

**RULES
OF THE
DEPARTMENT OF HUMAN SERVICES**

**CHAPTERS 290-1-3, 290-1-7, 290-4-1, 290-4-2, 290-4-3, 290-4-5, 290-4-6, 290-4-7,
290-4-8, 290-4-9, 290-4-10, 290-4-12, 290-4-13, 290-5-5, 290-5-12, 290-5-22,
290-5-27, 290-5-32, 290-5-37, 290-5-41, 290-5-44, 290-5-46, AND 290-9-37**

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Rule Chapter 290-1-3. VITAL RECORDS

Rule 290-1-3-.10 Repealed

- (1) ~~The State Registrar may establish additional written procedures for all documentary evidence requirements to substantiate any amendment to a vital record or to substantiate the required items on a delayed birth certificate. The State Registrar shall determine the acceptability of all documentary evidence submitted, and establish a priority of best evidence.~~
- (2) ~~Documents presented, such as census, hospital, church, or school records must be from independent sources and shall be in the form of the original record or a duly certified copy thereof, or a signed statement from the custodian of the record or document. Affidavits of personal knowledge or bible records are not acceptable as evidence to establish a delayed certificate of birth, or to amend a birth certificate.~~

Authority: Ga. L. 1982, pp. 723, 757; O.C.G.A. Secs. 31-2-4, 31-10-3, 31-10-11.

Rule 290-1-3-.17 New Certificate

- (1) ~~The new certificate of birth prepared for a person born in this State after adoption, legitimation, determination of paternity, or acknowledgement of paternity shall be on the form prescribed by the Department and shall include the following items and such other information necessary to complete the certificate:~~
- ~~(a) — The name of the child as it will appear on the new certificate;~~
 - ~~(b) — The date and place of birth as transcribed from the original certificate;~~
 - ~~(c) — The names and personal particulars of the adoptive parents or the natural parents whichever is appropriate;~~
 - ~~(d) — The birth number assigned to the original birth certificate;~~
 - ~~(e) — The original filing date; and~~
 - ~~(f) — The name of the attendant, printed or typed.~~
- (2) ~~The information necessary to locate the existing certificate and to complete the new certificate shall be submitted to the State Registrar or his or her designee on forms prescribed and approved by the State Registrar.~~
- (3) ~~A State file number from the delayed numbering series will be assigned to certificates prepared in this State for persons born in a foreign country, not entitled to citizenship at birth, and shall be prepared on a Certificate of Foreign Birth.~~

~~(4) A State file number from the delayed numbering series will be assigned to certificates prepared for full adoptions, where neither parent is the natural parent, for persons born in this State and the adoptive parents elect to show the place of birth as the residence of the adoptive parents at the time of the adoptee's birth. The place of birth indicated must be located in Georgia.~~

Authority: ~~Ga. L. 1982, pp. 723, 760; O.C.G.A. Secs. 31-2-4, 31-10-3, 31-10-14.~~

~~Rule 290-1-3-.21. Disposition of Reports of Induced Terminations of Pregnancy~~

~~(1) — Reports of induced termination of pregnancy are statistical reports only and are not to be incorporated into the official records of the State Office of Vital Records. The State Registrar is authorized to dispose of such reports when all statistical processing of the records has been accomplished. However, the State Registrar may establish a file of such records so they will be available for future statistical and research projects provided such file is not made a part of the official records and the reports are not made available for the issuance of certified copies. Such file shall be retained for as long as the State Registrar deems necessary and it shall then be destroyed. The file may be maintained by photographic, electronic, or other means as determined by the State Registrar, in which case the original report from which the photographic, electronic, or other file was made may be destroyed.~~

~~(2) — The provisions of this Rule shall also apply to all records of induced termination of pregnancy filed prior to the adoption of this Rule.~~

~~Rule 290-1-3-.22. Removal of Body~~

~~Before removing a dead body or fetus from the place of death, the person removing such body or fetus shall:~~

~~(a) — Obtain assurance from the attending physician, the associate physician, or the chief medical officer of the institution in which death occurred that the death is from natural causes and that the physician will assume responsibility for certifying the cause of death or fetal death and receive written permission to remove the body from the place of death; or~~

~~(b) — Notify the coroner or medical examiner if the case comes within his or her jurisdiction or, if the physician cannot certify the cause of death, obtain assurance from the coroner or medical examiner that he or she will assume responsibility for certifying the cause of death, and obtain written permission to remove the body.~~

Authority: ~~Ga. L. 1982, pp. 723, 765; O.C.G.A. Secs. 31-2-4, 31-10-3, 31-10-15, 31-10-20.~~

~~Rule 290-1-3-.28. Medical Items~~

~~Unless otherwise provided by Statute or in these Rules, all items of a medical nature on a vital record may be amended only upon receipt of a signed statement from those persons responsible for the completion of such items. The State Registrar may require documentary evidence to substantiate the requested amendment.~~

~~Authority: Ga. L. 1982, pp. 723, 767; O.C.G.A. Secs. 31-2-4, 31-10-3, 31-10-23.~~

~~Rule Chapter 290-1-7. RULES FOR DETERMINING YEAR 2000 READINESS~~

~~Rule 290-1-7-.01 Legal Authority~~

~~These rules are adopted and published pursuant to the Official Code of Georgia Annotated (O.C.G.A.) Sections 50-32-1 through 50-32-6 and 31-7-1.~~

~~Rule 290-1-7-.02 Title and Purpose~~

~~These rules shall be known as the Rules for Determining Year 2000 Readiness. The purpose of these rules is to give certain licensed institutions information about the Year 2000 readiness reporting requirements these institutions will have to meet.~~

~~Rule 290-1-7-.03 Definitions~~

~~In these rules, certain words have the following technical or special meanings:~~

- ~~(a) "Department" means the Georgia Department of Human Resources.~~
- ~~(b) "Emergency Medical Services and Ambulance Services" means those providers of emergency care and transportation which are licensed or approved by the Georgia Department of Human Resources.~~
- ~~(c) "Essential Service" means any service provided by a licensed institution, private home care provider, x-ray user, licensed child care center serving medically fragile children or end stage renal disease center inspected by the Georgia Department of Human Resources wherein the loss or interruption of the service directly threatens the health, safety or economic well-being of the persons receiving such services.~~
- ~~(d) "Facilities That Provide Essential Services" means ambulatory surgical treatment centers, child care centers serving medically fragile children, clinical laboratories, emergency medical services and ambulance services, end stage renal disease centers, intermediate care facilities for the mentally retarded, health maintenance organizations, hospices and private home care providers which are providing essential services as defined in these rules.~~

~~(e) "Institution" means any of the following kinds of facilities that are licensed by the Georgia Department of Human Resources: abortion facilities, ambulatory surgical treatment centers, birthing centers, hospitals, nursing homes or personal care homes.~~

~~(f) "Non-compliant equipment" means all equipment used by the licensed or regulated entity to deliver essential services which uses computer software or hardware or embedded computer microchips which is determined to be not Year 2000 compliant.~~

~~(g) "Private home care provider" means a provider of specialized private home care services licensed by the Georgia Department of Human Resources. The specialized services include the use of medical equipment which relies on computer software or hardware or has embedded computer microchips.~~

~~(h) "Year 2000" means the calendar year commencing immediately after the hour of 12:00 Midnight of December 31, 1999.~~

~~(i) "Year 2000 compliance" or "Year 2000 compliant" means that the software, application, hardware, firmware, equipment, embedded chip, or other applicable item which is represented to be Year 2000 compliant. The item:~~

~~1. Is able, without delay, error, invalid or incorrect results, premature endings or interruption, to consistently and correctly recognize, handle, accept, sort, manipulate, calculate, display, store, retrieve, access, compare, and process date, year, and time data and information before, between, during and after January 1, 1999, January 1, 2000, February 29, 2000, March 1, 2000, and any other date after December 31, 1999 (all of the foregoing being collectively defined as the 'relevant dates'), including, but not limited to, accepting any date, year, or time data and performing calculations or other operations or functions on dates, years, or times or portions of dates, years or times, without delay, error, invalid or incorrect results, premature endings, or interruptions;~~

~~2. Before, between, during, and after any of the relevant dates, functions accurately in accordance with any applicable specifications or documentation and without delay, interruption, premature endings, error, invalid or incorrect results, or changes in operations associated with the occurrence of any of the relevant dates or the advent of any new century, year, leap year, or any other date, year or time related matter;~~

~~3. Consistently and accurately responds to, stores, and provides output of two-digit year data or six digit date data and properly resolves any ambiguity as to century or year;~~

~~4. Will not be adversely affected in any manner by the advent of the Year 2000 or the passing or transition of any year, century, or other relevant date;~~

~~5. Has been designed to accommodate same century and multicentury formulas and date values and date data interface values that reflect the century; and~~

~~6. Consistently, correctly, accurately, unambiguously, and without delay, error, invalid or incorrect results, premature endings or interruption receives, provides, processes, and interfaces date, year, and time data between all items and all other software, applications, hardware, firmware, equipment, embedded chip, or other applicable items.~~

~~Rule 290-1-7-.04 Year 2000 Readiness~~

- ~~(1) All facilities providing essential services are required to determine whether they have any Year 2000 non-compliant equipment which is used in the delivery of essential services before September 9, 1999.~~
- ~~(2) Facilities which determine that their provision of essential services would be disrupted by the use of non-compliant equipment must remedy the non-compliance in at least one of the following ways:
 - ~~(a) — Replace non-compliant equipment with Year 2000 compliant equipment.~~
 - ~~(b) — Fix or remediate non-compliant equipment so that it is Year 2000 compliant.~~
 - ~~(c) — Retire non-compliant equipment and use alternative methods to deliver essential services without disruption.~~~~
- ~~(3) All facilities providing essential services shall respond truthfully under affidavit to Year 2000 readiness status surveys provided to them by the Department no later than 30 days after receipt.~~
- ~~(4) All facilities providing essential services are required to update the Year 2000 readiness surveys filed with the Department as directed by the Department after the initial filing or whenever there is a substantial change in the information provided in response to the Year 2000 readiness survey.~~
- ~~(5) The Department may audit any facility providing essential services for all matters related to Year 2000 compliance and contingency planning. Each facility must produce all requested materials and personnel, or in case of personal emergencies, reasonable substitute personnel when given 30 days notice by the Department.~~

~~Rule 290-1-7-.05 Contingency Plans~~

- ~~(1) Facilities must develop contingency plans for the provision of essential services using alternative methods in the event that there is a disruption in the supplies or services required by the facility to deliver essential services to the public.~~

~~(2) Facilities must make a copy of the contingency plan available to the Department upon request and provide a copy of the plan to the local emergency management agency upon request.~~

~~Rule 290-1-7-.06 Penalties~~

~~(1) The Department may impose an administrative fine of \$1000 per day until the completed survey response is received on any facility providing essential services which fails to complete and return the Year 2000 Readiness survey within 30 days of the facility's receipt of the survey.~~

~~(2) The Department may impose an administrative fine of \$1000 per day for failure of a facility providing essential services to submit timely and complete updates to the Year 2000 readiness survey.~~

~~(3) The Department may impose a civil penalty, not to exceed \$10,000.00, against a facility providing essential services that experiences a failure of essential services due to the facility's failure to reasonably and appropriately plan for Year 2000 compliance.~~

~~(4) The Department must provide notice to the facility providing essential services of the Department's intent to impose an administrative fine and an opportunity for an administrative hearing.~~

~~Rule 290-1-7-.07 Severability~~

~~In the event that any rule, sentence, clause or phrase of any of these rules may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional or otherwise unenforceable, such determination or adjunction shall in no manner affect the remaining rules or portions thereof. The remaining rules or portions thereof shall remain in full force and effect as if such rule or portions thereof so determined, declared or adjudicated invalid or unconstitutional were not originally part of these rules.~~

~~Rule Chapter 290-4-1. EMERGENCY RECEIVING, EVALUATING AND TREATMENT FACILITIES.~~

~~Rule 290-4-1-.01 Definitions~~

~~Unless a different meaning is required by the context, the following terms as used in this Rule shall have the meaning hereinafter ascribed to them:~~

~~(a) The term "private facility" means any hospital facility that is a proprietary hospital or a hospital operated by a nonprofit corporation or association approved for the purposes of Chapter 3 or Chapter 7 of Title 37 of the Official Code of Georgia Annotated, as~~

~~provided herein, or any hospital facility operated by a hospital authority created pursuant to the "Hospital Law", Article 4 of Chapter 7 of Title 31.~~

~~(b) The term "Crisis Stabilization Program" ("CSP") means a short term residential program operated as a part of a comprehensive community mental health and substance abuse program for the purpose of providing psychiatric stabilization or detoxification services, which complies with applicable standards in the "Standards for Community Mental Health, Mental Retardation and Substance Abuse Services".~~

~~(c) The term "department" means the Department of Human Resources of the State of Georgia.~~

~~(d) The term "emergency receiving facility" means a facility designated by the department to receive patients under emergency conditions as provided in Part 1 of Article 3 of Chapter 3 or of Chapter 7 of Title 37.~~

~~(e) The term "evaluating facility" means a facility designated by the department to receive patients for evaluation as provided in Part 2 of Article 3 of Chapter 3 or Chapter 7 of Title 37.~~

~~(f) The term "treatment facility" means a facility designated by the department to receive patients for treatment as provided in Part 3 of Article 3 of Chapter 3 of Title 37.~~

~~(g) "Physician" means any person who is licensed to practice in this State under the provisions of Article 2 of Chapter 34 of Title 43, or who is employed as a physician by the United State Veterans Administration or other federal agency.~~

~~(h) The term "Psychiatrist" means any physician certified as a Diplomat in Psychiatry by the American Board of Psychiatry and Neurology, or who has completed three years of approved residency training program in psychiatry and has had two years of full-time practice in this specialty.~~

~~Rule 290-4-1-.02 Provisions~~

~~Designation as Emergency Receiving, Evaluating and Treatment Facilities.~~

~~(a) The department may designate any private facility or such portion of a certified community mental health and substance abuse program which complies with the standards for a CSP within the State of Georgia at the request of or with the consent of the governing officers of such facility.~~

~~(b) Any private facility or any CSP designated as an Emergency Receiving, Evaluating, or Treatment Facility will indicate its consent in a written instrument to the department.~~

~~(c) Any private facility or any CSP requesting approval and designation as an Emergency Receiving, Evaluating, or Treatment Facility will make application on forms approved by the department.~~

~~(d) Any Crisis Stabilization Program (CSP), to be eligible for designation, shall be a part of a comprehensive community mental health and substance abuse program which comprehensive program has been certified by the Office of Quality Assurance of the Division of Mental Health, Mental Retardation and Substance Abuse to be in compliance with:~~

- ~~1) Standards for Community Mental Health, Mental Retardation and Substance Abuse Services, and~~
- ~~2) the Department of Human Resources Grants to Counties Policy Manual.~~

Rule 290-4-1-.03 Emergency Receiving Facility

~~(1) The private emergency receiving facility shall comply with the regulations of Chapter 290-5-6, Rules and Regulations entitled "Hospitals" as they now exist or as may be amended.~~

~~(2) The private facility or the CSP shall arrange for the availability of a physician who will examine the patient as soon as possible, but in any event within 48 hours of admission.~~

~~(3) The private facility or the CSP shall provide at least one room with detention screens or shatterproof windows and a locked door that can be opened from the outside, to accommodate a highly disturbed or suicidal person with reasonable safety.~~

Rule 290-4-1-.04 Evaluating Facility

~~(1) The private evaluating facility shall comply with the regulations of Chapter 290-5-6, Rules and Regulations entitled "Hospitals" as they now exist or as may be amended.~~

~~(2) The active medical staff of the private facility or the CSP shall include a physician who has completed at least one year of approved psychiatric residency and consultation by a psychiatrist shall be available.~~

~~(3) The private facility or the CSP shall provide at least one room with detention screens or shatterproof windows and a locked door that can be opened from the outside, to accommodate a highly disturbed or suicidal person with reasonable safety.~~

~~(4) The private facility or the CSP shall utilize available resources in the community to provide psychological tests and social work services if such services are needed for the patients and do not exist within the facility.~~

Rule 290-4-1-.05 Private Treatment Facility

~~(1) The private treatment facility shall comply with the regulations of Chapter 290-5-6, Rules and Regulations entitled "Hospitals" as they now exist or as may be amended.~~

~~(2) The facility shall have an identifiable program specifically designed for the mentally ill.~~

~~(3) The program shall be directed by a psychiatrist.~~

~~(4) The facility shall provide but not be limited to psychological services, social services, activity therapies and rehabilitation services.~~

~~Rule 290-4-1-.06 Enforcement~~

~~The administration and enforcement of these rules and regulations shall be as prescribed in O.C.G.A. Chapter 37-1.~~

~~Rule Chapter 290-4-2. REPEALED.~~

~~Rule 290-4-2-.20 Residential Intensive Treatment Programs~~

~~Such residences provide services for clients with significant substance abuse impairment, and who, typically, have not progressed in a less intensive setting, or lack supports and require a highly structured and specialized environment, or are transitioning from detoxification. In addition to the general rules set forth, programs offering residential intensive treatment programs shall meet the requirements of this subsection (.20).~~

~~(a) Client intake, assessment, and admission; individual treatment planning; and discharge and aftercare, if applicable, shall be done in accordance with rules .13, .14, and .17. Additional admission requirements, including laboratory tests, may be required by facility policy and/or determination of the medical/clinical director.~~

~~(b) A program shall provide a minimum of eight hours per day of various therapeutic services designed to enable the client to function without substance abuse. Such services shall be provided by persons who have been determined qualified by education, training, experience, and who are licensed/certified if required by state practice acts to render such services that meet the needs of clients.~~

~~(c) There shall be sufficient types and numbers of staff members on duty in the residence to provide for safe supervision of clients whenever clients are present.~~

~~(d) Provisions shall be made for mandatory education of children in care in accordance with O.C.G.A. Sections 20-2-690et seq. or its successor statute.~~

~~(e) A program shall have a written agreement with a physician for the provision of medical care.~~

**~~Rule Chapter 290-4-3. PRETRIAL EXAMINATION AND FOR COMMITMENT
BECAUSE OF INCOMPETENCY TO STAND TRIAL- AMENDED.~~**

~~Rule 290-4-3-.01 Duration of Detention for Pretrial Examination~~

~~When any individual who has criminal charges presently pending against him, is sent to any institution under the jurisdiction of the Department of Human Resources for the purpose of having such person evaluated to determine whether such person is competent to stand trial, the institution to which that person is brought shall make a report to the committing court as to the person's competency to stand trial at the institution's earliest opportunity, but in any event such report shall be made to the court not more than 45 days after the institution has received physical custody of the person. Discharge of such person shall be pursuant to the provisions of Rule 290-4-3-.02(6).~~

~~Rule 290-4-3-.02 Disposition of Persons Committed Pursuant to Georgia Code Section 27-1502~~

~~(1) Whenever a person is committed, pursuant to the provisions of Georgia Code Section 27-1502 following an adjudication of incompetency to stand trial, to any State institution which is subject to the jurisdiction of the Department of Human Resources, within ninety (90) days after the institution has received actual custody of such person, he or she shall be evaluated and a diagnosis made as to whether the person is presently incompetent and if so, whether there is a substantial probability that the person will attain competency in the foreseeable future. If the person is found to be competent to stand trial, the institution shall immediately report that finding and the reasons therefor to the trial court and the person shall be discharged pursuant to paragraph (6) of this rule.~~

~~(2) If the person is found to be incompetent to stand trial and there is not a substantial probability that the person will attain competency in the foreseeable future, the institution shall report that finding and the reasons therefor to the trial court and such person, provided that he or she meets the criteria for civil commitment, shall thereupon be civilly committed to a State institution pursuant to the provisions of Georgia Code Sections 88-5 or 88-25, whichever is applicable. If such person does not meet the criteria for civil commitment, he or she shall be discharged.~~

~~(3) If the person is found to be incompetent to stand trial but there is a substantial probability that such person will attain competency in the foreseeable future, by the end of said ninety (90) day period, or at any prior time, the institution shall report that finding and the reasons therefor to the trial court and shall retain custody over the individual for the purpose of continued treatment for an additional period not to exceed nine (9) months.~~

~~(4) If, by the end of said nine (9) month period, or at any prior time if the person's condition warrants, the person is still found not to be competent to stand trial, irrespective of the probability of recovery in the foreseeable future, the institution shall report that finding and the reasons therefor to the trial court and such person, provided that he or she meets the criteria for civil commitment, shall thereupon be civilly committed to a State institution pursuant to the provisions of Georgia Code Sections 88-5 or 88-25, whichever is applicable. If such person does not meet the criteria for civil commitment he or she shall be discharged.~~

~~(5) Even if it is found that the person probably soon will be able to stand trial, his continued confinement must be accompanied by progress toward that goal. If the institution finds at any time during said nine (9) month period that the person is not progressing toward competency, the institution shall report that finding and the reasons therefor to the trial court and such person, provided that he or she meets the criteria for civil commitment, shall thereupon be civilly committed to a State institution pursuant to the provisions of Georgia Code Sections 88-5 or 88-25 whichever is applicable. If such person does not meet the criteria for civil commitment, he or she shall be discharged.~~

~~(6) In no event shall any person confined pursuant to a court order entered in a pending criminal prosecution be discharged other than into the custody of a law enforcement officer of the jurisdiction of the court committing such person to the institution, unless the court has dismissed the charges which led to the commitment; provided that in the event that such law enforcement officer refuses to appear and take custody of the person within twenty (20) days after notice to such officer, to the presiding judge of the committing court, and to the prosecuting attorney for such court, the person shall be discharged and the committing court so notified. All notifications shall be sent by certified mail, return receipt requested. Provided, that, with the concurrence of the appropriate court, and upon the recommendation of the attending physician, any person discharged as competent to stand trial, may be held at the confining institution instead of at the court's detention facilities, whenever, in the attending physicians' opinion, such detention in the court's facilities would be detrimental to the well-being of the person so committed. Such detention shall continue only until the date of the person's trial.~~

~~Rule Chapter 290-4-5. ADMINISTRATION OF PATIENT COST OF CARE.~~

~~Rule 290-4-5-.01 Legal Authority~~

~~The legal Authority for this chapter, unless otherwise noted, is "The Patient Cost of Care Act", Georgia Laws 1979, pp. 834-843.~~

~~Rule 290-4-5-.02 Organization and Purpose~~

~~The purpose of these rules is to effect the requirements of "The Patient Cost of Care Act," which mandates that the Georgia Department of Human Resources establish standards for determining assessments for patient cost of care, determine liability therefore, make investigations thereof, establish billing and collection procedures, provide for hearings and other requirements.~~

~~Rule 290-4-5-.03 Definitions~~

~~The terms "Department," "State Hospital," "Patient," "Persons Liable for Cost of Care," "Cost of Care," "Income," and "Assessment" as used in these rules shall carry the same meanings as ascribed to such terms in "The Patient Cost of Care Act". Unless a different meaning is required by the context, the following terms as used in these rules shall mean:~~

~~(a) "Commissioner" means the Commissioner of the Georgia Department of Human Resources;~~

~~(b) "Hospital Hearing Officer" means that person or persons appointed by the Commissioner or his designee to hold hearings at each State Hospital on matters relating to the administration of the Patient Cost of Care Program;~~

~~(c) "Hospital Patient Accounts Officer" means that person appointed by the Superintendent of each State Hospital or his designee to manage the administration of the Patient Cost of Care Program;~~

~~(d) "Hearing Officer for Final Appeals" means that person appointed by the Commissioner to review, on request, the decisions of the Hospital Hearing Officer and to make a final decision on behalf of the Department on appeal of any such decision.~~

~~Rule 290-4-5-.04 Delegation of Authority~~

~~The Commissioner hereby delegates authority for the determination of assessments, based on the standards prescribed herein, to each State Hospital Superintendent and his appointed designee, the Hospital Patient Accounts Officer; and the authority for review of such determinations, on request, to the Hospital Hearing Officers and the Hearing Officer for Final Appeals, respectively. Authority delegated to the Hospital Hearing Officers shall not impair the authority of the Hospital Patient Accounts Officer to perform his functions under pertinent sections of the aforesaid Act, nor preclude participation by members of the Hospital Patient Accounts Office staff in the hearing process or in administration of the determination of the Hospital Hearing Officer.~~

~~Rule 290-4-5-.05 Standards for Assessments~~

~~Standards for determining assessments are based on the income, assets, insurance and other third party coverage or entitlements, and other circumstances of persons liable for cost of care.~~

~~(a) The Department hereby establishes the assessment for cost of care for any patient covered by a contract of insurance or other third party reimbursement contract or entitlement as:~~

- ~~1. the total amount payable under such contract or entitlement up to the total cost of care, or that portion of cost of care payable under such contract or entitlement;~~
- ~~2. if benefits payable under such contract or entitlement are less than the total cost of care, the amounts payable by all persons liable for cost of care toward any remaining balance as determined by application of the standards prescribed in paragraphs (b), (c), and (d) below; provided, however, that amount payable toward any remaining balance for a patient eligible under (a) any insurance contract, plan or benefit shall be determined in accordance with any provisions for payment stipulated by the insurance contract, plan or benefit as a requirement for participation in the insurance, plan or benefit; for a patient eligible under (b) the Medical Assistance Program (Title XIX of the Social Security Act) shall be determined in accordance with the provisions of the Georgia State Plan for Medical Assistance; and for a person eligible under (c) the Medicare Program (Title XVIII of the Social Security Act) shall be determined in accordance with the regulations and policies of the Social Security Administration;~~
- ~~3. the total amount payable under such contract or entitlement which exceeds total cost of care if paid in accordance with the provisions or regulations of such contract or entitlement.~~

~~(b) The Department hereby prescribes a standard scale for determining assessments for cost of care for all patients and other persons liable for cost of care, except as provided in paragraph (a) above, or further provided in paragraphs (c) or (d) below, derived by application of the factors of:~~

- ~~1. for all patients except as provided in paragraph 2. or 3. below:
 - ~~(i) — poverty income guidelines published by the federal government, effective upon issuance by the Department; but effective not later than sixty days following the publication date of the revised guidelines in the federal register;~~
 - ~~(ii) — total of deductions and personal exemptions allowable under Georgia Income Tax laws and regulations; except (1) no deductions or personal exemptions will be allowed to persons residing in another state, and (2) no deductions or personal exemptions will be allowed more than once in calculating assessments of the patient and other responsible parties for any one patient;~~~~

~~(iii) — a graduated range of income levels in excess of the sum of (i) and (ii) above;~~

~~(iv) — the number of dependents as defined by Georgia Income Tax Laws and regulations, except that no dependent is to be reflected more than once in calculating assessment(s) for any one patient;~~

~~(v) — a base and graduated percentage charge associated with each income level;~~

~~(vi) — a charge associated with assets equal to 5 per cent; except, effective January 1, 1993, for individuals hospitalized six continuous months and having assets accumulated from government benefit payments, a charge associated with assets will be made as provided in paragraph 3. below.~~

~~2. for patients remaining as inpatients in State Hospitals longer than three months, who receive monthly benefits or funds:~~

~~(i) — on earned income and other income which is not paid or otherwise available to be paid on a regular monthly basis, the same factors as (b)1. (i) through (b)1. (v);~~

~~(ii) — on benefits or other funds paid or available to be paid on a regular monthly basis, even though actual payments may occur at a different interval of time:~~

~~(I) — total of benefits and funds received or available to be received on a monthly basis;~~

~~(II) — a deduction equal to the amount of the personal needs allowance allowed institutionalized individuals by the State Medical Assistance Plan;~~

~~(III) — any other deduction that the Department clearly defines by published policy prior to allowing such deduction.~~

~~(IV) — a charge associated with assets equal to 5 per cent; except, effective January 1, 1993, for individuals hospitalized for six continuous months and having assets accumulated from government benefit payments, a charge associated with assets will be made as provided in paragraph 3. below.~~

~~3. for patients hospitalized six continuous months and remaining inpatients, who have accumulated assets from government benefit payments, effective January 1, 1993:~~

~~(i) — a charge for full cost of care against the patient's accumulated assets which are in excess of allowed limits as those for establishing eligibility for institutionalization benefits under Title XIX of the State Medical Assistance Plan and which are not otherwise exempt and counted as resources of the patient under the State Medical Assistance Plan.~~

~~(c) The Department further prescribes a lower standard scale derived by the application of the above factors plus an additional factor of limited number of days allowable for care for mentally retarded respite care admissions under Code Section 37-4-21 or any other respite program allowed by law or duly adopted department regulations.~~

~~(d) The Department prescribes the same standard scale outlined in paragraphs (a), (b) and (c) for a stepparent or other person residing with and providing support of a patient under 18 years of age who has not been legally adopted by such individual; except, after application of the factors in paragraphs (b) and (c) to derive an assessment for such individual, liability will be capped at the total amount such individual is authorized by Georgia income tax laws to claim as a standard deduction and personal exemption for the patient. This provision of limited liability does not apply to hospital, health, and other medical insurance, program, or plan benefits payable toward cost of care, any benefits or funds or other entitlements for which the patient is eligible or to any subrogation rights as provided by law.~~

~~Note: The resultant standard scale shall be published in a uniform table and is hereby incorporated into these rules, and by reference, made a part thereof. Copies of the standard scale shall be available on request at each Hospital Patient Accounts Office.~~

Rule 290-4-5-.06 Reassessments/Redeterminations

~~(1) All assessments as determined under the provisions of "The Patient Cost of Care Act" and in accordance with the standards prescribed in Rule 290-4-5-.05 above shall be subject to redetermination under any of the following circumstances:~~

~~(a) — On request of any person who has been notified of liability for payment of cost of care in either his personal or representative capacity;~~

~~(b) — On discovery by the Department of error, omission or false statements which were relied upon by the Hospital Patient Accounts Officer in determining assessments for cost of care;~~

~~(c) On discovery by the Department of changes in economic circumstances of any person liable for cost of care assessments; and~~

~~(d) — At the end of a period not to exceed twelve (12) months from the date an assessment was originally made.~~

~~(2) Except as determined under the provisions of paragraph (b) above, no such redetermination shall operate to increase the assessment for cost of care for services received previous to such redetermination. Such redetermination may operate to decrease assessments for care previously received if the change in economic or other circumstances so dictate. However, no such reduction shall require the refund of any payments made on an assessment prior to the date of the reduction of the assessment.~~

~~Rule 290-4-5-.07 Administrative Hearing Procedures~~

~~(1) On request of a party affected by an assessment for cost of care, the Hospital Hearing Officer will initiate the following actions:~~

~~(a) Obtain pertinent records from the Hospital Patient Accounts Office in order to create a legally sufficient file in order to hear the matter.~~

~~(b) Issue to the indicated party or parties a NOTICE for the hearing. The NOTICE for the hearing shall include:~~

~~1. the time of the hearing;~~

~~2. the place of the hearing, giving the street address, floor and designated room.~~

~~3. the purpose of the hearing and a brief statement of the facts alleged in clear and intelligible language so that the parties may be fully apprised thereof and be able to prepare therefore;~~

~~4. a statement of the legal authority under which the hearing is to be held;~~

~~5. a statement that the respondent has the right to subpoena witnesses and present relevant evidence through the Department as well as a statement that the parties have the right to be represented by legal counsel or any other representative and present evidence on all the issues involved.~~

~~(c) In these cases and within the discretion of the Hospital Hearing Officer, an informal disposition may be made by the Hospital Hearing Officer and the affected party by stipulation, agreed settlement or consent order.~~

~~(d) In considering the place for the conduct of the hearing, due regard shall be given to the convenience and necessity of the parties and the representatives. The hearing will be informally held in a manner which will be conducive to an agreeable settlement of the issue.~~

~~(e) The hearing shall be opened promptly at the time fixed in the NOTICE of hearing. A brief summary of the law involved, the purpose of the hearing and the issues involved will be entered into a recording device (which may be later transcribed if there is a need for a formal transcript) at the inception of the hearing.~~

~~(f) The order or proof in the conduct of such a hearing should be somewhat flexible in order to consider all of the issues. Generally, the following procedure will be adhered to:~~

~~1. the Hospital Hearing Officer will introduce into the record the notice of assessment and other pertinent documents and will question any departmental witnesses if this should be necessary;~~

2. — the respondent (that is, the party or parties to whom the assessment is directed) should then be heard;

3. — each party shall be given reasonable and adequate time to complete his presentation. The hearing is not considered complete until both sides have had opportunity to introduce relevant evidence or testimony;

4. — the rules of evidence as applied in civil cases in the Superior Courts of Georgia shall be followed; however, when necessary to ascertain facts not reasonably susceptible of proof thereunder, the strict rules of evidence or technical procedures shall not apply. The Hospital Hearing Officer shall conduct the hearing on a middle course between rigid formal technical procedures and informality;

5. — a record shall be preserved which will include the recording of the hearing together with all documentary evidence and pertinent data.

(g) — The hearing shall be for the purposes of determining the accuracy and reliability of information utilized in making the assessment and whether the assessment was, in all important respects, made in accordance with the provisions of "The Patient Cost of Care Act" and the standards adopted pursuant thereto.

(h) — Upon the conclusion of the hearing, the Hospital Hearing Officer shall make a succinct finding of fact and will supply the respondent as well as the Department with a copy of his decision within fifteen days after such hearing. This period may be extended in exceptional cases should the complexity of the hearing require such an extension. If the matter is so extended, the Hospital Hearing Officer will include the reasons for such an extension in his final order.

(2) In the event the responsible party(ies) is adversely affected by a decision of the Hospital Hearing Officer, he may have a review thereof by appeal to the Hearing Officer for Final Appeals at the State level. Such an appeal must be made within thirty days after rendition of the final order by the Hospital Hearing Officer. The Hospital Hearing Officer will supply the dissatisfied party(ies) with the address of the Hearing Officer for Final Appeals and will forward the record and pertinent documents upon being notified by the adversely affected party(ies). Such a request for an appeal must be made in writing thirty days after the rendition of a final order and shall be directed to the Hospital Hearing Officer first hearing the case.

(a) — In the event of an appeal to the Hearing Officer for Final Appeals, the petition or letter of the aggrieved party(ies) shall state the reasons why and in what respect such party is aggrieved and the grounds to be relied upon as a basis for the relief demanded. This petition or letter will form a part of the record to be transmitted to the Hearing Officer for Final Appeals.

(b) — The Hospital Patient Accounts Officer, upon request, shall assist the aggrieved party in the preparation of a formal request for a hearing by furnishing

~~such pertinent information as may be available and by insuring the request is directed to the Hearing Officer for Final Appeals within the specified time period.~~

~~Rule Chapter 290-4-6. PATIENTS' RIGHTS.~~

~~Rule 290-4-6-.01 Purpose, Implementation, and Definitions~~

~~(1) Purpose. The Purpose of these regulations is to safeguard the rights of persons treated pursuant to the Official Code of Georgia Annotated (O.C.G.A.) Chapters 37-3, 37-4 and 37-7. Rules and regulations for persons treated in mental health centers will be issued separately.~~

~~(2) Applicability. These regulations shall apply to all facilities except mental health centers and those operated by Federal agencies as defined in O.C.G.A. Chapters 37-3, 37-4 and 37-7. They shall in general apply to all persons served in such facilities without regard to the type or source of entry into the program. When the patient is a minor or an adult with a legally appointed guardian, the regulations are applicable to that person with certain exceptions as specifically stated in various parts of the regulations. These variations are noted in the text of the regulations. For persons being served by virtue of a court order related to a criminal matter, the regulations are applicable to the extent that they do not violate the provisions of the order nor the need to provide for the safety of the individual or of others.~~

~~(3) Implementation. Each facility shall instruct each staff member in the contents of these regulations. Each facility also, at the beginning of each patient's treatment, shall notify the patient or his parent or guardian, if applicable, of the rights and remedies contained in these regulations, to their applicability to him. Notifications shall be done in such a manner commensurate with the individual's abilities and capabilities of comprehension and understanding. Further, prior to the restriction of any patient's rights (as permitted by these regulations), a staff member shall again inform the patient or his parent or guardian, if applicable, of his right to administrative complaint or judicial review of that restriction, except in cases where the resident's condition makes this impractical and the resident shall be informed at a time when his condition permits.~~

~~(4) Definitions. Unless a different meaning is required by the context, the following terms as used in these regulations shall have the meanings hereinafter set forth:~~

~~(a) ——— "Abuse" means any unjustifiable intentional or grossly negligent act, exploitation or series of acts, or omission of acts which causes injury to a patient, including but not limited to verbal abuse, assault or battery, failure to provide treatment or care, or sexual harassment;~~

~~(b) ——— "Chief Medical Officer" means the physician designated by the chief administrative officer of the facility with overall responsibility for patient treatment at any facility receiving patients pursuant to O.C.G.A. Chapters 37-3 or 37-7 or his~~

~~designee. Where patients are receiving treatment under the provisions of O.C.G.A. Chapter 37-4, this term shall include the term "Superintendent" when applicable;~~

~~(c) "Community Mental Health Center" shall mean an organized program for the care and treatment of the mentally ill and alcoholics, drug dependent individuals or drug abusers operated by a county board of health or such similar program recognized by a county board of health or the Department;~~

~~(d) "Court" means, in the case of an individual who is 17 years of age or older, the probate court for the county of residence of the patient or the county in which such patient is found, and, in the case of an individual who is under the age 17 years, the juvenile court for the county of residence of the patient or the county in which such patient is found;~~

~~(e) "Department" means the Georgia Department of Human Resources and includes its duly authorized agents and designees;~~

~~(f) "Director" means the director of the Division of Mental Health, Mental Retardation and Substance Abuse of the Department of Human Resources;~~

~~(g) "Facility" for purposes of this Chapter 290-4-6, means any State-owned or State-operated hospital, or other facility utilized for the diagnosis, care, treatment, or hospitalization of patients, and any other hospital or facility within the State of Georgia approved for such purpose by the Department as defined in O.C.G.A. Chapters 37-3, 37-4 and 37-7, but does not mean community mental health center;~~

~~(h) "Guardian" means an individual appointed as provided by law to be over the person of an adult or of a minor. Whenever the word patient is used in these regulations, a guardian is entitled to exercise the patient's rights on behalf of his ward;~~

~~(i) "Individualized Service Plan."~~

~~1. "Individualized service plan" means a proposal that is developed during a patient's stay in a facility pursuant to O.C.G.A. Chapter 37-3 and that is specifically tailored to the individual patient's treatment needs. For the purpose of these regulations, it includes the corresponding individualized treatment plan for a patient's stay in a facility pursuant to O. C .G.A. Chapter 37-7. Each such plan shall clearly include:~~

~~(i) A statement of treatment goals or objectives, based upon and related to a proper evaluation, which can be reasonably achieved within a designated time interval;~~

~~(ii) Treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to these goals and which include specific prognosis for achieving these goals;~~

~~(iii) — Identification of the types of professional personnel who carry out the treatment and procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under State and Federal law;~~

~~(iv) — Documentation of patient involvement and, if applicable, the patient's accordance with the service plan;~~

~~(v) — A statement attesting that the chief medical officer has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive available environment possible closest to the patient's home community;~~

~~2. — For the purpose of these regulations, "individualized service plan" also includes the corresponding individualized program plan for a client's stay in a facility pursuant to Georgia Code Chapter 37-4. The "individualized service plan" is developed prior to admission and is updated on a continuing basis. As a minimum each plan shall include:~~

~~(i) — A statement of the nature of the specific problem and the specific needs of the client;~~

~~(ii) — A statement of the least restrictive setting available and conditions necessary to achieve the purposes of habilitation based upon the needs of the client;~~

~~(iii) — A description of intermediate and long-range goals with the projected timetable for their attainment;~~

~~(iv) — A description of proposed program, facility, or department(s) responsible for involvement with the client in order to attain these goals;~~

~~(v) — An explanation of criteria for rejection of other alternative settings for habilitation;~~

~~(vi) — Proposed criteria enumerated for release to less restrictive settings for habilitation;~~

~~(j) — "Patient" means any mentally ill person who receives treatment pursuant to O.C.G.A. Chapter 37-3 and any alcoholic, drug dependent individual, or drug abuser who receives treatment pursuant to O.C.G.A. Chapter 37-7; it also includes any mentally retarded person who receives habilitation pursuant to O.C.G.A. Chapter 37-4. "Patient" also includes a person for whom treatment or habilitation is sought;~~

~~(k) — "Physical restraint" means any mechanical device used to restrict a person's physical movement, except as noted in Section 290-4-6-.02 (1)(c)2. (ii);~~

~~(l) "Physician" means any person duly authorized to practice medicine in this State pursuant to O.C.G.A. Chapter 43-34.~~

~~(m) "Representatives" means the person appointed pursuant to Section 290-4-6-.06(2) of these regulations, to receive notices;~~

~~(n) "Restrictive Time-out" means the placement of a patient in a room or area from which egress is prevented for a brief period of time contingent upon the occurrence of a specified target behavior, but under observation by staff. Key-locks or other latching devices which will not automatically open when staff are not present are prohibited.~~

~~(o) "Seclusion" means the placement of a patient alone in a locked room when the procedure is not part of a systematic, Restrictive Time-out program (see definition of "Restrictive Time-out").~~

~~(p) "Staff member" means, for the purposes of these regulations only, any person who is an employee, independent contractor, or other agent of the Department. The use of "staff member" in these regulations for such persons shall in no way alter the legal relationship of such persons and the Department, or subject the Department to any liability to which it is not otherwise subject.~~

~~(q) "Superintendent" means the chief administrative officer who has overall management responsibility at any facility receiving patients pursuant to O.C.G.A. Chapters 37-3, 37-4 and 37-7, or an individual appointed as the designee of such superintendent;~~

~~(r) "Treatment" means care; diagnostic services; therapeutic services, including the administration of drugs; and any other service for the treatment of an individual pursuant to O.C.G.A. Chapter 37-3; it includes such services, as well as social service care, vocational rehabilitation and career counseling, for an individual pursuant to O.C.G.A. Chapter 37-7; it also includes habilitation of an individual pursuant to O.C.G.A. Chapter 37-4.~~

Rule 290-4-6-.02 Treatment

~~(1) Appropriateness.~~

~~(a) General. Each patient shall receive care and treatment that is suited to his needs in the least restrictive environment available offering appropriate care and treatment.~~

~~(b) Individual Service Plans.~~

~~1. The examination of patients shall be governed as follows:~~

~~(i) For persons being treated pursuant to O.C.G.A. Chapters 37-7 and 37-3, each patient shall be assessed by the staff as soon as possible after~~

~~admission but within the time limits contained within O.C.G.A. Chapters 37-7 and 37-3 or 72 hours, whichever comes first;~~

~~(ii) — For persons treated pursuant to O.C.G.A. Chapters 37-4, each patient shall be assessed on the day of admission to an inpatient facility.~~

~~2. — The development of an individualized service plan shall be governed as follows:~~

~~(i) — For persons being treated in a hospital pursuant to O.C.G.A. Chapters 37-7 and 37-3, staff shall develop an individualized service plan for each patient as soon after the initial assessment as practical but within the time limits contained within O.C.G.A. Chapters 37-7 and 37-3 or 10 days, whichever comes first;~~

~~(ii) — For persons treated pursuant to O.C.G.A. Chapters 37-4, individualized service plans for each person shall be developed prior to admission to a hospital.~~

~~3. — Each individualized service plan shall be reviewed at regular intervals to determine the patient's progress toward the stated goals and objectives of the plan to determine whether the plan should be modified because of the patient's present condition. These reviews should be based upon relevant progress notes in the patient's clinical record and upon other related information. Information from the patient and other sources, including family members, should be obtained and utilized where feasible. Reviews should be conducted as required by applicable standards such as medicare, medicaid, JCAH, policies, etc.~~

~~(c) Physical Restraints, and Seclusion.~~

~~1. — All physical restraints, and seclusion shall be used solely for the purposes of providing effective treatment and protecting the safety of the patient and other persons and shall not be used as punishment or for the convenience of staff. Physical restraints and seclusion should only be used when no less restrictive methods of controlling behavior which would reasonably insure the safety of the patient and other persons are feasible.~~

~~2. — The use of physical restraints shall be governed as follows:~~

~~(i) — For patients treated pursuant to O.C.G.A. Chapters 37-7 and 37-3, physical restraints shall not be applied unless it is determined by an attending physician to be absolutely necessary to prevent a patient from seriously hurting himself or others and is required by his medical needs. This determination shall expire after 24 hours. An attending physician must then make a new determination after personally examining the person before the restraints may be continued. Every use of a restraint and the reasons therefore shall be made a part of the clinical record of the~~

~~patient. A copy of each of these entries shall be forwarded to the chief medical officer for review. A patient placed in physical restraints shall be checked at least every 30 minutes by staff members trained in the use of restraints, and a written record of these checks shall be made. While in restraints each person should be spoken to, checked for indications of obvious physical distress, be offered liquids and an opportunity to meet his need to urinate and defecate as needed or at least every 2 hours unless the person is asleep or his condition does not permit. The person should be periodically removed from restraints if his condition permits. A person in restraints should receive all means available to other patients except as otherwise ordered by a physician based upon the person's health needs and as his condition to take meals which in restraints permits. Restraints are to be discontinued when they are no longer needed to prevent a person from hurting himself or others and his medical needs allow removal;~~

~~(ii) — For persons treated pursuant to O.C.G.A. Chapter 37-4, the following procedures shall apply:~~

~~(I) — Physical restraints shall not be applied, except in emergencies as provided in the next subsection, unless it is determined by a physician to be necessary to prevent a patient from seriously injuring himself or others. The physician's order for restraints shall expire after 12 hours. The physician must then make a new determination that the application of restraints is necessary to prevent the client from seriously injuring himself or others and must make such a determination for each 12-hour period that the restraint is continued. The physician must issue a written order for each use of restraints. Restraints are to be discontinued when they are no longer needed to prevent the person from seriously injuring himself or others;~~

~~(II) — When the application of a restraint is necessary in emergency situations to protect the patient from immediate injury to himself or others, restraints may be authorized by attending staff who must immediately report the action taken to the physician. The facility shall have written policies and procedures that govern the use of restraints and that clearly delineate, in descending order, the personnel who can authorize the use of restraints in emergency situations;~~

~~(III) — Every use of a restraint shall be made a part of the patient's clinical record. The following shall be documented for the record:~~

~~I. — The reasons for applying the restraints;~~

~~II. — The signature of the person authorizing the restraints;~~

~~III. — The time of application and removal of the restraint;
and~~

~~IV. — A record of checks at least every 30 minutes by a staff member trained in use of restraints with the signature of the person making such checks. While in restraints each person should be spoken to or in some manner communicated with, checked for indications of obvious physical distress, be offered liquids and an opportunity to urinate or defecate as needed or at least every 2 hours unless the person is asleep or his condition does not permit. A person in restraints must be given an opportunity for motion and exercise for a period not less than 10 minutes during each 2 hours of restraint. A person in restraints should receive all meals available to other patients except as otherwise ordered by a physician based upon the person's health needs and as his condition to take meals while in restraints permit. A copy of each use of restraints shall be followed to the superintendent for review;~~

~~(IV) — For the purposes of this subsection 290-4-6-.02(1)(c)2. (ii), those devices which restrain movement, but are applied for protection from accidental injury or required for the medical treatment of the client's physical condition or for supportive or corrective needs of the client, shall not be considered physical restraints. However, devices used in such situations must be authorized and applied in compliance with the facilities' policies and procedures. The use of such devices shall be a part of the patient's individual program plan.~~

~~3. — The use of seclusion shall be governed as follows:~~

~~(i) — For persons treated pursuant to O.C.G.A. Chapters 37-7 and 37-3, procedures for the use of seclusion shall be the same as those for physical restraints contained in Subsection 290-4-6-.02(1)(c)2. (i).~~

~~(ii) — For persons treated pursuant to O.C.G.A. Chapter 37-4, the use of seclusion is not allowed.~~

~~(iii) — For persons treated pursuant to O.C.G.A. Chapter 37-4 the use of Restrictive Time-out is permitted.~~

~~(d) — Medications.~~

~~1. — All medications shall be used solely for the purposes of providing effective treatment and protecting the safety of the patient and other persons and shall not~~

~~be used as punishment or for the convenience of staff. Physical restraints and seclusion should only be used when no less restrictive methods of controlling behavior which would reasonably insure the safety of the patient and other persons are feasible.~~

~~(2) Participation of Patient.~~

~~(a) — Access to information. Each patient and his guardian or parent of a minor, if applicable, shall have the right to review the patient's own medical records in accordance with Section 290-4-6-.05(3) of these regulations, to be told his diagnosis, to be consulted and informed about the treatment recommendation and any risk involved. The patient will be fully informed about his medication, including its side effects and available treatment alternatives. Such disclosures shall be made unless the disclosure to the patient himself is determined by the chief medical officer or the patient's treating physician to be detrimental to the patient's physical or mental health and unless a notation to that effect is made part of the patient's record. The patient shall be informed to the fullest extent possible in a manner that is commensurate with his abilities of comprehension and understanding. Such information shall not be withheld from a guardian or parent of a minor child in cases in which disclosure is to be made to that person.~~

~~(b) — Consent. No treatment of any kind shall be administered to a patient if that patient refuses the treatment prior to the treatment except that:~~

~~1. Medication may be administered without the consent of the patient or other person where a physician determines that refusal would be unsafe to the patient or others. If the patient continues to refuse medication after such initial emergency treatment, a concurring opinion from a second physician must be obtained before medication can be continued without the patient's consent.~~

~~2. If an adult patient has been judicially determined to be incompetent to give such consent or to make decisions of a similar nature, such consent shall be obtained from the patient's guardian with capacity to make such decisions. If the patient is a minor, such consent shall be obtained from the minor's parent or guardian;~~

~~3. If the guardian or parent, where applicable, cannot be found after a diligent search, or if an adult patient, though legally competent, is physically unable (due to unconsciousness or otherwise) to give or withhold such consent, such consent shall be obtained from any one of the following persons: for an adult or minor patient, the patient's spouse; for a minor patient, any adult brother or sister, any grandparent, or any person temporarily standing in loco parentis, whether formally serving or no. When the treatment for which consent is sought is not standard psychiatric treatment, the consent obtained from the persons listed in this Section 290-4-6-.02(2)(b) 3. shall not be sufficient to authorize the treatment unless court approval is also obtained after a hearing. Standard psychiatric treatment shall not include insulin coma, or psychosurgery.~~

~~4. In cases of grave emergency where the medical staff of the facility determines that immediate surgical or other intervention is necessary to prevent serious physical consequences or death, and where delay in obtaining consent would create a grave danger to the physical health of the patient as determined by at least two physicians, then essential surgery or other intervention may be administered without the consent of the patient or other person. In such cases, a record of the determination of the physicians shall be entered into the medical records of the patient and this will be the prior consent for such surgery or other intervention. Such consent shall be valid notwithstanding the type of admission of the patient, and it shall also be valid whether or not the patient has been adjudged incompetent. Actual notice of any action taken pursuant to this section shall be given to the patient and the spouse, next of kin, attorney, guardian or representative of the patient as soon as practicably possible.~~

~~(3) Participation of Representative.~~

~~(a) — Participation of representatives shall be governed as follows for patients being treated on an inpatient basis in a hospital pursuant to Georgia Code Chapters 37-7 and 37-3 and persons ordered to involuntary outpatient treatment by a community mental health center on an outpatient basis.~~

~~1. — At the time that an adult patient's representative is designated or selected, and at least every 12 months thereafter, such patient shall be notified that, unless objected to by the patient, such representative will be permitted to consult with the facility regarding the development of the patient's individualized service plan and the patient's treatment under such plan.~~

~~2. — At least 7 days prior to any substantial change in the individualized service plan or treatment thereunder of an adult patient, such patient shall be notified that such patient's representative will be notified of such change unless objected to by the patient within 24 hours. The representative of an adult patient not objecting to notification of such representative as herein authorized, shall be notified at least 5 days prior to any substantial change in such patient's individualized service plan or the treatment under such plan.~~

~~3. — In an emergency where delay due to providing prior notification under Section 290-4-6-.02(3)(a) 2. would create serious damage to the health of the patient, such a substantial change may be made without such prior notification if:~~

~~(i) — The patient's record specifies the circumstances surrounding the emergency;~~

~~(ii) — Within 48 hours after the change an adult patient is notified of his rights to object, within 24 hours, to his representative's being notified of such change; and~~

~~(iii) — The representative of a minor patient, and the representative of an adult patient not objecting to notification of such representative as herein authorized, shall be notified of such change within 5 days after such change occurs.~~

~~4. — For purposes of Sections 290-4-6-.02(3)(a) 2. and 290-4-6-.02(3)(a)3., "substantial change" means a significant change including but not limited to the transfer of a patient from a unit primarily serving patients under 18 years of age to a unit primarily serving patients 18 years of age or over or the transfer of a patient from one facility to another, but shall not include:~~

~~(i) — Changes in the routine day-to-day care of the patient;~~

~~(ii) — Routine or periodic changes or adjustments in patient medication;~~

~~(iii) — Changes relating to routine or necessary medical care needs of the patient;~~

~~(iv) — Formulation of the patient's initial individualized plan;~~

~~(v) — Discharge of the patient from the facility; nor~~

~~(vi) — Changes specifically contemplated in an individualized service plan regarding which the representative has already received notification.~~

~~5. — Notification to representatives under Sections 290-4-6-.02(3)(a) 2. and 290-4-6-.02(3)(a)3., may be made by telephone if the date and time of such notification is entered on the patient's clinical record and if such notification is followed within 15 days by written notification.~~

~~6. — A patient's legal guardian shall have the consultation and notification rights of a patient's representative under Sections 290-4-6-.02(3)(a) 1., 290-4-6-.02(3)(a)2., and 290-4-6-.02(3)(a)3. without regard to whether or not the patient is a minor and without regard to whether or not the patient objects to such consultation, notification, or both. A patient for whom a legal guardian has been appointed shall not be notified of any right to object under this Section 290-4-6-.02(3).~~

~~7. — For purposes of this Section 290-4-6-.02(3), "representative" means the representative designated by the patient or, in the absence of such designation, the person selected as a representative in the order of listing under Section 290-4-6-.06 of these regulations but shall not mean the patient's legal guardian. At the time of being designated or selected, such representative shall be given notice of his notification and consultation rights under this Section 290-4-6-.02(3). In order to exercise such rights, the representative shall be required to notify the Department, on a form supplied by the Department, of his election to exercise such rights. Upon receiving such notice, the Department shall thereafter provide that representative the notification and consultation required by this Section 290-~~

~~4-6-.02(3) until said representative notifies the Department to the contrary. A patient whose representative has not elected to exercise such rights shall not be required to be notified of his representatives' rights under this Section 290-4-6-.02(3).~~

~~(i) — The provisions in Section 290-4-6-.02(3)(a) are not applicable to patients treated pursuant to O.C.G.A. Chapter 37-4. Participation of representatives shall be governed as provided in applicable regulations and policies.~~

~~(4) Location.~~

~~(a) — The Department may designate the State-owned or State-operated facility to which a patient is admitted. When the needs of the patient or efficient utilization of any such facility may require, a patient may be transferred from one such facility to another. At the time of any such transfer, notice shall be given in writing to the patient and to his representatives in accordance with Section 290-4-6-.06 (1) of these regulations, and the patient shall be advised in writing of the reasons for his transfer. A voluntary patient pursuant to O.C.G.A. Chapters 37-7 and 37-3 may be transferred only with his consent. Notice of transfer for patients treated pursuant to O.C.G.A. Chapter 37-4 must be given at least 14 days prior to the transfer.~~

~~(b) — Patients may be admitted to a hospital approved as a private facility as provided by law if accepted for treatment by the approved private facility.~~

~~(c) If a patient is able to pay for treatment in a private facility approved by the Department, he may apply to the Department for transfer at his expense to such private facility. If the private facility agrees to accept the patient, the Department shall transfer the patient to that facility.~~

~~(d) — The facility shall assist the patient in securing placement in available noninstitutional community facilities and programs when those programs represent the least restrictive appropriate care and treatment available.~~

~~(5) Private Physician.~~

~~(a) — If a patient is able to secure the services of a private physician who is not on the medical staff of the facility, the patient shall have the right to have that physician visit him at the inpatient facility. The patient or his guardian or parent, if applicable, shall sign a written form indicating the name, telephone, and address of the private physician and requesting that the physician be allowed to make such visits. Thereafter, the private physician shall be allowed to visit the patient at the inpatient facility at any reasonable time, and subject only to other reasonable regulations. The staff shall require the private physician to produce proper identification and proof of current certification as a physician upon the initial visit and thereafter as necessary. The private physician shall be provided a private area in which to examine and consult with the patient. Upon the patient's written~~

authorization, the private physician shall be allowed to examine the patient's clinical record.

~~Rule 290-4-6-.03 Treatment Environment~~

~~(1) General. The individual dignity of each patient shall be respected at all times and upon all occasions, including any occasion on which the patient is taken into custody, detained, or transported. Except where required under conditions of extreme urgency, those procedures, facilities, vehicles and restraining devices normally used for criminals or those accused of crime shall not be used in connection with patient, to the extent that this is under the Department's control.~~

~~(2) Abuse and Sexual Activity.~~

~~(a) Abuse of any patient is prohibited. A staff member may use only such force as is necessary to restrain and secure a patient threatening imminent harm or committing harm to himself or others, and may use only such force as is necessary to prevent an involuntary patient from leaving a facility. Such necessary force shall not constitute abuse. For the purpose of this section, an involuntary patient is one who is being treated involuntarily or who is being examined or evaluated to determine the need for involuntary treatment or who is the subject of a petition and certificate seeking involuntary treatment.~~

~~(b) No staff member shall engage in any sort of sexual activity with any patient.~~

~~(c) A staff member who witnesses an incident of such abuse or sexual activity shall report the incident to the Human Rights Committee and the superintendent of the facility as soon as possible, which Committee shall notify the Personal Advocacy Unit. Upon receiving such a report, the Committee or its designee shall assist the reporting staff member or the patient (or his guardian or parent, if applicable) in initiating a complaint pursuant to Section 290-4-6-.07 of these regulations. If the incident appears to constitute criminal conduct, the superintendent shall also report the incident to the appropriate law enforcement agency. A staff member who fails to comply with the applicable requirements of this Section 290-4-6-.03(2)(c) shall be subject to adverse action in accordance with personnel procedures of the Department.~~

~~(3) Personal Effects.~~

~~(a) A patient's right to his personal effects shall be respected. Each patient admitted to or treated in a facility must be provided with individual storage space for his belongings as space permits. A patient's right to retain his personal property may be restricted for the following reasons:~~

~~1. To protect the health or safety of the patient or others;~~

~~2. To prevent the patient from using an item that would interfere with the orderly operation of the facility;~~

~~3. To protect the patient's valuable property when there is substantial risk that it will be lost or stolen;~~

~~4. Where the property constitutes contraband.~~

~~(b) Each facility shall encourage and assist patients to provide for the safekeeping of their money in bank accounts and of their other valuables in safe places maintained by the facility.~~

~~(c) Whenever a patient's personal property is retained by the facility, a notation listing the items retained by the facility shall be made in the patient's record. In addition, the patient shall be provided with a receipt if he so requests.~~

~~(d) At the time a patient is discharged or as agreed to by the patient, all money and personal effects placed in the facility's custody shall be returned, except where possession of a certain item by a patient would be illegal.~~

~~(e) No staff member shall be responsible for the loss of or damage to a patient's property where reasonable efforts to assure the safety of that property have been made.~~

~~(f) A patient's personal effects may not be examined or searched after his admission unless he (or his guardian or parent, if applicable) consents to the search or unless the chief medical officer or superintendent, upon personal knowledge or information provided by staff members or other reliable persons, determines that there is reasonable cause for believing that the patient has an item or items that may be dangerous or whose possession is illegal. If a search is deemed necessary, the reasons for it must be recorded in the patient's record along with the date, time and result of the search. The patient has a right to be present at any search and told the reason for the search, except when such search is deemed urgent for safety reasons and the patient or resident is not immediately available. Nothing in this Section 290-4-6-.03(3)(f) shall prevent the facility from making an inventory of items in the patient's possession at the time of his admission or from assisting the patient, as required by his condition, in the care and upkeep of his belongings.~~

~~(4) Communications and Visits.~~

~~(a) Mail. Receiving and sending of mail shall be governed as follows for patients being treated on an inpatient basis in a hospital pursuant to O.C.G.A. Chapters 37-7, 37-3 and 37-4.~~

~~1. Each patient shall be allowed to receive, send, and mail sealed, unopened correspondence, and no patient's correspondence shall be opened, delayed, held or censored by the facility, except under the following conditions.~~

~~(i) — if there are reasonable grounds to believe that incoming mail contains items or substances which may be dangerous to the patient or others, the chief medical officer may direct reasonable examination of such mail and disposition of items or substances found therein. All writings must be presented to the patient within 24 hours of inspection;~~

~~(ii) — The chief medical officer may apply to the court for a temporary order to restrict outgoing mail. The court, upon a showing of probable cause that such mail is dangerous to the patient or others, may grant a temporary restriction of the patient's mail privileges, provided that within 5 days after the issuance of such temporary order, the court holds a hearing to determine whether or not an order of restriction for an extended time shall issue.~~

~~(I) — In no event shall mail be restricted pursuant to such temporary order for more than 5 days.~~

~~(II) — If the court determines at the hearing that the patient's outgoing mail is dangerous to the patient or others, it may order the mail restricted for a period not to exceed 30 days.~~

~~(III) — The court order for restriction of mail for an extended period may be renewed as necessary for periods not to exceed 30 days with a new hearing to take place each time.~~

~~(IV) — The chief medical officer of the facility shall restrict communication as provided in the court order.~~

~~(iii) — Any restriction of incoming or outgoing mail under this Section 290-4-6-.04(4)(a) shall not exceed a period of 5 days, except that such restriction may be renewed by the chief medical officer for a period not to exceed 5 days, provided that such renewal periods in the aggregate shall not exceed the period specified in the court order when outgoing mail is restricted pursuant to such order. Prior to a renewal, the chief medical officer shall make a new determination that such mail continues to be dangerous to the patient or others;~~

~~(iv) — Correspondence of the patient with his attorney shall not be restricted under this Section 290-4-6-.03(4)(a), nor shall correspondence to a patient from a public official be restricted under this section.~~

~~(v) — Each time that a patient's incoming or outgoing mail is examined, written notice of the examination, and notice of the right to a full and fair hearing within 5 days after a temporary court order, shall be served on the patient and his representatives as provided in Section 290-4-6-.06 of these regulations. A voluntary patient may waive in writing such notice to his representatives. In addition, the circumstances surrounding the~~

~~examination of any mail shall be recorded in the patient's clinical record. Each facility shall maintain policies that encourage the patients' exercise of their communication rights, including supply to indigent patients of writing materials and postage in reasonable amounts.~~

~~(b) Telephone calls.~~

~~1. Each patient has the right to make reasonable use of telephones. In order to assure this right, each facility shall:~~

~~(i) Maintain locations for calling (including pay telephones where feasible) which allow for privacy;~~

~~(ii) Supply indigent patients with funds or access to telephones for making a reasonable number of calls;~~

~~(iii) Prohibit any monitoring of patient calls without consent from the patient except pursuant to a court order.~~

~~2. The facility may place reasonable restrictions, such as those relating to the distance, time, length, and frequency of calls, upon the use of telephones by all patients generally. In addition, reasonable restrictions may be placed upon an individual patient's use of telephones under the following conditions:~~

~~(i) The restriction must be required by the type of seriousness of the patient's mental condition and must be ordered by the patient's attending physician;~~

~~(ii) The type and extent of the restriction, along with the specific reason for the restriction must be stated in the order;~~

~~(iii) The order shall expire automatically 24 hours after it is given, unless it is terminated sooner, but additional 24-hour orders may be given according to the same procedure as that required for the original order.~~

~~3. The patient may consent in writing to restrictions to the use of the telephones.~~

~~4. Telephone communication of a patient with his attorney or private physician shall not be restricted in accordance with Sections 290-4-6-.03(4)(b) 2-(i) and (iii).~~

~~(c) Visitation. Visitation shall be governed as follows for patients being treated on an inpatient basis in a hospital pursuant to O.C.G.A. Chapters 37-7, 37-3 and 37-4:~~

~~1. Each patient admitted to a facility has the right to receive visitors daily or to refuse in writing to receive any visitors or particular visitors. Privacy, to the extent that it is possible, should be provided;~~

~~2. — The facility may place reasonable restrictions, such as those relating to time and place, upon visitation by persons from outside of the facility for all patients generally. Visiting hours shall be set for at least 4 hours daily, 2 hours of which shall be after 6 p.m. In addition, reasonable restrictions may be placed upon an individual patient's right of visitation under the following conditions:~~

~~(i) — The restriction must be required by the type of seriousness of the patient's mental or physical condition and must be ordered by the patient's attending physician;~~

~~(ii) — The type and extent of the restriction, along with the specific reasons for the restriction, must be stated in the order;~~

~~(iii) — The order shall expire automatically 24 hours after it is given, unless it is terminated sooner, but additional 24-hour orders may be given according to the same procedure as that required for the original order.~~

~~3. — The patient may consent in writing to restrictions on visitation.~~

~~4. — Visitation by a patient's attorney or private physician shall not be restricted in accordance with Sections 290-4-6-.03(4)(c) 2. (i) and (iii).~~

~~(d) — Other.~~

~~1. — Each patient admitted to a facility shall have the right to regular social interaction with others, including persons of the opposite sex, subject only to the provisions of Section 290-4-6-.02(1)(c) of these regulations (seclusion) and to other reasonable regulations, such as those relating to time and place.~~

~~2. — Each patient admitted to a facility shall have the right to attend religious services, but no patient may be compelled to attend such services. The patient should be assisted in the observance of his religion to the extent possible.~~

~~(5) Transportation.~~

~~(a) — The governing authority of the county of the patient's residence shall arrange for all required transportation of the patient. Whenever possible, marked vehicles normally used for the transportation of criminals or those accused of a crime shall not be used for the transportation of patients. However, the type of vehicle to be furnished for the transportation shall be in the discretion of the governing authority of the county.~~

~~(b) — The court shall, upon the request of the county board of health, order the sheriff to transport the patient in such manner as the patient's condition demands. At any time that the county board of health is satisfied that the patient can be transported safely by family members or friends, such private transportation shall be encouraged and authorized.~~

~~(c) No female patient shall be transported to or from a hospital at any time without another female in attendance who is not a patient, unless such female patient is accompanied by her husband, father, adult brother or adult son.~~

Rule 290-4-6-.04 Personal Affairs

~~(1) General. No patient, whether voluntary or involuntary, shall be deprived of any civil, political, personal, or property rights or be considered legally incompetent for any purpose without due process of law. These rights include, but are not limited to:~~

- ~~(a) — The right to dispose of property;~~
- ~~(b) — The right to execute legal instruments;~~
- ~~(c) The right to make purchases;~~
- ~~(d) — The right to enter into contractual relationships;~~
- ~~(e) — The right to register and vote;~~
- ~~(f) The right to marry and to obtain a separation, divorce, or annulment;~~
- ~~(g) — The right to hold a driver's license; nor~~
- ~~(h) — the right to make a will.~~

~~(2) Legal Counsel.~~

~~(a) — Each patient admitted to a facility has the right to secure legal counsel to represent him in his personal affairs during his hospitalization. The patient should be assisted by staff members to the extent possible in securing legal counsel.~~

- ~~1. — If the patient can afford legal counsel, he may secure counsel at his own expense.~~
- ~~2. — If the patient needs legal counsel for his personal affairs but cannot afford such counsel, he may contact the local legal aid service for assistance.~~
- ~~3. — Each facility shall post on every treatment unit the name, address, and telephone number of local lawyer referral services and local agencies which provide legal services to indigent persons.~~

~~(b) — The securing of legal counsel for patients at hearings concerning their committal or treatment is not governed by these regulations.~~

~~(c) Each patient admitted to a facility shall have the right to have his legal counsel for personal affairs visit him at the facility. The patient (or his guardian or parent, if applicable) or the attorney shall provide the facility with the attorney's name, telephone number and address. The staff shall require the attorney to produce proper identification and proof of current certification as an attorney upon the initial~~

~~visit and thereafter as necessary. The attorney shall be allowed to visit the patient at the facility at any reasonable time, and subject to other reasonable regulations. The attorney shall be provided a private area in which to consult with the patient. Upon the patient's written authorization, the attorney shall be allowed to examine the patient's clinical record.~~

~~(3) Voting.~~

~~(a) — Each patient admitted to a facility who is entitled to vote shall be given his right to vote in primary, special and general elections and in referenda.~~

~~(b) — The superintendent of each facility, or his designee, shall:~~

~~1. — At least 30 days prior to a national or statewide election, post notice of the election in each hospital treatment unit;~~

~~2. — Notify patients 18 years old and over of their right to register to vote, to obtain absentee ballots, and to cast ballots. The notification shall be conducted to allow sufficient time for voter registration and acquisition of absentee ballots;~~

~~3. — When clinically suitable and if staffing of the facility permits, allow residents to leave the premises to exercise voting privileges, or to register to vote, and require personnel, where available, to accompany residents; otherwise voting by absentee ballot is sufficient;~~

~~4. — Make arrangements with state and local officials to provide for voter registration and casting of ballots by interested patients; and~~

~~5. — Assist election officials in determining a patient's place of residence for voting purposes.~~

~~(4) Education.~~

~~(a) — The right of any minor patient and of any other patient entitled by law to an appropriate education at public expense shall not be abridged during hospitalization. The special education needs of each minor patient or patient entitled to such educational services shall be individually considered and respected.~~

~~(b) — To insure the appropriate education of every minor patient or other patient entitled to such services during hospitalization, the Department of Human Resources and the Department of Education have executed a number of agreements which delineate each agency's responsibilities in providing such an education. These agreements shall be made available by the Department of Human Resources for review and copying by the patient's parents or guardian at their request or by the adult patient entitled by law to such services.~~

~~(5) Employment Outside Facility.~~

~~(a) — Each facility shall encourage and assist a patient in securing suitable employment outside the facility, if the patient wishes to be so employed and if such employment will aid in the patient's treatment. The training of patients for gainful employment shall also be encouraged through appropriate resources and referrals.~~

~~(b) — All wages and benefits earned by employment outside the facility shall belong solely to the patient.~~

Rule 290-4-6-.05 Patient Records

~~(1) Contents. A clinical record shall be maintained at each facility for each patient treated at that facility. The record shall contain information on all matters relating to the admission, care, treatment, discharge and legal status of the patient, and shall include all documents relating to the patient. The record specifically shall contain at least the following progress notes; documents describing or arising from the patient's history; the results of all psychiatric and physical examinations; individualized service plans, evaluations and reevaluations; orders for treatment; orders for physical restraints, seclusion, and other restrictions permitted by these regulations or other applicable law; accident and incident reports; and court orders and other court documents received by the facility. When clinical records or parts of clinical records are released as provided in this Section 290-4-6-.05 copies of the clinical record should be released unless the original is required by law. If particular documents in the clinical record includes the name or names of other patients, these will be erased or obliterated from any copies when released as authorized by this Section 290-4-6-.05.~~

~~(2) Confidentiality.~~

~~(a) — The clinical record shall not be a public record and no part of it shall be released to anyone other than the patient, or if appropriate, the parent of a minor patient or guardian, except:~~

~~1. — When the chief medical officer of the facility where the record is kept deems it essential for continued treatment, the record or parts thereof may be released to physicians when and as necessary for the treatment of the patient;~~

~~2. — A copy of the record may be released to any person or entity as designated in writing by the patient or, if appropriate, the parent of a minor patient or guardian;~~

~~3. — When a patient is admitted to a facility, the patient's record or information contained in the record at another facility, community mental health center, or in the records of a private practitioner may be released to the admitting facility. When the service plan of a patient involves transfer of that patient to another facility, community mental health center, or private practitioner, the patient's record or information contained in the record may be released to that facility, community health center, or private practitioner;~~

4. ~~— The record or any part thereof may be disclosed to any employee or staff member of the facility when it is necessary for the proper treatment of the patient;~~
 5. ~~— The record shall be released to the patient's attorney if the attorney so requests and the patient consents to the release;~~
 6. ~~— In a bona fide medical emergency as determined by a physician treating the patient, the chief medical officer may release the patient's record to the treating physician.~~
 7. ~~— The record shall be produced by the entity having custody thereof at any hearing concerning the patient's treatment at the request of the patient or his attorney;~~
 8. ~~— The record of patients treated pursuant to O.C.G.A. Chapters 37-3 and 37-4 shall be produced in response to a valid subpoena or order of any court of competent jurisdiction, except for matters privileged under the laws of this State. For patients treated pursuant to O.C.G.A. Chapter 37-7, a valid subpoena must be accompanied by the order of a court of competent jurisdiction ordering the release of the record after a full and fair show cause hearing.~~
 9. ~~— Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of a criminal investigation may be informed whether a person is or has been a patient in a State facility as well as the patient's current address, if known. This provision is not applicable to persons who are being treated or hospitalized in accordance with O.C.G.A. Chapter 37-7 pertaining to alcoholics, drug dependent individuals and drug abusers.~~
 10. ~~— For patients treated pursuant to O.C.G.A. Chapter 37-4, when the treatment plan of the patient involves transfer to another facility, or involves the receipt of community services by the patient as defined in that code chapter, the record may be released to that facility or entity rendering such service;~~
 11. ~~— Nothing in this Section 290-4-6-.05(2) shall prevent patient records or information contained therein from being reproduced, transmitted, transferred or stored within the Department for administrative purposes in accordance with other applicable law.~~
- (b) ~~— In connection with any hearing concerning the patient's treatment, any physician who is treating or who has treated the patient shall be authorized to give evidence as to any matter concerning the patient, including evidence as to communications otherwise privileged under O.C.G.A. 24-9-40.~~
- (c) ~~Any disclosure authorized by these regulations or other applicable law, or any unauthorized disclosure of confidential or privileged patient information or communications, shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized~~

~~disclosure is made. Any person making a disclosure authorized by these regulations or other applicable law shall not be liable to the patient or any other person notwithstanding any contrary provision of O.C.G.A. 24-9-21 or 24-9-40, as now or hereafter amended.~~

~~(3) Examination by patient.~~

~~(a) — Every patient and former patient shall have the right to examine all clinical records kept in his name by the Department or the facility where the patient is or was hospitalized or treated, unless:~~

~~1. — The disclosure of such records to the patient is determined, by the chief medical officer or the patient's treating physician, to be detrimental to the patient's physical or mental health; and~~

~~2. — A notation to that effect is made in the patient's record. The exception contained in these Sections 290-4-6-.05(3)(a) 1. and 2. shall be applicable only to persons who are presently patients, and not to former patients.~~

~~(b) — Each facility shall assist patients in reviewing their own records but may establish reasonable limitations, such as those relating to time, place, and frequency, upon such review.~~

~~(4) Correction by patient.~~

~~(a) — Every patient or former patient shall have the right to request that any inaccurate information found in his clinical record be corrected. A current patient's request shall be made in writing to the individual in charge of records at the facility or individual designated by the superintendent. That individual will consult the appropriate staff at the facility if needed. If the request is made orally to a staff member, that staff member will assist the patient in making the request to the appropriate person.~~

~~(b) — Upon receipt of a request for correction of a patient's or former patient's record, the individual in charge of records at the facility or the person so designated shall within 5 days:~~

~~1. — Make the requested correction, and provide the patient or former patient with a copy of the corrected record; or~~

~~2. — Notify the patient or former patient, in writing of the inability to obtain amendment of the record and the reason therefore, and notify the patient or former patient that he may file a complaint regarding this refusal in accordance with Section 290-4-6-.07(1) of these regulations. Such notification shall be complete upon mailing;~~

~~3. — If amendments are made, they should be added to the record and the original record should be preserved.~~

~~(5) Copies.~~

~~(a) — It is the policy of the Department to provide routine information to the general public without charge whenever possible. In no event shall charges for special information services (such as copies of patient records upon request) exceed the cost, including staff time and materials, to the State of providing such services. Requests for information or for copies of patient records should be complied with as quickly as possible.~~

~~(b) — Fees charged for copying services in State facilities shall comply with policies set by the Department.~~

~~(c) Waiver or reduction of fees may be granted where such action is in the public interest or when based on a patient's ability to pay.~~

~~(d) — Staff members shall assist the patient in the selection of records for copying purposes. A policy of full disclosure and assistance shall be followed, while waste in copying practices is to be discouraged.~~

~~Rule 290-4-6-.06 Notice; Representatives and Guardians Ad Litem~~

~~(1) Notice:~~

~~(a) — To patient: At any time that notice is required to be given to a patient by these regulations or other applicable law, the date on which the notice is given shall be entered in the patient's clinical record. If the patient is unable to read a notice understandably, a reasonable effort shall be made to explain the notice to him.~~

~~(b) — To Representatives: At any time that notice is required to be given to a patient's representatives, the notice shall be served on those persons designated in accordance with Section 290-4-6-.06(2) of these regulations. The patient's guardian ad litem shall likewise be served. Unless otherwise provided, notice may be served in person or by first class mail. When notice is served by mail, a record shall be made of the date of mailing and shall be placed in the patient's clinical record. Service shall be complete upon mailing to the last known mailing address.~~

~~(c) Judicial orders. At any time that a court enters an order affecting a patient pursuant to these regulations or other applicable law and serves said order on the Department, a copy to that order shall be served on the patient and his representative as provided in Section (a) and (b) of this Section 290-4-6-.06(1), unless the order contains an accompanying certificate that such service has already been made.~~

~~(2) Representatives and Guardians Ad Litem.~~

~~(a) — Selection. At the time that a patient is admitted to a facility, the names and addresses of at least two representatives shall be entered in the patient's clinical record. The patient has the right to designate one representative.~~

~~1. — If the patient designates one representative, the facility shall designate the second, who shall be selected from the following persons in the order of listing: the patient's legal guardian, spouse, an adult child, parent, attorney, adult next of kin, or adult friend.~~

~~2. — If the patient does not exercise his right to designate one representative, the facility shall designate both of the patient's representatives.~~

~~(i) — One of the representatives shall be selected from the following persons in the order of listing: the patient's legal guardian, spouse, an adult child, parent, attorney, adult next of kin, or adult friend. The second representative shall be selected from the same list without regard to the order of listing but shall not be the person who signed the petition allowed under the provisions of O.C.G.A. Chapters 37-3, 37-4 and 37-7.~~

~~(ii) — If the facility is unable to secure at least two representatives after diligent search, or if the Department is the guardian of the patient, that fact shall be entered in the patient's record and the facility shall apply to the court in the county of the patient's residence for the appointment of a guardian ad litem, which shall not be the Department.~~

~~(iii) — On application of any person or on its own motion, the court may also appoint a guardian ad litem for a patient for whom representatives have been named whenever the appointment of a guardian ad litem is deemed necessary for protection of the patient's rights. Such guardian ad litem shall act as the representative of the patient on whom notice is to be served under the applicable provision of law and shall have the powers granted to representatives by these provisions.~~

~~(b) — Powers.~~

~~1. — Representatives shall have the power to receive the notices required to be sent to them by these regulations and other applicable law, and the power to consult with the facility staff as required in Section 290-4-6-.02(3) of these regulations.~~

~~2. — Guardians ad litem shall have the power to receive the notices required to be sent to them by these regulations or other applicable law. Such guardianship shall be for the limited purpose stated in the order of the court and shall expire automatically after 90 days or after a lesser time stated in the order. The responsibility of the guardian ad litem shall not extend beyond the specific purpose of the appointment.~~

Rule 290-4-6-.07 Remedies for Violations

~~(1) Complaint Procedures. Any patient (or his guardian or parent of a minor patient, if applicable) or his representative or any staff member may file a complaint alleging that a patient's rights under these regulations or other applicable law have been violated by staff members or persons under their control. Such complaints shall be governed by the procedure established by this Section 290-4-6-.07(1). A person who considers filing such a complaint is encouraged to resolve the matter informally by discussing it first with the staff members or other persons involved or member of the Human Rights Committee or similar mechanism, if applicable, as provided in Section 290-4-6-.07(1)(b). The patient is not required to use the procedure established by this Section 290-4-6-.07(1) in lieu of other available legal remedies~~

~~(a) — For patients being treated in State facilities complaint procedures shall be governed as follows:~~

~~1. — The superintendent of each facility shall appoint a minimum of three persons to serve as a Human Rights Committee with the responsibility of investigating and attempting to resolve complaints from patients. If possible, at least one member of the Committee appointed by the Superintendent shall be a person not on the staff of or otherwise affiliated with the Department.~~

~~(i) — Staff persons appointed to serve on the Human Rights Committee should be representative of the various service components of the facility. Membership on the Committee should be time-limited and rotated periodically. Facilities may have more than one Human Rights Committee if the size of the facility is too large for one Committee to handle effectively.~~

~~(ii) — The Human Rights Committee of each facility shall have the authority to investigate complaints, use whatever means are available to resolve complaints, and consult with management on the development of policies and procedures that safeguard the rights of patients served in the facility.~~

~~2. — First step.~~

~~(i) — The complaint shall be filed with the Human Rights Committee of the patient's facility and it may be filed on a form provided by the Committee. If the patient states the complaint orally, specific assistance should be given in proceeding with the complaint and completing the form. Complaints may be made by telephone to a representative of the Human Rights Committee, who will complete the form. Staff members whose alleged conduct gave rise to the complaint may be informed of the complaint.~~

~~(ii) — As soon as possible, but within 7 working days after the complaint is filed, the Committee shall investigate the complaint, resolve it if possible, and complete a disposition report; however, if after interviewing the complainant, it is found that complaint does not state an allegation that, if true, would constitute a violation of these regulations or other applicable law, the Committee may reject the complaint in writing. In other cases of such rejection, the original of the rejection notice shall be filed in the Committee records and a copy shall be sent to the complainant. In all investigated complaints, the Committee shall employ the investigatory method deemed most suitable to determine the facts. This method may include, but is not limited to, personal interviews, telephone calls, review of documents, and correspondence. The Committee and its designees shall have access to all files, documents, records, and personnel of the Department deemed by the Committee to be relevant to its investigation. The Committee shall resolve the complaint through mediation and conciliation whenever possible. The patient or someone in his behalf may appear before the Committee on behalf of the patient whose rights are alleged to have been violated.~~

~~(iii) — The Committee shall complete a brief disposition report on each investigated complaint. The report shall state the parties involved, the gist of the complaint, the facts disclosed by the investigation, and whether the complaint was resolved or not. The original report shall be filed in the Committee records, and a copy shall be sent to the superintendent. All parties involved in the complaint shall be notified of the action taken by the Committee.~~

~~3. — Second Step.~~

~~(i) — If the complaint is rejected or is not resolved by the Committee to the satisfaction of the patient (or his guardian or parent of a minor patient, if applicable) or the complainant, either the patient (or his guardian or parent of a minor patient, if applicable) or the complainant may file with the superintendent a written request for a review of the complaint. The request shall be filed no later than 10 working days after the person filing the request receives a copy of the rejection notice or the disposition report of the Committee. The superintendent may reject the request in writing without a review if either the complaint or the request for review is not filed in a timely fashion, or if the complaint does not state an allegation that, if true, would constitute a violation of these regulations or other applicable law. The original of the rejection shall be filed in the superintendent's records, and a copy shall be sent to the complainant. In all other cases, the superintendent shall designate a staff member who has no connection with the complaint to conduct a review of the complaint.~~

~~(ii) — The person conducting the review shall review all reports and documents which were utilized in Section 290-4-6-.07(1)(a) 2. In addition, the reviewer may interview any person who may have information related to the complaint. The complainant, or someone acting in his behalf if the patient is the complainant, shall be given an opportunity to discuss the complaint directly with the reviewer and present any information relevant to the complaint. Staff members whose alleged conduct gave rise to the complaint shall also be given an opportunity to discuss the complaint with the reviewer and present any information relevant to the complaint. This review process is designed to be an informal process and not a formal hearing. The reviewer shall document his findings. The review should be completed as soon as possible, but within 10 working days after the request for review is filed.~~

~~(iii) — Within 5 days after the conclusion of the review, the reviewer shall submit to the superintendent a written report of the review. The report shall contain a list of the pertinent facts established during the review, a list of the pertinent provisions of these regulations or other applicable law, and a recommendation for disposition. Within 3 working days after receiving the reviewer's report, the superintendent shall issue a written decision disposing of the complaint. The superintendent's decision, in addition to the disposition, shall contain lists of the pertinent facts and law; however, it may incorporate by reference those lists contained in the reviewer's report. In this decision, the superintendent may accept, reject, or modify the reviewer's recommendation, or he may return the case to the reviewer for further proceedings. If the superintendent returns the case to the reviewer, the superintendent shall specify the matters to be addressed in the further proceedings and shall specify the period within which those proceedings shall be concluded. In no event shall the period for completing the further proceedings, including the reviewer's submission of an additional report to the superintendent and the superintendent's issuance of a decision, exceed 10 working days. The original of the superintendent's decision shall be filed in the superintendent's records, and a copy shall be sent to each party.~~

~~4. — Third Step.~~

~~(i) — The patient (or his guardian or parent of a minor patient, if applicable) or the complainant may appeal the superintendent's rejection or other decision by filing a written request for review with the director of the Division of Mental Health and Mental Retardation. The request for review shall be filed no later than 5 working days after the person filing the request receives a copy of the superintendent's rejection or other decision. Upon the filing of such a request, the superintendent shall be notified and~~

~~the superintendent shall immediately transmit to the director a copy of the superintendent's rejection, or decision, together with a copy of the reviewer's recommendation, the superintendent's decision, and other documents utilized in the review, if any.~~

~~(ii) — Within 10 working days of the filing of the request for review, the director or his designee shall issue a decision disposing of the appeal. This decision of the director or his designee shall be based upon a review of the request for review and the documents forwarded by the superintendent; no evidentiary hearing shall be conducted by the director or his designee. In this decision, the director or his designee may affirm, reverse, or modify the superintendent's rejection or other decision, or he may return the case to the superintendent for further proceedings. If the director or his designee returns the case to the superintendent, the director or his designee shall specify the matters to be addressed in the further proceedings and shall specify the period within which those proceedings shall be concluded. In no event shall the period for completing the further proceedings, including the reviewer's submission of an additional report, the superintendent's issuance of another rejection or other decision, and the director's or his designee's issuance of a decision, exceed 14 working days. The original of the director's or his designee's decision shall be filed in the director's records, and copies shall be sent to the superintendent and to each party. The decision of the director shall be final and no judicial review of such decision shall be available.~~

~~5. — General Provisions.~~

~~(i) — Whenever the Human Rights Committee or the Personal Advocacy Unit becomes aware of a situation that appears to require immediate action to protect the welfare and safety of any patient, the Committee or the Personal Advocacy Unit shall immediately notify the nearest available staff member with authority to correct the situation. In any situation that requires immediate action to protect a patient's welfare or safety, the superintendent may be notified instead. If adequate corrective action is not taken by that staff member, the Committee or the Personal Advocacy Unit shall immediately notify the superintendent, or if necessary the director or the Commissioner of the Department.~~

~~(ii) — No person shall be subject to any form of discipline or reprisal solely because he has sought a remedy through or participated in the procedures established by this Section 290-4-6-.07(1).~~

~~(iii) — Obstruction of the investigation or disposition of a complaint by any person shall be reported to the superintendent, who shall take action to eliminate the obstruction. Staff members are subject to adverse action in~~

~~accordance with personnel procedures of the Department for engaging in such obstruction.~~

~~(iv) — Time limits designated in this Section 290-4-6-.07(1) may be extended by the decision maker at each step for good cause only.~~

~~(v) — This complaint procedure does not replace or invalidate any other Department policy or procedure pertaining to reporting requirements, disciplinary matters, or the like.~~

~~(vi) — Staff members who are involved in a complaint shall not be involved in the processing of that complaint.~~

~~(b) — The following complaint procedures may be used for patients being treated in private facilities designated pursuant to O.C.G.A. Chapters 37-3, 37-4 and 37-7:~~

~~1. — Each private facility shall establish a Human Rights Committee as provided in Section 290-4-6-.07(1)(a) 1. or some similar mechanism to investigate and resolve complaints and consult with management on the development of policies and procedures that safeguard the rights of patients served in the private facility;~~

~~2. — Each private facility shall establish a complaint procedure which contains at least the following elements:~~

~~(i) — A written procedure whereby a patient (or his guardian or parent of a minor child if applicable) or any staff member may make a complaint and a procedure for having the Human Rights Committee or similar mechanism investigate the complaint.~~

~~(ii) — A process so the complainant may appeal the decision of the Committee or any similar mechanism to the superintendent of the private facility.~~

~~3. — General Provisions:~~

~~(i) — Whenever the Human Rights Committee or similar mechanism becomes aware of a situation that appears to require immediate action to protect the welfare and safety of any patient, the Committee or similar mechanism shall immediately notify the nearest available staff member with authority to correct the situation. In any situation that requires immediate action to protect the patient's welfare or safety, the superintendent of the private facility may be notified instead. If adequate corrective action is not taken by a staff member, the Committee or similar mechanism shall immediately notify the superintendent.~~

~~(ii) — No person shall be subject to any form of discipline or reprisal solely because he has sought a remedy through or participated in the procedures established by this Section 290-4-6-.07(1)(b).~~

~~(iii) — Obstruction of the investigation or disposition of a complaint by any person shall be reported to the superintendent, who shall take action to eliminate the obstruction. Staff members are subject to adverse action in accordance with personnel procedures of the private facility for engaging in such obstruction.~~

~~(iv) — This complaint procedure does not replace or invalidate any other policy or procedure of the private facility pertaining to reporting requirements, disciplinary matters, or the like.~~

~~(2) Judicial Supervision.~~

~~(a) — Any patient (or his guardian or parent of a minor patient, if applicable) or his representative may file a petition in the appropriate court alleging that:~~

~~1. — The patient is being unjustly denied a right or privilege granted by these regulations or other applicable law; or~~

~~2. — A procedure authorized by these regulations or other applicable law is being abused; or~~

~~3. — The patient objects to the treatment being administered to him;~~

~~(b) — Upon the filing of such a petition as in (a) preceding, the court shall have the authority to conduct a judicial inquiry and to issue appropriate orders to correct any abuse of these regulations or other applicable law. The patient, his representatives, or his attorney may appeal any such order of the probate court or of the court's hearing officer to the superior court of the county in which the proceeding was held, and may appeal any such order of the Juvenile Court to the Court of Appeals and to the Supreme Court.~~

~~(c) At any time and without notice, a person detained by a facility, or a relative or friend on behalf of such person, may petition as provided by law for a writ of habeas corpus to question the cause and legality of detention and to request any court of competent jurisdiction on its own initiative to issue a writ of release. In the case of any such petition for the release of a person detained in a facility pursuant to a court order under O.C.G.A. 17-7-130 or 17-7-131, as not or hereafter amended, a copy of the petition, along with proper certificate of service, shall also be served upon the presiding judge of the court ordering such detention and the prosecuting attorney for such court, which service may be made by certified mail, return receipt requested.~~

~~(3) Attorney's Access.~~

~~(a) — An attorney representing a patient in a matter relating to the patient's hospitalization shall have the right to visit and consult with the patient at the facility in accordance with Section 290-4-6-.04(2)(c) of these regulations.~~

~~(b) — At reasonable times, and subject to the notification and identification provisions of Section 290-4-6-.04(2)(c) of these regulations, the patient's attorney for hospitalization matters shall have the right to interview the physician and staff members who have attended or are now attending the patient and the right to have the patient's records interpreted by them.~~

~~(c) The chief medical officer of each facility shall establish reasonable policies to make available to the patient's attorney all information in the possession of the facility which the attorney requires in order to advise and represent the patient concerning his hospitalization.~~

~~(4) Medication Prior to Hearings. The patient has a right to appear and testify at hearings as free from any side effects or adverse effects of the medication as is reasonably possible. The patient's attorney, if any, should be informed of any medication the patient is receiving at the time of the hearing.~~

~~Rule Chapter 290-4-7. ADMISSION, TREATMENT AND RELEASE OF MINORS FROM MENTAL HEALTH FACILITIES.~~

~~Rule 290-4-7-.01 Definitions~~

~~(1) "Admission" means the initial determination of placement into any facility for evaluation, observation, diagnosis, care and/or treatment. Admission shall occur prior to any placement requiring the individual to remain at the facility overnight.~~

~~(2) "Admission Team" means a team designated by the Chief Medical Officer which consists of a physician and at least one Qualified Mental Health Professional.~~

~~(3) "Chapter" means Chapter 290-4-7, entitled "Admission, Treatment and Release of Minors From Mental Health Facilities".~~

~~(4) "Department" means the Department of Human Resources.~~

~~(5) "Chief Medical Officer" (hereinafter referenced as "CMO") means such persons as defined by Chapter 37-3 of the Official Code of Georgia Annotated.~~

~~(6) "Chief Medical Officer Designee" means a physician, as designated, either temporarily or permanently, by the CMO. Such person shall be licensed to practice medicine pursuant to Chapter 43-34 of the Official Code of Georgia Annotated.~~

~~(7) "Committee for Continued Hospitalization Review" (hereinafter referenced as "CCHR") means a committee established by the CMO of each facility and shall consist~~

~~of not less than three (3) physicians and not less than two (2) other persons of a professional status. The Committee may conduct its meetings with a quorum of any three (3) members. The function of this committee shall be to review and evaluate the updated Individualized Service Plan (hereinafter ISP) and to report to the CMO its recommendations concerning a patient's need for continued hospitalization or modification of the ISP. Persons who have responsibility for the care and treatment of an individual patient for whom continued hospitalization is considered shall not serve on any committee which reviews such individual cases.~~

~~(a) ——— In addition, a member of the CCHR must interview the patient prior to the committee making written recommendations to the CMO. The written recommendation shall be signed by all participants.~~

~~(8) "Independent Medical Judgment" means a free and impartial decision made by a physician. The physician must have the authority to order the release of the individual. The physician must have personally interviewed the patient and attempted to explain the physician's role to the patient. The physician must have personally reviewed the clinical record and taken reasonable steps to assess the accuracy of such information relied upon in the decision. The physician shall not be subject to any personal conflict of interests. Such decision shall reflect the information utilized in support thereof, shall be made in writing, and the writing shall be signed and dated by the physician.~~

~~(9) "Multidiscipline Team" means a team appointed by the CMO which shall include, but not be limited to, a psychiatrist, nurse, social worker, psychologist, hospital special education staff member, and a local area mental health program representative.~~

~~(10) "Qualified Mental Health Professional" (hereinafter referenced as "QMHP") shall carry such definition as included in Division of Mental Health and Mental Retardation Policy Number 40-01 as now or hereafter may be amended.~~

~~(11) "Substance abuser" means such terms as defined by Section 37-7-1 of the Official Code of Georgia Annotated.~~

~~(12) Additional Definitions. All other terms, not separately defined herein, shall carry such definitions as found in Chapters 37-7 and 37-3 of the Official Code of Georgia Annotated, or such other relevant provisions of law or common usage.~~

~~Rule 290-4-7-.02 Voluntary Admission- General~~

~~The Georgia laws governing the hospitalization and treatment of the substance abuser (O.C.G.A. Chapter 37-7) and of the mentally ill individual (O.C.G.A. Chapter 37-3) allow for an individual who is twelve (12) years old or older, but who has not reached the age of eighteen (18) to admit himself or herself to a hospital for observation and diagnosis. Such an admission is also allowed based on the signature of the parent or legal guardian of a person under eighteen (18) years old. The person under that age does not have to agree with the admission. Treatment can be given only with the consent of the~~

~~parent or legal guardian. An admission for observation and diagnosis is based on the belief by a physician that there may be evidence of substance abuse or mental illness. The need for treatment is based on the physician's belief that there is evidence of substance abuse or mental illness as defined by Georgia law and that the individual is suitable for treatment and requires a certification that the child is in need of hospitalization. While there may be direct evidence of imminent harm to the person or to others, such a finding is not necessary for this type of admission.~~

~~Rule 290-4-7-.03 Voluntary Admission Guidelines~~

~~(1) The decision making process leading up to the admission of a minor shall begin at the local level. Information gathering, screening and evaluation will take place at a component of the appropriate local area mental health program. Hospital admission for treatment shall be viewed as a temporary step for the purposes of necessary immediate psychiatric intervention. Hospitalization shall not be viewed as a substitute for community-based treatment. Once a recommendation of hospitalization has been made at the local level, the individual is referred to the appropriate regional hospital where the data and circumstances thought to require the admission decision will be reviewed by a physician. At this point, the determination to admit or not to admit is made. At all ages of this procedure there should be direct two-way communications between the local area mental health program and the regional hospital.~~

~~(2) The requirement that the process be initiated at the local level must be followed for all admissions of a minor, whether admission is sought by the person himself or herself or by the parent or guardian, except in emergency situations. Admission may take place directly to the regional hospital in the case of a minor who is a substance abuser or mentally ill and for whom a delay in admission would result in imminent harm to himself or herself or other persons.~~

~~(3) The physician on duty shall be responsible for making the decision as to whether an emergency situation exists and whether the child meets the criteria for involuntary commitment. In making this decision the physician shall exercise independent medical judgment. When such an emergency admission takes place, the following must be notified of the admission:~~

~~(a) — the child;~~

~~(b) — the parent or guardian;~~

~~(c) the local area mental health program within twenty-four (24) hours or next working day;~~

~~(d) — the admission team at the hospital.~~

~~(4) The admission team shall conduct an evaluation (in keeping with the procedure for non-emergency admissions) except such evaluation must be completed within twenty-four (24) hours or by the end of the next working day following admission.~~

~~(5) In the absence of such an emergency, a minor seeking his or her own admission or a parent or guardian seeking admission of a minor, should be referred to a local area mental health program.~~

~~Rule 290-4-7-.04 Local Area Mental Health Program Procedures~~

~~(1) All patients for voluntary admission must be screened and referred by the local area mental health program except in emergencies. An emergency is defined as a situation where the minor meets the criteria of involuntary admission in accordance with Section 37-7-1 or 37-3-1 of the Official Code of Georgia Annotated.~~

~~(a) ——— A mentally ill person is one who presents a substantial risk of imminent harm to himself or to other persons, or who is unable to care for his own physical health and safety so as to create an imminently life-endangering crisis. Alcoholic, drug dependent individual, or drug abuser requiring involuntary treatment means a person who is an alcoholic, a drug dependent individual, or drug abuser and who presents a substantial risk of imminent harm to himself or others as manifested by either recent overt acts or recent expressed threats of violence which present a probability of physical injury to himself or to other persons, or who is incapacitated by alcohol or drugs on a recurring basis. Emergencies as well as involuntary admissions are encouraged to be screened by the local area mental health program if feasible. Non-emergency admissions who present themselves at the hospital must be routed back to the local area mental health program.~~

~~(2) Voluntary Admissions – Non-emergency. The recommendation for admission to the hospital must be made by a QMHP, who has personally interviewed both the child and his or her parent or guardian. The decision to recommend admission must be agreed upon by a psychiatrist who if at all feasible has seen the patient in a face to face contact and if not feasible has approved the admission by consultation with the QMHP. The recommendation including the reasons and facts in support of it shall be reduced to a writing and signed. The completion of such a writing shall not delay necessary hospitalizations.~~

~~(3) Admission Information. Information for admission must be obtained from interviews within the last seventy-two (72) hours with the child and his or her parent or guardian. The interview must include a discussion on the need for hospitalization. Additional information would be collected from other agencies (Social Services, schools, private physician, etc.) involved with the child as appropriate and feasible. The following information shall be obtained and accompany the child and his or her parents or guardian to the hospital:~~

- ~~(a) ——— immediate and long term circumstances leading to the need for hospitalization;~~
- ~~(b) ——— history — to include family, school and health;~~
- ~~(c) existing ISP or if a new patient, development of an initial ISP;~~
- ~~(d) ——— proposed goals and objective for hospitalization;~~
- ~~(e) ——— statement of alternatives to hospitalization that were considered and rejected;~~
- ~~(f) other assessments as in existing records or that can be feasibly collected within an appropriate time frame;~~
- ~~(g) ——— a Pre-Admission Parental Waiver and Consent Form, signed by the parent or guardian.~~

~~(4) If at all possible, a staff member, preferably the QMHP who has done the screening, should accompany the child and his or her parent or guardian, and a copy of the written recommendation to the hospital. If hospitalization is recommended, the QMHP shall notify the hospital.~~

Rule 290-4-7-.05 Hospital Procedures

~~(1) The final decision for admission rests with the CMO or his or her designee who must in making this decision personally interview the child and otherwise exercise independent medical judgment. This decision is made after a psychiatric evaluation is completed and an admission team from the child and Adolescent Unit has received the material from the local area mental health program, interviewed the child separately and parent or guardian and made other assessments as needed to determine if hospitalization is appropriate. If admission is deemed necessary, the child shall be notified in writing of his or her rights as set forth in O.C.G.A. Section 37-3-23. Likewise the parent or guardian shall receive such notices and the local area mental health program shall be notified of the admission. This decision, including the reasons and facts in support of it shall be reduced to a writing and signed by the physician.~~

~~(2) When admission is determined necessary, a person is designated as responsible for further assessment and treatment under the medical supervision of the unit psychiatrist. This person is responsible for the development of the initial ISP within twenty-four (24) hours of admission unless previously completed using information collected by the local area mental health program, the hospital Child and Adolescent (C&A) admission team and the CMO or his or her designee. This preliminary ISP must be developed on admission and placed in clinical records by the designated individual and shall include:~~

- ~~(a) ——— Preliminary goals and objectives of treatment;~~

~~(b) Treatment methods and procedures to be used to meet these goals and objectives, including further assessments;~~

~~(c) Identification of types of professional personnel who will carry out the treatment and procedures;~~

~~(d) Documentation of the patient and his or her parent's or guardian's involvement and, if applicable, their accordance with the service plan. This documentation shall specify the hospital's expectations with respect to parental participation in the child's service plan. In formulating the ISP, consideration shall be given to any known conflicts of interest between parent and child;~~

~~(e) An individualized statement attesting that the CMO or his or her designee has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive environment closest to the patient's home community, and that all necessary procedures in this determination have been followed.~~

~~(3) Following admission but within three (3) working days after the admission decision is made, the unit psychiatrist exercising independent medical judgment shall review the need for hospitalization. The unit psychiatrist shall promptly notify the treatment team of his or her decision. If the decision is that there is not a need for further hospitalization, the patient is discharged according to the discharge procedures outlined herein.~~

~~(4) Within ten (10) working days of admission a further assessment must be completed. This assessment shall include:~~

~~(a) Physical:~~

~~1. complete medical history;~~

~~2. general physical examination;~~

~~3. motor development and functioning;~~

~~4. determination by physician if dental care is needed;~~

~~5. speech, hearing and language screening;~~

~~6. vision screening;~~

~~7. review of immunization status and completion according to the current Georgia Immunization Manual;~~

~~8. laboratory work-up including routine blood work and urinalysis;~~

~~9. chest X-ray and/or tuberculin test; and~~

~~10. appropriate screening for venereal disease.~~

~~NOTE: If any of the physical health assessments indicate the need for further testing or definitive treatment, arrangements shall be made to carry out or obtain~~

~~the necessary evaluations and treatment by appropriately qualified and trained clinicians, and plans for these treatments shall be coordinated with the patient's overall service plan.~~

~~(b) Psychiatric/Psychological:~~

~~1. The assessment includes direct psychiatric evaluation and behavioral appraisal, evaluation of sensory and motor functioning, a mental status examination appropriate to the age of the patient and a psychodynamic appraisal. A psychiatric history, including the nature, duration and results of the treatment, and the reason for termination.~~

~~2. The psychological assessment includes appropriate testing.~~

~~(c) Developmental/Social:~~

~~1. The developmental history of the patient includes the prenatal period and from birth until present, the rate of progress, developmental milestones, developmental problems, and past experiences that may have affected the development. The assessment shall include an evaluation of the patient's strengths as well as problems. Consideration shall be given to the healthy developmental aspects of the patient, as well as to the pathological aspects, and the effects that each has on the other shall be assessed. There shall be an assessment of the patient's current age, appropriate developmental needs which shall include a detailed appraisal of his or her peer and group relationships and activities.~~

~~NOTE: All efforts must be made to assess the developmental history, however, under some circumstances this may not be possible. Documentation of these efforts must be in the record.~~

~~2. The social assessment includes evaluation of the patient's relationships within the structure of the family and with the community at large, an evaluation of the characteristics of the social, peer group, and institutional settings from which the patient comes. Consideration shall be given to the patient's family circumstances, including the constellation of the family group, their current living situation, and all social, religious, ethnic, cultural, financial, emotional and health factors. Other factors that shall be considered are past events and current problems that have affected the patient and family; potentialities of the family's members meeting the patient's needs; and their accessibility to help in the treatment and rehabilitation of the patient. The expectations of the family regarding the patient's treatment, the degree to which they expect to be involved, and their expectations as to the length of time and type of treatment required shall be assessed.~~

~~(d) Nursing: The nursing assessment includes, but is not limited to the evaluation of:~~

- ~~1. self-care capabilities including bathing, sleeping and eating;~~
- ~~2. hygienic practices such as routine dental and physical care and establishment of healthy toilet habits;~~
- ~~3. dietary habits including a balanced diet and appropriate fluid and caloric intake;~~
- ~~4. responses to physical diseases such as acceptance by the patient of a chronic illness as manifested by his or her compliance with prescribed treatment;~~
- ~~5. responses to physical handicaps such as the use of prosthesis or coping patterns used by the visually handicapped;~~
- ~~6. responses to medication such as allergies or dependence.~~

~~(e) Education/Vocational: The patient's current educational/vocational needs in functioning, including deficits and strengths, shall be assessed. Potential educational impairment and current and future educational/vocational potential shall be evaluated using, as indicated, specific educational testing and special educators or others.~~

~~(f) Recreational: The patient's work and play experiences, activities, interests and skills shall be evaluated in relation to planning appropriate recreational activities.~~

~~(5) The assessment will be completed, and the team notified by the person responsible for coordinating the assessment. After the assessment is completed, if there is not a need for hospitalization, the patient is discharged according to the discharge procedure outlined in the following pages. If the child is discharged prior to the completion of the assessment, only that portion of the assessment appropriate to the length of stay is required.~~

~~(6) If the child needs hospitalization, a multidiscipline team including, but not limited to, a psychiatrist, nurse, social worker, psychologist, hospital special education staff member and a local area mental health program representative develops the ISP within ten (10) working days of admission. Under special circumstances which must be documented, the multidiscipline team may consist of any three (3) of the disciplines identified plus a psychiatrist. These circumstances include, but are not limited to, a temporarily vacant position, staff illness or annual leave. An individual on the multidisciplinary team shall be designated to explain the treatment plan to the child and to contact the parent or guardian to review the plan with them and obtain their informed consent to the treatment recommendations. The explanation of the ISP to the child and parent or guardian shall take place within two (2) working days after completion by the person designated by the treatment team. If the parent refuses to consent to the treatment recommendations, the hospital may either discharge the child, or initiate involuntary commitment procedures if he or she meets the criteria of Chapters 37-7 and 37-3 of the Official Code of Georgia Annotated.~~

~~(7) The ISP shall be in writing and include the elements as outlined in O.C.G.A. Section 37-3-1. The term ISP shall also mean Individual Treatment Plan as defined in O.C.G.A. Section 37-7-1 as follows:~~

~~(a) — a statement of treatment goals or objectives, based upon and related to a proper evaluation, which can be reasonably achieved within a designated time interval;~~

~~(b) — treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to these goals and which include specific prognosis for achieving these goals;~~

~~(c) identification of the types of professional personnel who will carry out the treatment and procedures including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under State and Federal law;~~

~~(d) — documentation of parent and child's involvement and, if applicable, their accordance with the service plan. This documentation shall specify the hospital's expectations with respect to parental participation in the child's service plan. In formulating the ISP, consideration shall be given to any known conflicts of interest between parent and child;~~

~~(e) — an individualized statement attesting that the CMO has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive environment possible closest to the patient's home community, and that all necessary procedures in this determination have been followed; and,~~

~~(f) the ISP shall include expected length of stay to accomplish the stated goals and objectives, post discharge plan, including tentative placement needs, documentation of the involvement of the local area mental health program and of the child and his or her guardian or family.~~

Rule 290-4-7-.06 Involuntary Admissions

~~(1) A minor may also be admitted without his or her consent or that of his or her parent or guardian on an involuntary basis if the criteria and procedures for this type of admission found in O.C.G.A. Chapters 37-7 and 37-3 are applied. The procedures for the involuntary admission of a minor are the same as that for an adult except the court having jurisdiction over the procedures is the juvenile court instead of the probate court.~~

~~(2) At the present time the criteria for involuntary admission require the presence of substance abuse or mental illness and a substantial risk of imminent harm to the person or to others as evidenced by recent overt acts or recent expressed threats of violence which present a probability of physical injury to the person or to others. In addition, the criteria for involuntary admission of a substance abuser include as grounds the fact a~~

person is incapacitated by alcohol or drugs on a recurring basis. An additional basis for a person who is mentally ill is that the person is also so unable to care for his or her own physical health and safety as to create an imminently life-endangering crisis. If it is thought that the minor meets such criteria, the current procedures found in O.C.G.A. Chapters 37-7 and 37-3 must be followed.

(3) It is important to remember that even if the minor child meets the criteria for involuntary commitment, the procedures described above for voluntary admissions may also be utilized. The involuntary procedures allow another method for admission provided the criteria are met. Even in cases where involuntary admission is being considered or utilized, the process should begin at the local area mental health program unless there is an urgent situation.

(4) The parent or guardian whose child or ward has been involuntarily admitted may at any time apply to the unit psychiatrist to transfer the minor from involuntary to voluntary status pursuant to O.C.G.A. Section 37-3-24. The unit psychiatrist or CMO designee in accepting or denying the transfer of status must exercise independent medical judgment. The following shall be notified by the unit psychiatrist of the transfer:

(1) the child,

(2) parent or guardian, and

(3) the multidiscipline treatment team. A child so transferred shall be notified in writing of his or her rights as set forth in O.C.G.A. Chapter 37-3.

Rule 290-4-7-.07 Admission By Order of a Juvenile Court

(1) A third method of admitting a minor to a regional hospital is found in the Georgia law covering juveniles. O.C.G.A. Section 15-11-40 sets out these procedures. If the court has evidence that a child under its jurisdiction is mentally ill, it can order that the child be evaluated. This evaluation should be conducted on an outpatient basis except when circumstances require an inpatient setting. Local area mental health programs should work with the courts in their area to establish procedures to avoid inpatient evaluations except when absolutely necessary. If an order is received for inpatient evaluation, the court should be contacted to try to determine alternate approaches. If there are none, evaluation and a report back should take place as soon as possible.

(2) If the evaluation finds the child to be committable, the court can commit the child to the Division of Mental Health and Mental Retardation. The meaning of the term "committable" has been interpreted by the Attorney General of Georgia to mean the child meets the current criteria for involuntary commitment as contained in O.C.G.A. Chapter 37-3. Op. Att'y Gen. 76-111. This is the basis for the juvenile court commitment. This is also the basis for discharge. If a child is committed because he or she meets the criteria for involuntary admission, discharge is authorized when the criteria are no longer applicable. If the court order contains prohibitions against discharge, the court should be

~~contacted so that discharge will take place when the criteria for involuntary admission are no longer applicable. If the involuntary criteria cease to be applicable, hospitalization can be continued utilizing the voluntary method described above.~~

~~(3) If there are questions pertaining to the provisions of a juvenile court order or difficulties arise after consultation with the court, appropriate Central Office staff of the Division should be notified by telephone and mailed a copy of the court order immediately.~~

~~Rule 290-4-7-.08 Review Procedure for Continued Hospitalization~~

~~(1) Child and Adolescent Staff Review. The ISP shall at a minimum, be reviewed by the treatment team and updated regularly.~~

~~(a) ——— When the length of stay has been under three (3) months, the service plan shall be reviewed no less frequently than within the first seventy-two (72) hours after admission, one (1) week thereafter, and every two (2) weeks thereafter for the duration of treatment (i.e., 3 days; 10 days; 2 weeks thereafter).~~

~~(b) ——— When the length of stay has been three (3) to twelve (12) months, the service plan shall be reviewed no less frequently than required by the scheduled outline in Section (1) above for the first three (3) months and every three (3) months thereafter for the duration of treatment.~~

~~(c) For children hospitalized longer than twelve (12) months, ISP review shall continue at three (3) month, ninety (90) day intervals.~~

~~(d) ——— If at any time during the admission process or in any part of the periodic review process, any member of the treatment team, or any member of the local area mental health program, shall determine that (A) the child is no longer mentally ill, (B) that the child is not in need of treatment in the institution, (C) that the child could be better treated in another reasonably available but less restrictive alternative, or (D) that all reasonable steps have not been taken to secure an alternative placement, such person shall report his or her determination in writing to the CMO who, within five (5) days of receiving the report, shall direct an immediate independent review of the child's case by the CCHR, as set forth in Section (2)(a) below. At each of these reviews by the treatment team, the unit psychiatrist shall be required to exercise independent medical judgment and shall document with specificity said review and the basis for the decision in the medical record of the child.~~

~~(2) Continued Hospitalization Committee Review.~~

~~(a) ——— An independent review for continued hospitalization for children under eighteen (18) years of age shall be completed at ninety-day (90-day) intervals or less, except in the case of children designated in Rule 290-4-7-.08(2)(b)1. and 2.~~

~~where they shall not receive the initial ninety-day (90-day) review but instead shall receive such a review ninety (90) days after the hearing provided in Rule 290-4-7-.08(2)(b)7., or ninety (90) days after the decision not to ask for such a hearing.~~

~~1. The CCHR shall conduct the review. The treatment team shall notify the CCHR by the seventy-sixth (76th) day following admission or from the date of transfer from involuntary to voluntary status of the need for continued hospitalization. Within seven (7) days of such notice, the CCHR shall both meet to determine the need for continued hospitalization and make their recommendation to the CMO or his or her designee.~~

~~2. After consideration of the Committee's recommendations and minority recommendations, if any, the CMO in the exercise of independent medical judgment shall determine if the patient needs continued hospitalization. The CMO shall make this decision by the ninetieth (90th) day following admission or from the date of transfer from involuntary to voluntary status.~~

~~3. If the decision of the CMO is that continued hospitalization is necessary for the child, the CMO shall assure that a written notice of this decision is sent to the child, and the parent, or a person standing in loco parentis. This notice shall consist of:~~

~~(i) a statement of the child's right to file for habeas corpus;~~

~~(ii) a statement of the parent's right to request release;~~

~~(iii) a statement of the child's and the parent's right to file a motion for protective order to object to the ISP;~~

~~(iv) a statement to the child of any known low-cost or free legal service to which the child may be entitled and assistance in securing such legal services upon request by the child.~~

~~(b) The following procedures will be followed for a child about whom it has been determined:~~

~~1. that the child is in the legal custody of the Department of Family and Children Services (hereinafter DFACS) and was admitted to the hospital upon application of DFACS personnel, or~~

~~2. that the child's parent has not been an active participant in the child's treatment, as determined by the following criteria:~~

~~(i) failure to fulfill the requirements established for the parents by the admission team;~~

~~(ii) failure to become involved in formulation of the child's ISP and failure to fulfill requirements of the ISP.~~

~~(Non-participation by parents and known conflicts of interest between parent and child shall be well-documented, including all attempts by staff to contact parents, and all decisions relating to conflict of interest situations.)~~

~~3.—— No later than fifty (50) days after admission, the treatment team will have determined whether the child fits into the above categories, and if so, the treatment team must within this fifty (50) day period advise the CMO that it recommends continued hospitalization of such a child. If the CMO in the exercise of independent medical judgment determines that continued hospitalization is necessary (and such decision must be made by the sixtieth (60) day following admission or from the date of transfer from involuntary to voluntary status) then, in addition to the notices set forth on page 20 above, the CMO shall immediately notify the local Georgia Legal Services Program (hereinafter GLSP) office of the continued hospitalization decision and of the name, age, location and treatment team contact for such child. The notice shall also state that GLSP has fifteen (15) working days from the receipt of such notice to request an administrative hearing to be conducted by the hearing examiners who are responsible for conducting hearings under O.C.G.A. Section 37-3-83. GLSP shall notify both the hearing examiner and the hospital as to whether or not a hearing will be requested.~~

~~4.—— The CMO shall also notify DFACS and the parent/guardian of the continued hospitalization decision and of the notification of the local office of GLSP. Such notice shall state that GLSP may be acting in an attorney-client capacity to such child concerning the child's need for further hospitalization.~~

~~5.—— GLSP may interview the child, the hospital staff and the child's medical record in determining whether to request an administrative hearing. The child has the right to secure alternative representation but the hospital staff and DFACS shall assume that GLSP represents the child unless specifically notified otherwise by GLSP.~~

~~6.—— Upon the request of an administrative hearing by GLSP on behalf of the child, GLSP shall assume the responsibility of providing or assuring the provision of legal representation for the child, either through its own advocates or through volunteer panels secured by GLSP. This responsibility shall continue as required by the Code of Professional Responsibility, and all regulations relating to GLSP as an entity.~~

~~7.—— If an administrative hearing is requested, the hearing examiner shall set a date for a hearing to be conducted within twenty five (25) days of receipt of the request, unless continued for good cause. Notice of the hearing shall be served on the parents, DFACS, GLSP, and the CMO of the facility. The hearing examiner, within his or her discretion, may grant a change of venue for the convenience of the parties or witnesses. Such hearing shall be a "full and fair~~

hearing" as defined in O.C.G.A. Section 37-3-1, except that the child's attorney may move that the child not be required to appear; however, the record shall reflect that reasons for the hearing examiner's actions. After such hearing, the hearing examiner shall serve on all parties his or her written determination of whether continued hospitalization is necessary for treatment of the child.

8. Appeals from the decision of the hearing examiner may be held in accordance with O.C.G.A. Section 50-13-19.

(c) If the decision is that there is no need for continued hospitalization, then the child must be discharged according to the discharge procedures outlined below. Signed documentation of all recommendations and decisions must be a part of the child's clinical record. If the decision is that less restrictive environments than the hospital may be required or may be available, then the hearing examiner may require reports concerning such placement actions or schedule the matter for any earlier review appropriate. This same process heretofore described shall recur and be completed at least every ninety (90) days after a hearing or after a decision not to have a hearing.

Rule 290-4-7-.09 Discharge Procedure

(1) When a discharge decision is made, the parents or guardian shall be notified in writing. If there is no immediate placement resource available, a meeting will be held within five (5) working days of the discharge decision within the local area mental health program staff, parent or guardian, and any other social service agencies as determined to be necessary. If no discharge has taken place within ten (10) additional working days, the CMO or his or her designee shall insure that a petition will be filed with the juvenile court in the county of the child's residence, and a hearing requested so that the juvenile court may determine and make provision for an appropriate placement for the child. Written notification and a copy of the petition will also be sent to the parent or agency holding custody of the child, and to the child.

(2) Involuntary Admission. The procedure for discharge is as outlined in O.C.G.A. Sections 37-3-43 and 37-3-64, or the patient may be transferred to voluntary status as outlined in O.C.G.A. Section 37-3-24, with the parent or guardian being the person signing for voluntary hospitalization, unless the child is twelve (12) years of age or over, in which case he or she may sign for his or her own voluntary hospitalization.

(3) Juvenile Court Ordered (O.C.G.A. Section 15-11-40) Admissions, Same as "(1)" above, except that the notification of the decision for discharge must include the juvenile court. If the initial court order or further orders specify a longer hospitalization time, then Central Office must be notified.

~~Rule Chapter 290-4-8. DISPOSITION OF GUILTY BUT MENTALLY ILL AND GUILTY BUT MENTALLY RETARDED OFFENDERS.~~

~~Rule 290-4-8-.01 Definitions~~

- ~~(1) "Department" means Department of Human Resources, Division of Mental Health, Mental Retardation and Substance Abuse.~~
- ~~(2) "GDC" means the Department of Corrections which is the Georgia penal system.~~
- ~~(3) "Guilty but mentally ill" means a felony conviction of a defendant who was mentally ill at the time of the crime.~~
- ~~(4) "Mentally ill" means having a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. However, the term "mental illness" shall not include a mental state manifested only by repeated unlawful or antisocial conduct.~~
- ~~(5) "Guilty but mentally retarded" means a felony conviction of a defendant who is mentally retarded.~~
- ~~(6) "Mentally retarded" means having significantly subaverage general intellectual functioning resulting in or associated with impairments in adaptive behavior which manifested during the developmental period.~~

~~Rule 290-4-8-.02 Purpose~~

~~The purpose of these Rules is to provide for the appropriate placement of an offender who has been found guilty but mentally ill or guilty but mentally retarded at the time of the crime.~~

~~Rule 290-4-8-.03 Applicability~~

~~These Rules shall apply to all facilities operated by the Department as defined in O.C.G.A. 37-2-2(7).~~

~~Rule 290-4-8-.04 Implementation~~

~~The Department is authorized to contract with GDC to implement these rules and to outline the specific responsibilities of each Agency.~~

~~Rule 290-4-8-.05 Procedure for Evaluation~~

~~When GDC notifies the Department that an offender has been found guilty but mentally ill or guilty but mentally retarded, the Department shall provide a staff psychiatrist or a~~

~~licensed psychologist to evaluate the offender. Said psychiatrist or psychologist shall evaluate the offender's current mental status and determine whether or not immediate hospitalization is indicated. When an offender is found guilty but mentally retarded, the evaluator shall conduct a full individualized test of intelligence, including an assessment of adaptive behavior. The person who conducts the evaluation shall write a report of the evaluation including at least the following: brief mental health or mental retardation assessment, diagnostic impression, current regimen, recommendation for treatment or habilitation, and determination of need for immediate hospitalization. The psychiatrist or psychologist who makes the evaluation and writes the report shall send the report to the Commissioner of GDC or his designee in accordance with terms specifically outlined in the contract between the Department and GDC.~~

~~Rule 290-4-8-.06 Procedure for Hospitalization~~

~~Hospitalization is indicated if it is determined that the offender meets the criteria for involuntary commitment as defined in O.C.G.A. 37-3-1(9.1) or O.C.G.A. 37-4-40. The offender must also meet transfer guidelines as defined by policies and procedures of the GDC. After the notification by GDC, the Department shall receive said offender referred by GDC and transfer will be made in accordance with Division of Mental Health, Mental Retardation and Substance Abuse Policy Memorandum No. 1.400.~~

~~Rule 290-4-8-.07 Transfer to the Department of Corrections~~

~~When the treating physician determines that hospitalization is no longer indicated, he shall notify the Commissioner of GDC or his designee. The Department shall cooperate with GDC in the transfer of the guilty but mentally ill or guilty but mentally retarded offender from Central State Hospital to the penal facility designated by GDC.~~

~~Rule Chapter 290-4-9. CLIENTS' RIGHTS.~~

~~Rule 290-4-9-.01 Purpose, Implementation, and Definitions~~

~~(1) Purpose. The purpose of these regulations is to safeguard the rights of persons treated pursuant to O.C.G.A. Chapters 37-3, 37-4, 37-5, and 37-7.~~

~~(2) Applicability. These regulations shall apply to all area community mental health, mental retardation and substance abuse programs, as defined in O.C.G.A. Chapters 37-2, 37-5, and 26-5, which are operated by the Boards of Health or Community Service Boards or funded through contracts with the Boards of Health, the Regional Boards, the Community Service Boards, or the Department of Human Resources, including licensed Personal Care Homes which are under contract with the Department, Boards of Health, Regional Boards or Community Service Boards to receive clients who have mental~~

~~illness, mental retardation, or are substance abusers. These regulations shall in general apply to all persons served in such programs without regard to the type or source of entry into the program. When the client is a minor or an adult with a legally appointed guardian, the regulations are applicable to that parent or guardian, with certain exceptions, as specifically stated in various parts of the regulations. For persons being served by virtue of a court order related to a criminal matter, the regulations are applicable to the extent that they do not violate the provisions of the order nor the need to provide for the safety of the individual or of others.~~

~~(3) Implementation. Each Mental Health, Mental Retardation, and Substance Abuse Program shall instruct each staff member in the contents of these regulations. Each Program shall also provide, at the beginning of each client's treatment, the client or his parent or guardian, if applicable, a written summary of the rights and remedies contained in these regulations and their applicability to him. Insofar as is possible, notifications shall be done in such a manner commensurate with the individual's abilities and capabilities of comprehension and understanding and shall be documented in the client's record. Further, prior to the restriction of any client's rights (as permitted in these regulations), a staff member shall again inform the client, or his parent or guardian if applicable, of his right to administrative complaint of that restriction, except in cases where the client's condition makes this impractical, and in such cases the client shall be informed at the time when his condition permits.~~

~~(4) Definitions. Unless a different meaning is required by the context, the following terms as used in these regulations shall have the meanings hereinafter set forth:~~

~~(a) ——— "Abuse" means any unjustifiable intentional or grossly negligent act, exploitation or series of acts, or omission of acts by a staff member which causes physical or mental injury, or endangers the safety of a client, including but not limited to verbal abuse, assault or battery, failure to provide treatment or care, or sexual harassment;~~

~~(b) ——— "Care" means diagnostic services; therapeutic services, including the administration of drugs; habilitation; and any other service for the treatment or habilitation of an individual pursuant to O.C.G.A. Chapters 37-2, 37-4, 37-5, and 26-5;~~

~~(c) "Chief Medical Officer" means the physician designated by the Program Director with overall responsibility for client treatment or habilitation at the facility receiving the client;~~

~~(d) ——— "Client" means any person who receives treatment or habilitation for alcohol or drug abuse, mental illness, or mental retardation pursuant to O.C.G.A. Chapters 37-2, 37-4, 37-5, and 26-5 or any person accepted for evaluation;~~

~~(e) ——— "Court" means, in the case of an individual who is 17 years of age or older, the probate court for the county of residence of the client or the county in~~

~~which such client is found, and, in the case of an individual who is under the age of 17 years, the juvenile court for the county of residence of the client or the county in which such client is found;~~

~~(f) "Department" means the Georgia Department of Human Resources and includes its duly authorized agents and designees;~~

~~(g) — "Director" means the Director of the Division of Mental Health, Mental Retardation and Substance Abuse of the Department of Human Resources;~~

~~(h) — "Division" means the Division of Mental Health, Mental Retardation and Substance Abuse of the Department of Human Resources;~~

~~(i) "Guardian" means an individual appointed as provided by law to be legally responsible for the person of an adult or of a minor. Whenever the word "client" is used in these regulations, a guardian is entitled to exercise the client's rights on behalf of his ward;~~

~~(j) "Individualized Service/Program Plan"~~

~~1. — "Individualized Service/Program Plan": An organized statement of the proposed treatment/habilitation process to guide the service provider and client throughout the duration of service at the Program.~~

~~2. — Each plan shall clearly include but is not limited to:~~

~~(i) — A statement of the goals or desired outcomes, based upon and related to a proper evaluation of the nature of the specific problem and the specific needs of the client, which can be reasonably expected to be achieved;~~

~~(ii) — The kinds of services to be provided to obtain these goals and the frequency of services;~~

~~(iii) — Identification of professional personnel who planned these services, including appropriate medical or other professional involvement by a physician;~~

~~(iv) — Documentation of client involvement and, if applicable, the client's accordance with the individualized service/program plan;~~

~~(v) — Compliance with the Program's written Quality Improvement Plan;~~

~~(k) "Mental Health, Mental Retardation and Substance Abuse Program (Program)" shall mean an organized program for the care and treatment of persons with mental illness, mental retardation, or individuals with an alcohol or drug dependence or addiction operated by a County Board of Health or Community Service Board or funded through contracts with a County Board of Health, Regional Board, Community Service Board or the Department of Human Resources.~~

~~(l) "Mental Health, Mental Retardation and Substance Abuse Program Director" shall mean the Director of a Mental Health, Mental Retardation and Substance Abuse Program.~~

~~(m) "Physical Restraint" means any mechanical device used to restrict a person's physical movement, except for those devices which are applied for protection from accidental injury or required for the medical treatment of the client's physical condition or for supportive or corrective needs of the client. These latter devices used in such situations must be authorized and applied in compliance with the Program's policies and procedures. The use of such devices shall be documented in the client's record;~~

~~(n) "Physician" means any person duly authorized to practice medicine in this State pursuant to O.C.G.A. Chapter 43-34;~~

~~(o) "Psychologist" means any person duly authorized to practice applied psychology in this State pursuant to O.C.G.A. Chapter 43-39.~~

~~(p) "Professional staff" means staff members who are psychiatrists, psychiatric nurses, physicians, social workers, clinical chaplains, psychologists, or persons who have met Division requirements for Mental Health Professional Equivalency or Mental Retardation Professional.~~

~~(q) "Quality Improvement Plan" means a written description of a clearly defined, organized program that is designed to promote quality client care through peer review and ongoing objective and systematic assessment of client care and the correction of identified problems. The plan describes the authority and responsibilities of program staff responsible for review of client's rights, mechanisms for choosing representatives from individuals served or their representatives, and individuals not otherwise affiliated with the program to serve on the Quality Improvement Clients' Rights Subcommittee;~~

~~(r) "Regional Executive Director/Designee" means the person with overall responsibility for the Mental Health, Mental Retardation and Substance Abuse Services.~~

~~(s) "Representative" means the person appointed, pursuant to section 290-4-9-.02(1)(h) of these regulations, to receive notices;~~

~~(t) "Staff member" means, for the purpose of Chapter 290-4-9 only, any person who is an employee, independent contractor, or other agent of the Department or of a County Board of Health, Regional Board or Community Service Board who provides services to persons with mental illness, mental retardation, or who are substance abusers. The use of "Staff member" in these regulations for such persons shall in no way alter the legal relationship of such persons and the Department, or subject the Department to any liability to which it is not otherwise subject;~~

~~(u) — "Time-out" means a behavior modification procedure whereby a person is removed from the environment, or stimuli within the environment, which reinforces the undesired behavior which needs to be modified, and to an unlocked area where the client's movement is not restrained.~~

~~Rule 290-4-9-.02 Treatment or Habilitation~~

~~(1) Appropriateness.~~

~~(a) — General. Each client shall receive care that is suited to his needs in the least restrictive environment available offering appropriate care and treatment or habilitation. All clients have the right to a humane treatment or habilitation environment that affords reasonable protection from harm, exploitation or coercion. No client, whether voluntary or involuntary, shall be deprived of any civil, political, personal, or property rights or to be considered legally incompetent for any purpose without due process of law. Temporary restriction or denial of a client's rights may occur only when specific justification is documented, per these regulations. Protection of the client's well-being shall be of primary concern to all staff under all circumstances.~~

~~(b) — Individual Service/Program Plans.~~

~~1. — The development of an individualized service/program plan shall be governed as follows:~~

~~(i) — Each client shall be evaluated and assessed by the staff as soon as possible after admission but within the time limits contained in the Community Service Board's Quality Improvement Plan or Division/Department minimum requirements, as appropriate.~~

~~(ii) — Each individualized service/program plan shall be reviewed at regular intervals as specified in the Community Service Board's Quality Improvement Plan or Division/Department minimum requirements, as appropriate, to determine the client's progress toward the stated goals and to determine whether the plan should be modified because of the client's present condition. These reviews should be based upon relevant progress notes in the client's record and upon other related information.~~

~~(c) Receipt of Service (Day Services).~~

~~1. — Each client shall have the right to receive prompt treatment services on a voluntary, confidential basis including:~~

~~(i) — The right to care despite inability to pay;~~

~~(ii) — The right to receive services in the least restrictive environment available;~~

~~(iii) — The right to review and obtain copies of his service record, unless determined by the physician or such other staff as designated by the governing authority to be responsible for the client's treatment or habilitation to be contraindicated. Such determination shall be noted in the client's records along with the specific reason for any denial. A determination that a client may not review or obtain copies of his record shall expire after 30 days. Upon any new request after expiration, a new determination must be made and documented in the client's record. After any denial of his right to review or obtain copies of his record, a client may file a complaint under the procedures outlined in 290-4-9-.04. A client who is permitted to obtain copies of his record may be required to pay a reasonable fee to cover the costs of such copies.~~

~~(iv) — The right to a written individualized service/program plan;~~

~~(v) — The right to be involved in, to the extent possible, his own plan of care;~~

~~(vi) — The right to refuse service, unless it is determined by a physician or licensed psychologist that the client is unable to care for himself, dangerous to himself or others, or mandated by a court.~~

~~(d) — Receipt of Service (Residential Services).~~

~~1. — Each client shall have the right to retain his own personal effects, clothing, and money.~~

~~2. — Each client shall have the right to converse privately, have convenient and reasonable access to the telephone and mails, and to see visitors, except if denial is necessary for treatment or habilitation, as documented in the client's record by a physician or licensed psychologist.~~

~~3. — Each client shall have the right to exercise the civil, political, personal, and property rights to which he is entitled.~~

~~4. — Each client shall have the right to pursuit of employment, education, and religious expression.~~

~~(e) — Restriction of any client's rights:~~

~~1. — A client's rights may be restricted/denied only on a temporary basis and in order to protect the health and safety of the client or others;~~

~~2. — If restriction, abridgement, or denial of a client's rights are instituted, other than those pursuant to 290-4-9-.02(1)(c)1. (iii) of these regulations, the nature, extent and reason shall be entered in the client's record as a written order approved by a physician or licensed psychologist. Review of such restriction will occur in the approved treatment or habilitation review process. Any continuing~~

~~denial or restriction shall be reviewed every 15 calendar days and shall be entered into the client's treatment or habilitation record. Such restriction, abridgement, denial of a right must be reviewed by the staff responsible for review of client rights as specified in the Program's Quality Improvement Plan.~~

~~(f) Physical Restraints and Time-out Utilization.~~

~~1. Physical restraints shall not be used in any program governed by these rules and regulations; provided, however, that emergency receiving, evaluating and treatment facilities may use restraints in accordance with Rules and Regulations for Patients' Rights, Chapter 290-4-6. For the purposes of this subsection, those devices which restrain movement, but are applied for the protection of accidental injury or required for medical treatment of the client's physical condition or for supportive or corrective needs of the client, shall not be considered physical restraints. However, such devices used in such situations must be authorized and applied in compliance with the Program's policy and procedures. The use of such devices shall be a part of the client's Individual Service/Program Plan.~~

~~2. Time-out procedures shall be used solely for the purpose of providing effective treatment and protecting the safety of the client and other persons and shall not be used as punishment or for the convenience of staff. It shall be documented in the client's record, prior to the use of time-out procedures, that less restrictive methods of modifying the problem behavior have been systematically tried and found to be ineffective.~~

~~3. The use of time-out shall be governed as follows:~~

~~(i) Every use of time-out shall be under the supervision and observation of the Program's professional staff and limited to no more than 15 minutes per episode.~~

~~(ii) Every use of time-out shall be conducted in a unlocked well lighted, heated or cooled, ventilated area with a means of observation available. The area(s) to be used for time-out shall be identified in the Program's policy and procedure for time-out utilization.~~

~~(iii) Every use of time-out shall be documented in the client's record. Such documentation shall include but is not limited to:~~

~~(I) the reasons and justification for time-out utilization;~~

~~(II) the signature of the person authorizing the time-out.~~

~~(g) Medications.~~

~~1. The attending physician is responsible for assuring, and documenting in the client's record, that the benefits, side effects, and risks of psychotropic~~

~~medication are explained to the individual, commensurate with the individual's abilities of comprehension and understanding.~~

~~2. All medications shall be administered or prescribed solely for the purpose of providing effective treatment or habilitation and/or protecting the safety of the client and other persons and shall not be used as punishment or for the convenience of staff.~~

~~3. If not judicially declared incompetent, all adults shall give signed consent to the administration of medication. If an adult client has been judicially determined to be incompetent to give signed consent or to make decisions of a similar nature, signed consent to the administration of medication shall be obtained from the client's guardian with capacity to make such decision. If the client is a minor, such signed consent shall be obtained from the minor's parent or legal guardian.~~

~~4. Only in cases of emergency, where the physician determines that immediate intervention is necessary to prevent the death of or serious consequences to a client and where delay in obtaining signed consent would be unsafe for the client or others then immediate essential intervention may be administered without the consent of the client or other person. In such emergency cases, a record of the determination of the physician shall be entered into the client's record, and this will be the prior consent for such intervention. An attempt to expeditiously resolve the emergency situation must then be demonstrated.~~

~~(h) Participation of representatives for persons ordered to receive involuntary outpatient treatment at a mental health center on an outpatient basis is governed by the Rules of the Department of Human Resources Rule 290-4-6-.02(3).~~

Rule 290-4-9-.03 Treatment or Habilitation Environment

~~(1) General. The individual dignity of each client shall be respected at all times and upon all occasions. The provision of all services shall be offered in an environment, which is designed to assure the health and safety of all clients.~~

~~(2) Abuse and Sexual Activity:~~

~~(a) Abuse of any client is prohibited. A staff member shall use force only if necessary to prevent a client from threatening imminent harm or committing harm to himself or others. Such force as may be needed to prevent a client from threatening imminent harm or committing harm to self, staff, or others shall not constitute abuse. An incident report of such activity shall be filed with the Program Director and with the Clients' Rights program staff.~~

~~(b) — No staff member shall engage in any sort of sexual activity with any client, or allow sexual activity between or among clients while the client remains under the care or supervision within a program operated or contracted by a County Board of Health, Regional Board, Community Service Board or the Department.~~

~~(c) No staff member shall abuse any client through physical or verbal attack, exploitation, or coercion.~~

~~(d) — A staff member who witnesses an incident of such abuse or sexual activity shall report the incident to the Program Director within 24 hours, and to the Program Clients' Rights staff as specified in the Program's Quality Improvement Plan as soon as possible, which staff shall notify the Personal Advocacy Unit of the Division within 5 working days. Upon receiving such a report, the Program Clients' Rights Subcommittee shall assist the reporting staff or the client (or his guardian or parent, if applicable) in initiating a complaint pursuant to Section 290-4-9-.04 of these regulations. If the Program Director has reasonable cause to believe that the incident constitutes criminal conduct, he shall notify the Regional Executive Director. If the Regional Executive Director concurs, he shall report the incident to the appropriate law enforcement agency. A staff member who fails to comply with the applicable requirements of this Section 290-4-9-.03(2) shall be subject to adverse action in accordance with personnel procedures of the Department or the governing authority.~~

~~(e) — If a staff member of a program has reasonable cause to believe that a parent or caretaker of a minor has inflicted physical injuries other than by accident, has neglected, exploited sexually or assaulted the child, then the staff member shall notify the program's director or his delegate who in turn shall report the allegation to the appropriate County Department of Family and Children Services by telephone, as soon as possible, followed by a written report. The report shall include the names of the parent(s) or caretaker(s), the name of the client, his age, nature and extent of injuries including evidence of previous injuries and other pertinent information on the cause of injury and the identity of the perpetrator. Abuse or neglect of adult clients shall be reported in accordance with the provisions of O.C.G.A. 30-5-1 through 30-5-8.~~

~~Rule 290-4-9-.04 Remedies for Violations~~

~~(1) Complaint Procedures. Any client (or his guardian or parent of a minor client, if applicable) or his representative or any staff member may file a complaint alleging that a client's rights under these regulations or other applicable law have been violated by staff members or persons under their control. Such complaints shall be governed by the procedure established in this Section 290-4-9-.04. A person who considers filing such a complaint is encouraged to resolve the matter informally by discussing it first with the staff members or other persons involved or Program Clients' Rights staff as specified in~~

~~the Program's Quality Improvement Plan. The client is not required to use the procedures established by this Section 290-4-9-.04 in lieu of other available remedies, including the right to directly contact the Personal Advocacy Unit at the Division of Mental Health and Mental Retardation and Substance Abuse or to submit a written complaint to the Regional Executive Director or Program Director or Governor's Advisory Council as provided in O.C.G.A. Chapter 37-2-4.~~

~~(a) — General. In order to ensure that such internal quality improvement investigations and monitoring activities are completed fully and in an in-depth manner, to encourage candid evaluations, and to ensure that adequate corrective action is taken in all cases, review actions taken and documentation made in furtherance of this Section 290-4-9-.04 shall remain confidential.~~

~~(b) — Client complaint procedures in Programs funded directly or indirectly by the Department shall be governed as follows:~~

~~1. — Each Program Director shall appoint a Clients' Rights Subcommittee to review the rights of the clients receiving services from programs contracted by the Department, a Regional Board, or a Community Service Board either directly or indirectly. The Clients' Rights Subcommittee functions as a part of the program's ongoing quality improvement program, as described in the Program's Quality Improvement Plan.~~

~~(i) — The Clients' Rights Subcommittee staff is chosen from those staff responsible for the Program's Quality Improvement peer review system; and is a subcommittee of the Quality Improvement Committee. Members shall be composed primarily of professional staff and shall also include a service consumer or his representative or person not otherwise affiliated with the program.~~

~~(ii) — The Clients' Rights Subcommittee shall have the authority to investigate complaints, use whatever means are available and appropriate to resolve complaints, and consult with Program management on the development of policies and procedures to safeguard the rights of clients served in the Program.~~

~~(iii) — The Quality Improvement Clients' Rights Subcommittees in the Programs conduct their activities under the auspices of the Program Quality Improvement Committee, and all reports will be channeled through the Quality Improvement Committee to the appropriate Program Director/designee for appropriate corrective action. A copy of all reports will also be channeled to the Division Quality Improvement Committee through the Division Personal Advocacy Unit.~~

~~(2) First Step:~~

~~(a) — The complaint shall be filed with the Clients' Rights Subcommittee of the client's Program, and it may be filed on a form provided by the Program. If the client states the complaint orally, specific assistance should be given in proceeding with the complaint and completing the form. Complaints may be made by telephone to clients' rights staff persons, who will complete the form. Staff members whose alleged conduct gave rise to the complaint may be informed of the complaint.~~

~~(b) — As soon as possible, but within seven working days after the complaint is filed, the Clients' Rights Subcommittee shall investigate the complaint, resolve it if possible, complete a disposition report, and file it with the Quality Improvement Committee's records. If after interviewing the complainant, however, it is found that the complaint does not state an allegation that, if true, would constitute a violation of these regulations or other applicable law, the complaint may be rejected in writing. In cases of such rejection, the original of the rejection notice shall be filed in the Quality Improvement Committee's records, and a copy shall be sent to the complainant. In all investigated complaints, the staff shall employ the investigatory method deemed most suitable to determine the facts. This method may include, but is not limited to, personal interviews, telephone calls, review of documents, and correspondence. The Quality Improvement Committee and its designees shall have access to all files, documents, records, and personnel of the Program deemed by the Committee to be relevant to its investigation. The Committee shall resolve the complaint through mediation and conciliation whenever possible. The client whose rights are alleged to have been violated or someone in his behalf may appear before the committee.~~

~~(c) The Program's Quality Improvement Committee shall complete a brief disposition report on each investigated complaint and forward it to the Program Director for approval. The report shall state the parties involved, the gist of the complaint, and whether the complaint was resolved or not. The original report shall be filed on forms provided by the Division in the Committee records, and a copy shall be sent to the Regional Executive Director, the Director of the Program, and to the Division Quality Improvement Committee through the Personal Advocacy Unit. The complainant shall be notified of the action taken by the Committee.~~

~~(3) Second Step.~~

~~(a) — If the complaint is rejected or is not resolved by the Committee to the satisfaction of the client (or his guardian or parent of a minor client, if applicable) or the complainant, either the client (or his guardian or parent of a minor client, if applicable) or the complainant may file with the Program Director a written request for a review of the complaint. The request shall be filed no later than 15 working days after the person filing the request receives a copy of the rejection notice or the disposition report of the Committee, which report includes notice of the necessity to file for review within 15 working days. The Program Director may reject the request in writing without a review if either the complaint or the request for review is not filed~~

~~in a timely fashion, or if the complaint does not state an allegation that, if true, would constitute a violation of these regulations or other applicable law. The original of the rejection shall be filed in the Program Director's records, and a copy shall be sent to the complainant and to the Regional Executive Director. In all other cases, the Program Director shall designate a staff member who is a member of the Quality Improvement Committee and has no connection with the complaint to conduct a review of the complaint.~~

~~(b) ——— The person conducting the review of the complaint shall review all reports and documents which were utilized in Section 290-4-9-.04(2). In addition, the reviewer may interview any person who may have information related to the complaint. The complainant, shall be given an opportunity to discuss the complaint directly with the reviewer and present any information relevant to the complaint. Any staff member(s) whose alleged conduct gave rise to the complaint shall also be given an opportunity to discuss the complaint with the reviewer and present any information relevant to the complaint. This review process is designed to be an informal process and not a formal hearing. The reviewer shall document his findings. The review shall be completed as soon as possible, but within 10 working days after the request for review is filed.~~

~~(c) Within five working days after the conclusion of the review, the reviewer shall submit to the Program Director a written report of the review. The report shall contain a list of the pertinent provisions of these regulations or other applicable law, and a recommendation for disposition. Within three working days after receiving the reviewer's report, the Program Director shall issue a written decision disposing of the complaint. The Program Director's decision, in addition to the disposition, may incorporate by reference those lists contained in the reviewers report. In this decision, the Program Director may accept, reject, or modify the reviewer's recommendation, or he may return the case to the reviewer for further proceedings. If the Program Director returns the case to the reviewer, the Program Director shall specify the matters to be addressed in the further proceedings and shall specify the period within which those proceedings shall be concluded. In no event shall the period for completing the further proceedings, including the reviewer's submission of an additional report to the Program Director and the Program Director's issuance of a decision, exceed 10 working days. The original of the Program Director's decision shall be filed on forms provided by the Division in the Program Director's records, and a copy shall be sent to the Regional Executive Director, to the complainant, and the Division Quality Improvement Committee through the Division Personal Advocacy Unit.~~

~~(4) Third Step.~~

~~(a) ——— The client (or his guardian or parent of minor client, if applicable) or the complainant may appeal the Program Director's rejection or other decision by filing a written request for review with the Regional Executive Director or his/her~~

~~designee. The request for review shall be filed no later than 10 working days after the person filing the request receives a copy of the Program Director's rejection or other decision. Upon the filing of such a request, the Program Director shall be notified, and the Program Director shall immediately transmit to the Regional Executive Director a copy of the Program Director's rejection or decision, together with a copy of the reviewer's recommendations, the Program Director's decision, and other documents utilized in the review, if any.~~

~~(b) Within 10 working days of the filing of the request for review the Regional Executive Director, or his/her designee, shall issue a decision disposing of the appeal. The Regional Executive Director may reject the request in writing without a review if either the complaint or the request for review is not filed in a timely fashion, or if the complaint does not state an allegation that, if true, would constitute a violation of these regulations or other applicable law. The original of the rejection shall be filed in the Regional Executive Director's records and a copy sent to the complainant. In all other cases, the Regional Executive Director shall review the pertinent facts, reports, and reviews which were in Section 290-4-9-.04(2) and 290-4-9-.04(3), and issue a written decision disposing of the complaint. The original of the Regional Executive Director's decision shall be filed on forms provided by the Division in the Regional Executive Director's records, and a copy shall be sent to the complainant and to the Division Quality Improvement Committee through the Division Personal Advocacy Unit.~~

~~(5) Fourth Step.~~

~~(a) The client (or his guardian or parent of a minor client, if applicable) or the complainant may appeal the Regional Executive Director's rejection or other decision by filing a written request for review with the Director of the Division of Mental Health, Mental Retardation and Substance Abuse. The request for review shall be filed no later than 10 working days after the person filing the request receives a copy of the Regional Executive Director's rejection or other decision. Upon the filing of such a request, the Regional Executive Director shall be notified, and the Regional Executive Director shall immediately transmit to the Director a copy of the Regional Executive Director's rejection or decision, together with a copy of the previous reviewer's recommendations, the Program Director's decision, and other documents utilized in the review, if any.~~

~~(b) Within 10 working days of the filing of the request for review, the Director or his designee shall issue a decision disposing of the appeal. This decision of the Director or his designee shall be based upon a review of the request for review and the documents forwarded by the Regional Executive Director; no evidentiary hearing shall be conducted by the Director or his designee. In the decision, the Director or his designee, may affirm, reverse, or modify the Regional Executive Director's rejection or other decision, or he may return the case to the Regional Executive Director for further proceedings. If the Director or his designee returns the~~

~~case to the Regional Executive Director, the Director or his designee shall specify the matters to be addressed in the further proceedings and shall specify the period within which those proceedings shall be concluded. In no event shall the period for completing the further proceedings, including the reviewer's submission of an additional report, the Regional Executive Director's issuance of another rejection or other decision, and the Director's or his designee's issuance of a decision, exceed 14 working days. The original of the Director's or his designee's decision shall be filed in the Director's records, and copies shall be sent to the Regional Executive Director and to the complainant. The decision of the Director shall be final.~~

~~(6) General Provisions.~~

~~(a) — Whenever the Program's Clients' Rights staff or the Division's Personal Advocacy Unit becomes aware of a situation that appears to require immediate action to protect the welfare and safety of any client, the Program's Clients' Rights staff or the Personal Advocacy Unit shall immediately notify the nearest available staff member with authority to correct the situation.~~

~~(b) — In any situation that requires immediate action to protect a client's welfare or safety, the Regional Executive Director may be notified instead. If adequate corrective action is not taken by that staff member, the Clients' Rights staff or the Personal Advocacy Unit shall immediately notify the Regional Executive Director, or, if necessary, the Division Director or the Commissioner of the Department.~~

~~(c) No person shall be subject to any form of discipline or reprisal solely because he has sought a remedy through or participated in the procedures established by this Section 290-4-9-.04.~~

~~(d) — Obstruction of the investigation or disposition of a complaint by any person shall be reported to the Program Director, who shall take action to eliminate the obstruction. Staff members are subject to adverse action for engaging in such obstruction, in accordance with personnel procedures of the Department or the personnel procedures of the governing authority.~~

~~(e) — Time limits designated in this Section 290-4-9-.04 may be extended by the decision maker at each step for good cause only.~~

~~(f) This complaint procedure does not replace or invalidate any other Department policy or procedure pertaining to reporting requirements, disciplinary matters, or the like.~~

~~(g) — Staff members who are involved in a complaint shall not be involved in the processing of that complaint.~~

Rule 290-4-9-.05 Confidentiality

~~(1) A service record for each client shall be maintained. The record shall include data pertaining to admission and such other information as may be required under regulations and standards of the Department. The service record shall not be a public record and no part of it shall be released except:~~

~~(a) Service records of clients treated for alcohol and drug abuse shall be maintained in accordance with Volume 42 of the Code of Federal Regulations 42, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records," as now or hereafter amended. Volume 42 of the Code of Federal Regulations Part 2 and O.C.G.A. 37-7-166 control the disclosure provisions for clients treated for alcohol and drug abuse;~~

~~(b) When the chief medical officer of the Program where the record is kept deems it essential for continued treatment or habilitation, a copy of the record or parts thereof may be released upon consent of the client to physicians or licensed applied psychologists when and as necessary for the treatment of or habilitation of the client;~~

~~(c) A copy of the record may be released to any person or entity as designated in writing by the client or, if appropriate, the parent of a minor, the legal guardian of an adult or minor, or a person to whom legal custody of a minor patient has been given by order of a court;~~

~~(d) When a client is admitted to a Program, a copy of the record or information contained in the record from another facility, community program, or a private practitioner may be released to the admitting Program. When the service/program plan of a client involves transfer of that client to another Program or hospital, a copy of the record or information contained in the record may be released to that Program or hospital;~~

~~(e) A copy of the record or any part thereof may be disclosed to any employee or staff member of the Program when it is necessary for the proper treatment of the client;~~

~~(f) A copy of the record shall be released to the client's attorney if the attorney so requests and the client, or the client's legal guardian, consents to the release;~~

~~(g) In a bona fide medical emergency, as determined by a physician treating the client, the chief medical officer may release a copy of the record to the treating physician or to the client's psychologist;~~

~~(h) The record shall be produced by the entity having custody thereof at any hearing held under O.C.G.A. Chapters 37-1, 37-3, 37-4, 37-5, or 37-7 at the request of the client, the client's legal guardian, or the client's attorney;~~

~~(i) A copy of the record shall be produced in response to a valid subpoena or order of any court of competent jurisdiction, except for matters privileged under the laws~~

~~of this State; provided, however, that disclosure of alcohol abuse or drug abuse client information shall be produced in response to a court order issued by a court of competent jurisdiction pursuant to a full and fair show cause hearing;~~

~~(j) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of a criminal investigation may be informed whether a person with mental illness or mental retardation is or has been a client in a Program as well as the client's current address, if known; provided, however, that disclosure of alcohol abuse or drug abuse client information is not authorized by this paragraph.~~

~~(k) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of investigating the commission of a crime on the premises of a Program or against Program personnel or a threat to commit such a crime may be informed as to the circumstances of the incident, including whether the individual allegedly committing or threatening to commit a crime is or has been a client in the Program, and the name, address, and last known whereabouts of any alleged client perpetrator.~~

~~(2) Any disclosure authorized by this section or any unauthorized disclosure of confidential or privileged client information or communication shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by this section shall not be liable to the client or any other person notwithstanding any contrary provision of O.C.G.A. Section 24-9, Article 2, as now or hereafter amended.~~

~~Rule 290-4-9-.06 Notification of Rights~~

~~In addition to the provision of these Regulations Paragraph 290-4-9-.01(3), each Program shall display a notice in a prominent place of the availability and accessibility of these regulations Chapter 290-4-9 at each appropriate service site.~~

~~Rule Chapter 290-4-10. DUI ALCOHOL OR DRUG USE RISK REDUCTION PROGRAM.~~

~~Rule 290-4-10-.01 Legal Authority~~

~~These rules are adopted and published in accordance with the Official Code of Georgia Annotated (O.C.G.A.) Section 40-5-80et seq.~~

~~Rule 290-4-10-.02 Title and Purpose~~

~~These rules are known as the Rules and Regulations for DUI Alcohol or Drug Use Risk Reduction Programs. The purpose of the rules is to provide for the certification of DUI Alcohol or Drug Use Risk Reduction Programs and instructors by the Department of Human Resources, Division of Mental Health, Mental Retardation, and Substance Abuse, and to provide for the inspection and investigation of such programs, instructors, and staff, and for enforcement of certification and program requirements by the department.~~

Rule 290-4-10-.03 Definitions

~~Unless the context otherwise requires, the terms used in these rules mean the following:~~

~~(a) "Assessment component" means the standard screening instrument designated by the Department of Human Resources that is used to screen for the extent of an individual's alcohol and drug use and its impact on driving.~~

~~(b) "Certification" means written authorization by the Department of Human Resources to any DUI Alcohol or Drug Use Risk Reduction Program or any Program Instructor to own and operate a program or to provide instruction, respectively. Certification is a prerequisite for initial and continued program operation and instruction. It is granted and continued upon a showing of initial and continued compliance with the requirements set forth in these rules and regulations. Certification specifically authorizes programs and instructors to provide the assessment and intervention components of the DUI Alcohol or Drug Use Risk Reduction Program.~~

~~(c) "Department" means the Department of Human Resources.~~

~~(d) "Director" means the person designated in writing by the program owner(s) to manage and control the overall operation of a DUI Alcohol or Drug Use Risk Reduction Program by managing the day-to-day operations, supervising all employees and instructors, establishing policies and procedures, ensuring compliance with same, overseeing and ensuring compliance with program requirements, and ensuring compliance with all other legal requirements. Each program must have one designated director. The director may be an owner or a person designated by the owner(s).~~

~~(e) "Division" means the Division of Mental Health, Mental Retardation, and Substance Abuse of the Department.~~

~~(f) "Intervention component" means a DUI Alcohol or Drug Use Risk Reduction course that delivers therapeutic education about alcohol and drug use and driving, and peer group counseling concerning alcohol and drug use over a period of 20 hours utilizing a methodology and curriculum approved and certified by the department.~~

~~(g) "Instructor" means an individual who has been certified by the department to instruct the intervention component of the DUI Alcohol or Drug Use Risk Reduction Program.~~

~~(h) "Management or Control" means the actual exercise of or authority to exercise direction, administration, supervision, or oversight over the operation of a DUI Alcohol or Drug Use Risk Reduction Program.~~

~~(i) "Offender" means any person who may be required to enroll in a DUI Alcohol or Drug Use Risk Reduction Program, but who has not yet become a student at a particular program.~~

~~(j) "Operations Guidelines" mean the directions, forms, formats and guidelines formulated by the department in order to implement these rules and regulations.~~

~~(k) "Owner" means any person who has a financial interest of at least twenty-five (25) percent in or who derives substantial financial benefit from a DUI Alcohol or Drug Use Risk Reduction Program.~~

~~(l) "Person" means any individual, agent, representative, governing or operating authority, board, organization, partnership, agency, association, corporation, or other entity, whether public or private.~~

~~(m) "Program" means any DUI Alcohol or Drug Use Risk Reduction Program that is certified to deliver the Assessment and Intervention components.~~

~~(n) "Program location" means any location where a DUI Alcohol or Drug Use Risk Reduction Program student or potential student receives services from the Program.~~

~~(o) "Program requirements" mean any provision of state or federal law, rule, regulation, operations guidelines of the department, or administrative or judicial order that applies to programs or instructors. Program requirements specifically include compliance with anti-discrimination laws and rules and regulations.~~

~~(p) "Revocation" means the termination by the department of the certification of a program, director, or instructor based upon failure to comply with program requirements.~~

~~(q) "Satellite program" means a program that is under the same ownership as another program, and that is exempted from certain location and facilities requirements pursuant to rule .18(12)and(13).~~

~~(r) "Session" means a segment of the intervention course. The course is divided into six sessions; sessions one through four are three and one half hours long and sessions five and six are three hours long.~~

~~(s) "Student" means any person who has signed an assessment contract, taken an assessment, enrolled in or taken the intervention component at a program.~~

~~(t) "Suspension" means the temporary withdrawal by the department of the certification of a program or instructor based upon failure to comply with the program requirements. Suspension may be for a period of time specified by the department or until specified conditions are met.~~

~~Rule 290-4-10-.04 Exclusions~~

~~The following persons may not own, direct, instruct, or serve as a program employee or agent:~~

- ~~(a) any employee of the department, the Georgia Department of Public Safety (DPS), or any spouse of such employee except those continuously operating or instructing as of July 1, 1990.~~
- ~~(b) any judge, public or private probation officer or employee, law enforcement or peace officer, employee of a court in this state, or any spouse thereof, except for owners and instructors who were certified as of July 1, 1990, and have been continuously certified since July 1, 1990.~~
- ~~(c) any person for whom owning, directing, instructing or serving as a program employee or agent would pose an actual, potential, or apparent conflict of interest due to the existence of a fiduciary relationship with any student or offender or due to the existence of any other relationship that would place the owner, director, instructor, employee or agent in a position to exert undue influence, exploit, take undue advantage of or breach the confidentiality of any student or offender.~~

~~Rule 290-4-10-.05 Qualifications of Program Owners and Directors~~

~~(1) Qualifications required. To be certified to operate a program and throughout the certification period, owners and directors must have the qualifications set forth below. These qualifications must be demonstrated at the time of application for program certification and at any other time reasonably requested by the department.~~

~~(2) Initial qualifications. Upon application for certification to operate a program, the applicant must have the following qualifications:~~

- ~~(a) ——— Clear criminal record. No owner or director may have been convicted of or pled guilty or nolo contendere to any crime which constitutes a felony in this or any other state unless a pardon has been obtained. Nor may he or she have been convicted of or pled guilty or nolo contendere to any misdemeanor involving fraud, dishonesty or deceit within a period of ten years preceding the date of the application. Nor may he or she have been convicted of or plead guilty or nolo contendere to any other misdemeanor, including driving under the influence, within a period of five years from the date of application for certification.~~
- ~~(b) ——— Safe driving record. Each owner and director must have a valid driver's license from the state of his or her legal residence, unless an owner or director has a medical condition that makes him or her ineligible for a driver's license. Each owner and director must have a safe driving record, which must be demonstrated by a Motor Vehicle Record (MVR) for the past three years. The MVR must show no more than six offenses, which result in the assessment of points pursuant to~~

~~O.C.G.A. 40-5-57 in a three-year period. In addition, it must show the absence of any points suspension or other mandatory suspension within the previous three years.~~

~~(c) Business Plan. The applicant must demonstrate, through a business plan on a format supplied by the department, the reasonable likelihood that the owner(s) have the ability to furnish continuous service in compliance with program requirements for a period of at least two years from the date operation commences.~~

~~(d) ——— Surety Bond. In order to protect the contractual rights of the students, each applicant must obtain and maintain a continuous surety bond in the amount of Seven Thousand Five Hundred Dollars (\$7,500).~~

~~(e) ——— Academic and work experience qualifications. Each director must be qualified by having the following academic and work experience requirements:~~

~~1. — an undergraduate or graduate degree in education, the social sciences, counseling, law, business or related field; or~~

~~2. — a high school diploma or GED equivalent, and at least two years of full-time (20 hours per week or more) relevant paid work experience. The relevance of work experience will be determined by the department and may include, but not be limited to, teaching of adolescents or adults, alcohol and drug prevention and intervention education, substance abuse counseling, or operation or management of a service-oriented business.~~

~~(f) Completion of Risk Reduction Program. Each owner and director must successfully complete the 20-hour intervention component of the Risk Reduction Program as evidenced by a certificate of completion.~~

~~(g) ——— Completion of director training course. Each director must successfully complete a department-designed training course. The department may set a fee to cover the cost of the course.~~

~~(h) ——— Freedom from substance abuse and illicit drug use. Each owner and director must refrain from abusing alcoholic beverages or controlled substances and from using illicit drugs.~~

~~(i) History of compliance. When anyone who has ever been or is currently certified to own, direct or instruct in a program applies to own or direct a new program, the department will consider that person's history of compliance in determining the applicant's eligibility for certification.~~

~~1. — Anyone whose certification has ever been revoked for issuing false or fraudulent certificates or falsifying program records will not be certified to open a new program.~~

~~2.— Anyone whose certification has been revoked for any other reason within the five-year period prior to application will not be certified to open a new program.~~

~~3.— The department may deny an application to open a new program if the applicant has a poor history of compliance with program requirements as evidenced by previous suspension(s), administrative fine(s), or notices of noncompliance.~~

~~4.— The department may deny an application to open a new program if the applicant is currently certified as an owner, director or instructor who is currently not in compliance with program requirements.~~

~~(j) Confidentiality statement. Each owner and director must sign a department provided confidentiality statement agreeing to hold the identity of students and program records confidential.~~

~~(k) Age. Each owner or director must be at least twenty-one years of age.~~

~~(3) Ongoing qualifications. Each owner and director must possess the following qualifications, as applicable, on an ongoing basis:~~

~~(a) — Continued clear criminal record. Each owner and director must maintain a criminal record free of felony or misdemeanor convictions or pleas. In addition, each owner and director must notify the department if he or she has pled guilty or nolo contendere to or has been convicted of any felony or misdemeanor within five business days of such event.~~

~~(b) — Continued safe driving record. Each owner and director must continue to maintain a safe driving record and must provide to the department a certified copy of his or her Motor Vehicle Report every two years. The MVR must show no more than four offenses which result in the assessment of points pursuant to O.C.G.A. 40-5-57, and the absence of any points or mandatory suspension in the two-year period. In addition, each owner and director must notify the department if he or she has pled guilty or nolo contendere to, or has been convicted of being at fault in a motor vehicle accident involving death or serious injury, within five business days of such event.~~

~~(c) Continuing education. Each director must successfully complete 20 hours of continuing education courses relevant to the program administration every two years. A minimum of 6 hours of the required 20 hours must be in department-designated courses concerning program administration or program components.~~

Rule 290-4-10-.06 Qualifications of Program Instructors

~~(1) Qualifications required. To be certified to instruct in a program and throughout the certification period, each instructor applicant and instructor must have the qualifications set forth below.~~

~~(2) Initial qualifications. Upon application for instructor certification each applicant must possess the following qualifications:~~

~~(a) Clear criminal record. No applicant for instructor certification will be certified who has been convicted of or pled guilty or nolo contendere to any crime that constitutes a felony in this or any other state unless a pardon has been obtained. Nor may he or she have been convicted of or pled guilty or nolo contendere to any misdemeanor involving fraud, dishonesty or deceit within a period of ten years from the date of the application. Nor may he or she have been convicted of or pled guilty or nolo contendere to any other misdemeanor, including driving under the influence, within a period of five years from the date of application.~~

~~(b) Safe driving record. Each applicant for instructor certification must have a valid driver's license from the state of his or her legal residence and must possess a safe driving record that must be demonstrated by a Motor Vehicle Record (MVR) for the past three years. The MVR must show no more than six offenses that result in the assessment of points pursuant to O.C.G.A. 40-5-57 in a three-year period. In addition, it must show the absence of any points or mandatory suspension within the previous three years.~~

~~(c) Academic and work experience qualifications. Each applicant for instructor certification must have at least a high school diploma or GED equivalence and at least two years of relevant work experience. The relevance of work experience shall be determined by the department and must have been obtained within the ten-year period immediately prior to application. Relevant work experience must include the following:~~

- ~~1. at least two years of full-time work experience (20 hours per week or more) in classroom teaching of adolescents, along with a teaching degree in an academic subject, from an accredited college or university qualifying that individual to teach at the junior high, middle school or high school level; or~~
- ~~2. at least two years of full-time work experience in classroom teaching of an academic subject for college credit to adults at the junior college, college or university level; or~~
- ~~3. at least two years of full-time work experience with adolescents or adults as an alcohol and drug prevention or intervention professional; or~~
- ~~4. at least two years of full-time work experience as a licensed substance abuse counselor with at least 6 months of experience in group counseling or group facilitation. If not licensed, the counselor must hold a certification in substance abuse that is recognized by the department.~~

~~(d) — Completion of instructor training. Each applicant must successfully complete the department-designated instructor training. The department will set a fee to cover the cost of the course. Requirements for successful completion include:~~

- ~~1. — passing a written examination with a score of at least 75 out of 100;~~
- ~~2. — making a satisfactory oral presentation during the training course to demonstrate ability to teach the course; and~~
- ~~3. — successfully completing practice teaching within six months of taking the instructor training course.~~

~~(e) — Age. Each applicant for instructor certification must be at least twenty-one years of age.~~

~~(f) Freedom from substance abuse and illicit drug use. Each applicant must refrain from abusing alcoholic beverages or controlled substances and from using illicit drugs.~~

~~(3) Ongoing qualifications. Each instructor must possess the following qualifications on an ongoing basis:~~

~~(a) — Continued clear criminal record. Each instructor must maintain a criminal record free of felony or misdemeanor convictions or pleas. In addition, each instructor must notify the department of any plea of guilty or nolo contendere, or conviction of any felony or misdemeanor within five business days of such event.~~

~~(b) — Continued safe driving record. Each instructor must continue to maintain a safe driving record and must provide to the department a verified copy of his or her Motor Vehicle Report every two years. The MVR must show no more than four offenses that result in the assessment of points pursuant to O.C.G.A. 40-5-57 and the absence of any points or mandatory suspension in the two-year period. In addition, each instructor must notify the department if he or she pleads guilty or nolo contendere, or is convicted of being at fault in a motor vehicle accident involving death or serious injury within five business days of such event.~~

~~(c) Continuing education. Each instructor must complete a minimum of 20 hours of continuing education in alcohol and drug training or group facilitation training sponsored or approved by the department every two years. A minimum of 10 hours of the required 20 hours must be in department-designated refresher courses specific to program components.~~

Rule 290-4-10-.07 Program Application and Certification Requirements

~~(1) Certification required. No program may operate without first being certified by the department as set forth herein.~~

~~(2) Application for certification. All applications must be submitted upon forms prepared by the department, following a procedure outlined by the department. The application must include all information, fees, and documents designated by the department and must be truthful, accurate, and complete.~~

~~(3) Initial certification. After receipt of a completed application evidencing that all owners and the designated director have the qualifications set forth in rule 290-4-10-.05 and that other program requirements are met, the department shall conduct an on-site inspection of the program location to determine the program's compliance with location and facilities requirements. If the program demonstrates compliance with program requirements, the department shall certify the program. However, failure of a certified program to begin holding classes within six months of certification and to continuously operate in compliance with these rules and regulations (with no more than a three month break in instruction) will result in revocation of certification.~~

~~(4) Ongoing certification. Once initially certified, a program will remain certified as long as the program remains in compliance with program requirements. The department may require that certain documents and information be submitted by the program on a periodic basis in order to verify continuing compliance with program requirements. Such documents shall include, but not be limited to, Motor Vehicle Reports, fingerprint cards, and verification of the director's continuing education.~~

~~(5) Additional information of verification. The department may require any program applicant or certified program to submit additional information or verification that is reasonably related to making a determination regarding initial certification or continued compliance with program requirements.~~

~~(6) Non-transferability of certification. Certification of a program is not transferable. Application for new (initial) certification must be submitted at least 60 days prior to any change in program ownership. All new owners must meet the requirements set forth in rule 290-4-10-.05. The program must return the old program certificate to the department prior to receiving a new certificate.~~

~~(7) Change in director. Each program must notify the department in writing at least 20 days prior to a change in the program's director. However, in the event that the change was unanticipated, notification must occur within two business days of the change. Within 30 days of the designation of a new director, the program must provide the department with verification that the new director meets the qualifications requirements set forth in rule 290-4-10-.05. Any newly designated director must enroll in and successfully complete the next available director training course before being permanently designated.~~

~~(8) Management and control by owners and directors. Only certified owners and directors are authorized to exercise management and control over program operations. No one may serve as director of more than five programs.~~

~~(9) Validity of certification. All certifications issued pursuant to the laws and regulations are valid only so long as the certificate holder is actively engaged in the operation of a program. In the event the certificate holder ceases to be actively engaged in the operation of a program, the certificate holder must immediately notify the department and return his certificate to the department.~~

~~Rule 290-4-10-.08 Temporary Suspension and Program Closure~~

~~(1) Temporary suspension of operations. If a program is unable to operate in accordance with program requirements due to loss of facility or other unexpected events, a request to temporarily suspend operations may be submitted to the department. If the request is approved, the program may temporarily suspend operations for a maximum of 90 days. The following procedure must be followed to temporarily suspend operations:~~

~~(a) — The program must provide to the department all assessment disks, the program certificate, all blank certificates of completion, pending assessment file and program card file.~~

~~(b) — The program must place a recording on the program answering machine or voice mail indicating that the program is temporarily closed, the expected date of reopening and the telephone number to the department for the issuance of replacement certificates and transfer of assessments.~~

~~(c) Programs are responsible for all costs associated with shipping materials to and from the department during a period of temporary suspension.~~

~~(2) Program closure. Each program must notify the department in writing of the owner's intent to close the program. This notification must include the closing date, the reason for closure, and must be given at least two weeks in advance of the closure date. In addition, any program that closes for whatever reason, including revocation of certification, must provide the following materials to the department within 3 business days of closure:~~

~~(a) — the official program certificate;~~

~~(b) — all unused certificates of completion and replacement certificates of completion;~~

~~(c) the records, including assessment results, of students who were assessed at the closed program within the last year, but who did not complete the intervention component at that program;~~

~~(d) — a sample copy of the letter the above students received notifying them of the closure of the program;~~

- ~~(e) — the program card files or a printout of the computer card files for the past five calendar years; and~~
- ~~(f) any other program records designated by the department.~~

~~Rule 290-4-10-.09 Instructor Application, Certification, and Recertification Requirements~~

~~(1) Certification required. No person may instruct in a program without first having obtained certification from the department as set forth herein.~~

~~(2) Application for certification. All applications must be submitted on forms prepared by the department, following a procedure outlined by the department. The application must include all information, fees and documents designated by the department and must be truthful, accurate and complete.~~

~~(3) Initial certification. Upon receipt of a fully completed application evidencing that the applicant meets the qualifications set forth in rule 290-4-10-.06, and upon verification that the applicant has successfully completed the instructor training course, the department shall certify the applicant as an instructor. Initial certification shall last for a period of up to twenty-four months. However, the certification of any instructor who fails to begin instructing within six months of certification may be revoked.~~

~~(4) Recertification. At least 60 days prior to the expiration of the initial certification period and any subsequent certification period, the instructor must submit to the department a recertification application, along with any documents or verification designated by the department. In order to be recertified, an instructor must have instructed at least six classes in the initial two-year certification period and at least four classes in every two-year recertification period thereafter. An instructor whose certification has lapsed for failure to timely apply for recertification will not be permitted to instruct until a completed recertification application has been submitted to the department and the department has given written approval to resume instructing. If certification has lapsed for a period of more than a year, a new application is required and the initial certification process must be followed.~~

~~(5) Additional information or verification. The department may require any applicant for instructor certification or recertification to submit additional information or verification that is reasonably related to making a certification or recertification determination.~~

~~(6) Validity of certification. All certifications issued pursuant to the laws and regulations are valid only so long as the certificate holder is actively engaged as an Instructor as required by paragraph (4) of this rule. In the event the certificate holder ceases to be actively engaged as an instructor, as required by paragraph (4), the certificate holder must immediately notify the department and return his or her certificate to the department.~~

~~Rule 290-4-10-.10 Program Employees~~

~~Any program employee, agent or volunteer who provides any program service to offenders or students, has access to program records, or who has telephone or face-to-face contact with offenders or students must meet the following requirements:~~

- ~~(a) be at least 18 years of age;~~
- ~~(b) sign a confidentiality statement provided by the department agreeing to hold the identity of students and offenders and student records confidential;~~
- ~~(c) sign a statement cosigned by the director that the employee has received orientation on these rules and operations guidelines relevant to that employee's job duties; and~~
- ~~(d) never have been a certified owner, director or instructor whose certification was revoked for having issued a false or fraudulent certificate or for falsifying program records.~~

~~Rule 290-4-10-.11 General Program Responsibilities~~

~~In addition to meeting all other program requirements, every program owner and director is responsible for the following:~~

- ~~(a) providing services for the assessment and intervention components of the risk reduction program;~~
- ~~(b) holding at least one class every other calendar month;~~
- ~~(c) the actions of all employees, agents and instructors carried out within the scope of employment, whether they are characterized as employees, agents or independent contractors;~~
- ~~(d) maintaining for every employee and instructor a personnel folder containing the job application, signed statements required by these rules and, if applicable, a copy of each instructor's current certification;~~
- ~~(e) designating a director who meets the qualifications requirements of rule 290-4-10-.05;~~
- ~~(f) ensuring that all students receive the Student Information Sheet and the required study guide;~~
- ~~(g) ensuring that all multiple offenders have access to the most recent registry of clinical evaluators and receive copies of any pages requested;~~
- ~~(h) training all program employees who have contact with students or offenders to provide accurate information regarding the program and to maintain student confidentiality;~~

- ~~(i) participating in program evaluations and research projects as directed by the department;~~
- ~~(j) prohibiting the solicitation of students or offenders for insurance, legal services, bail bonds, specific clinical evaluations or treatment providers, or any other product or service; and~~
- ~~(k) ensuring the quality of instruction and execution of the program in a professional manner conducive to learning.~~

Rule 290-4-10-.12 General Instructor Responsibilities

~~In addition to meeting all other program requirements, every certified instructor must:~~

- ~~(a) facilitate all sessions of the intervention component except in cases of emergency;~~
- ~~(b) instruct for no more than seven hours a day;~~
- ~~(c) arrive at least 30 minutes prior to the beginning of class;~~
- ~~(d) remain with the class during all sessions;~~
- ~~(e) perform no other duties or functions during class time, including answering the telephone, completing paperwork or administering assessments;~~
- ~~(f) ensure that classes meet the class size requirements set forth in rule 290-4-10-.14;~~
- ~~(g) conduct class free from the influence of alcohol or any illegal substance;~~
- ~~(h) require all students to attend the class for the mandatory class hours;~~
- ~~(i) schedule breaks as outlined in the intervention component syllabus;~~
- ~~(j) provide a minimum one hour meal break between each class session; this meal break is in addition to the required hours of class instruction;~~
- ~~(k) require students to sign a class roll at the beginning of each session of the intervention component;~~
- ~~(l) allow no student to attend class while intoxicated or under the influence of any illegal substance;~~
- ~~(m) require each student to arrive for each class session on time;~~
- ~~(n) read the requirements for successful completion of the program at the first session of the intervention component;~~
- ~~(o) provide each student with the required study guide at the first session of the intervention component;~~

- ~~(p) personally administer and grade the post-tests before the certificate of completion are issued;~~
- ~~(q) ensure that a certificate of completion is immediately issued to each student who successfully completes all program requirements;~~
- ~~(r) utilize an up-to-date instructor's manual and compact disc interactive audiovisuals during all class sessions.~~
- ~~(s) cover all material contained in the curriculum in sequence as outlined by the course syllabus with no outside material;~~
- ~~(t) provide to each student, along with the assessment summary sheet, written information containing the names, telephone numbers, and addresses of local referral to alcohol/drug treatment resources and self help support groups;~~
- ~~(u) participate in program evaluation and research as directed by the department;~~
- ~~(v) ensure that no student is subject to solicitation for any product or service during the intervention component; and~~
- ~~(w) deliver the curriculum in a professional manner that is conducive to learning.~~

~~Rule 290-4-10-.13 Assessment Component~~

~~Only persons trained by the department or its designee may administer assessments. Only the assessment instrument designated by the department may be used. Assessments must be conducted in accordance with the following criteria:~~

- ~~(a) all persons attending the program must be assessed and their assessments processed at least 30 minutes before the beginning of the first class session;~~
- ~~(b) assessments may not be transferred between programs except in the following situations:
 - ~~1. a class for which a student has a signed contract has been cancelled;~~
 - ~~2. the student has moved to another geographic location within the state; or~~
 - ~~3. there is an emergency and prior approval by the department has been obtained.~~~~
- ~~(c) assessments must be administered in accordance with the assessment directions and materials provided;~~
- ~~(d) each program must retain proof of its authorized use of assessment instruments and must use the assessment instrument only for the purpose of assessing students attending the program;~~

- ~~(e) assessments must be administered at the approved program location in a space and manner that affords privacy of the individual being assessed and that facilitates concentration and freedom from distractions;~~
- ~~(f) the assessment component may be administered either in groups or individually; however, individual results of the assessment are to be confidential and must only be discussed in private with the individual assessed;~~
- ~~(g) students must be informed that the assessment is valid for a one-year period, that failure to enroll in the intervention component within that period of time will result in the need for another assessment with payment thereof, and that any subsequent convictions within the one-year period or thereafter will require a separate assessment;~~
- ~~(h) assessment instruments must be coded in accordance with instructions provided by the department;~~
- ~~(i) each program must maintain a monthly roster of all offenders assessed, using the automated assessment roster of the approved assessment instrument;~~
- ~~(j) rebates must be paid to the state on all persons assessed, even if they did not return for class;~~
- ~~(k) completed original assessment rosters and copies of rebate checks for each calendar month must be sent to the department in time for them to be received by the tenth calendar day of the month following the report month;~~
- ~~(l) each program must maintain copies of the monthly assessment rosters and copies of rebate checks mailed to the department; and~~
- ~~(m) illiterate and/or disabled students and offenders must be meaningfully accommodated in the administration of the assessment;~~
- ~~(n) an assessment contract must be executed as required by rule 290-4-10-.19 for each student before the assessment is given.~~

Rule 290-4-10-.14 Intervention Component

~~Only the department designated intervention course must be used. This course may only be taught by instructors and must be conducted in accordance with the following requirements:~~

- ~~(a) programs must schedule courses so that all sessions are completed within four weeks, no more than two sessions are scheduled each day, and a one-hour meal break is scheduled between each session when more than one session is held on a day;~~
- ~~(b) course delivery, content and sequence of instruction must be in accordance with the department designated instructor's manual;~~

- ~~(c) classes must have a minimum of five students and can have no more than the maximum allowed by the classroom's square footage, up to a maximum of 30 students;~~
- ~~(d) no students from one class may be combined with students from another class to complete sessions of a course; however, a student with an excused absence may attend a class other than the one he/she started for the purpose of completing the missed class(es);~~
- ~~(e) all students must be required to attend class for the entire 20 hours and no student may be admitted late or dismissed early from any session;~~
- ~~(f) classes must be held in accordance with the class schedule on file with the department;~~
- ~~(g) programs must schedule classes so as to minimize the possibility that any class will have to be cancelled due to lack of enrollment. Cancellation of two consecutive classes due to lack of enrollment may be grounds for suspension, revocation or the imposition of an administrative fine. Any class that has not been rescheduled at least five days prior to the class beginning date will be considered a cancelled class;~~
- ~~(h) each student attending the intervention component must receive the required student study guide which is the property of the student;~~
- ~~(i) a class roll following a format designated by the department must be signed by each student at the beginning of each session;~~
- ~~(j) illiterate and/or disabled students and offenders must be meaningfully accommodated.~~

~~Rule 290-4-10-.15 Program Curriculum~~

~~Programs must use the department designated curriculum that must be delivered in accordance with the intervention component syllabus following the training and instructions provided by the department or its designee. In addition, each program must comply with the following requirements:~~

- ~~(a) all curriculum material must be covered in sequence following the curriculum syllabus with no deletions or additions of outside materials;~~
 - ~~1. only audio visual materials specifically approved by the department may be used during the course;~~
 - ~~2. no portion of the material contained in the curriculum may be photocopied nor used for any purpose other than presenting the DUI Alcohol or Drug Risk Reduction Program;~~
 - ~~3. each student must receive all required course material;~~

~~(b) each student must receive, along with the assessment summary sheet, written information containing the names, telephone numbers, and addresses of local referral to alcohol/drug treatment resources, and self help support groups.~~

Rule 290-4-10-.16 Program Records

~~(1) Confidentiality. Program records must be maintained in accordance with the confidentiality provisions of rule 290-4-10-.20.~~

~~(2) Required records. Each program must maintain the following records for five calendar years and they must be available and accessible for inspection and copying by the department upon request;~~

~~(a) assessment roster file containing copies of the monthly assessment roster and rebate checks, which must be filed chronologically by month and calendar year;~~

~~(b) class files labeled with the class dates and maintained in chronological order by dates of the class. Class files must contain the original class roll and program copy of class roster and in addition must contain the following records for each student enrolled in any program component;~~

~~1. the Student Information Sheet, the original assessment contract, the assessment answer sheet, the assessment results, and the program's copy of the assessment summary sheet, all with required signatures;~~

~~2. original signed intervention component contract;~~

~~3. graded student post test;~~

~~4. the program (pink) copy of the student's certificate of completion; and~~

~~5. copy of replacement certificate of completion, if applicable.~~

~~(c) a card file or backed up computer file must be maintained in alphabetical order by student name and must contain the following information;~~

~~1. student name, address, and phone numbers;~~

~~2. student driver's license number and social security number;~~

~~3. student's date of birth;~~

~~4. date of assessment;~~

~~5. class dates and date of class completion;~~

~~6. instructor;~~

~~7. certificate of completion number;~~

~~8. date of issuance of any replacement certificates of completion.~~

~~(d) — records of persons assessed who have not enrolled in a class must be placed in the assessment roster file with the appropriate month's assessment roster;~~

~~(e) — the department may require all programs to maintain all required records on a department designated computer program.~~

~~(3) Personnel files. Programs must maintain a personnel file for every employee and instructor whether they are characterized as employees or independent contractors as required by rule 290-4-10-.11(d).~~

~~(4) Submittal of program records to the department. Each program must send to the department the following records which are required and these records must be complete and accurate:~~

~~(a) — class rosters must be forwarded to the department within 15 days of class completion;~~

~~(b) — the original assessment roster and a copy of the rebate payment must be forwarded to the department by the 10th day of each calendar month for assessments in the previous month;~~

~~(c) should no assessments be given during a month, an assessment roster marked "no assessments" must be submitted to the department by the 10th day of the month following the report month;~~

~~(d) — the rebate payment must be sent to the department's Office of Financial Services by the 10th day of each calendar month for assessments in the previous month;~~

~~(e) — a quarterly class schedule on a form designated by the department. This schedule must be received two weeks prior to the quarter to which the schedule pertains. If classes are rescheduled or instructors reassigned, an amended schedule must be submitted to the department five business days prior to the beginning date of the class.~~

~~(5) Transfer of assessment results to clinical evaluators. Programs must transfer by fax or mail a copy of the assessment results of any multiple offender to the clinical evaluator designated by the offender, within five business days of the receipt by the program of a written release. The assessment may not be transferred to more than two clinical evaluators without the prior approval of the department. Programs may charge a transfer fee up to \$10.00 for each transfer.~~

~~Rule 290-4-10-.17 Program Name~~

~~No program may use any name like or deceptively similar to a name used by any other program in this state. No program may use the word "state" in any part of its name or~~

~~suggest that it is owned, operated, or endorsed by the state. A program may not use as its adopted business name "A DUI Alcohol or Drug Use Risk Reduction Program" or "Risk Reduction Program" or any other generic reference to the program without additional modifiers in the name.~~

~~Rule 290-4-10-.18 Program Location and Facilities~~

~~(1) Certification required. Programs may only operate in locations that have been certified by the department. Any departmental enforcement action affecting the certification of one program may apply to all programs under the same ownership.~~

~~(2) Location of programs. Each program must be located in an area zoned for commercial use or in a zoning district for which schools or educational enterprises are permitted uses.~~

~~(a) ——— No program may be located in the same facility, share the same entrance or be immediately adjacent to a facility where alcoholic beverages are sold or distributed.~~

~~(b) ——— No program may be located on the same premises in which activities unrelated to program activities are being conducted if the department determines that such unrelated activities may interfere with the provision of any program component in a professional, effective manner.~~

~~(c) No program office or classroom can be located within a retail business establishment or a private residence.~~

~~(d) ——— Program offices and classrooms must be located on the same premises.~~

~~(e) ——— Programs in existence at the time of the adoption of these rules must meet the requirements of paragraph (d) above by January 1, 2000.~~

~~(3) Change of location. The director must notify the department in writing at least 30 days in advance of any anticipated change in the location of any program. No program shall operate in any new location until written approval from the department has been obtained.~~

~~(a) ——— If a program desires to move its operating facility to a site in a county other than the county in which it is presently certified to operate, a new program application must be filed following a format designated by the department.~~

~~(b) ——— For changes of location within the same county, documentation of compliance with all local and county fire, zoning, building, and any other requirements of the municipality or county in which the program(s) will operate must be provided prior to written approval by the department.~~

~~(c) At least 10 days prior to a change in location approved by the department, all students who have been assessed within one year prior to the move who have not started or completed the program must be notified, in writing, of the move.~~

~~(d) ——— If a program moves 10 or more miles from its original location, students assessed within one year prior to the move who have not started or completed the program must be allowed to transfer to another program of the student's choice. Students must be allowed to transfer without any additional cost to them and they must be notified, in writing, of this right. The program must provide the department within 10 business days following the move a listing of students who are eligible to transfer.~~

~~(e) ——— Upon notification to the department requesting a change of location, the program must post a notice of its request to move the program. Such notice must be clearly displayed at the program. The proposed new location must be specified with complete address and mileage distance from the present location.~~

~~(f) The department will approve no more than one change in program location within any two-year period except in cases of emergency as determined by the department.~~

~~(4) Scheduling of a program move. A program will not be granted approval to move if the move would occur during an intervention course. No move may cause any student to have sessions of an intervention course in more than one location, except in documented emergencies approved by the department.~~

~~(5) Program facilities. All program facilities where students or offenders receive services must be approved by the department and must include the following:~~

~~(a) ——— Clean working restrooms;~~

~~(b) ——— Water fountain or drinking water with cups;~~

~~(c) Area for breaks separate from the classroom;~~

~~(d) ——— Blind, shades or curtains for windows or glass doors for student privacy;~~

~~(e) ——— Adequate lighting, heating and air conditioning;~~

~~(f) Floor covering such as carpet, tile, or vinyl;~~

~~(g) ——— Adequate parking.~~

~~(6) Equipment and furniture. Programs must maintain the following equipment in working order:~~

~~(a) ——— Computer with correct date and time and printer;~~

~~(b) ——— Copier;~~

- ~~(c) Television - at least 27 inches for classrooms of 400 to 450 square feet and at least 32 inches for classrooms greater than 450 square feet;~~
 - ~~(d) Compact disc interactive (Cdi) equipment that meets department specifications;~~
 - ~~(e) Telephone with answering machine or voice mail;~~
 - ~~(f) Fax Machine;~~
 - ~~(g) Locking file cabinets;~~
 - ~~(h) Padded chairs and tables arranged conference style in order to accommodate the maximum number of students for which the program is certified;~~
 - ~~(i) Dry erase white writing board of at least 4 by 6 feet; and~~
 - ~~(j) Other equipment as designated by the department.~~
- ~~(7) Office space. Each program must have sufficient office space to accommodate program administration and record-keeping. Office space must be sufficient to provide a secure location for program and student records.~~
- ~~(8) Business hours. Each program must maintain pre-established daily business hours of at least six hours per day between the hours of 8:00 AM and 8:00 PM five days per week, exclusive of class time. Programs must follow the holiday and vacation closing policy specified by the department in the operations guidelines. A staff person must be available during business hours to answer the telephone, furnish information about the program's operation, verify services provided, and to produce records and documentation requested by the department. Program offices cannot be open during class time unless there is a separate program office and entrance to accommodate program activities with no disruption of class. The full program name and business hours must be displayed and clearly visible from the outside of the premises.~~
- ~~(9) Classrooms. Classrooms must have at least 400 square feet of usable space. Programs with classrooms containing 400 to 419 square feet of usable space will be certified to provide services to a maximum of 20 students. Programs with larger classrooms will be certified to offer services to one additional student for every additional 20 square feet of usable space up to a maximum of 30 students. In addition, classrooms must meet the following requirements:~~
- ~~(a) Classrooms must have adequate space between students to afford privacy for writing and other activities.~~
 - ~~(b) The shape and configuration of a classroom must ensure that all students can see the audiovisuals.~~

~~(c) If there is excessive noise in the classroom caused by the HVAC system or other factors, or if the acoustics warrant, the department may require the classroom to be equipped with a microphone.~~

~~(d) ——— Vending machines are not permitted in the classroom.~~

~~(e) ——— Smoking is prohibited in all classrooms.~~

~~(10) Telephone line. Each program must have an operational dedicated telephone line, with the exception that the telephone line can be shared with other related programs certified by or registered with the department or the Department of Public Safety. All program telephone lines must be located at the program and must be answered by a program employee during established business hours. Telephone lines for satellite programs may be shared with the primary program as outlined in these rules. If the program's telephone number changes, the program must notify the department of the new number in writing within two business days. In the event that a program closes, the telephone line must be disconnected within 30 days of closure.~~

~~(11) Display of certification. The programs certificate must be displayed in a conspicuous location on the premises of the program.~~

~~(12) Satellite programs. An owner of an existing program may apply to the department for an exemption to operate a satellite program. The department, in its discretion, may approve an application to operate a satellite program if it determines;~~

~~(a) ——— there is no other program or satellite program in the county in which the satellite is to be operated;~~

~~(b) ——— there is an unmet need for a program in that county;~~

~~(c) the applicant to operate the satellite maintains a program office within 50 miles of the proposed satellite; and~~

~~(d) ——— the owner has a good record of compliance with program~~

~~(13) Exemptions for satellite programs. Whenever an exemption to operate a satellite program has been obtained, the satellite program may be exempted from one or more of the requirements pertaining to office space and telephone lines as is outlined below.~~

~~(a) ——— A satellite program may not be required to maintain a separate office, but may elect to have program administration and record-keeping maintained at the primary program.~~

~~(b) ——— Telephone lines for satellite programs may be shared with the primary program provided that the program provides a toll free number to serve all counties in which service is provided.~~

~~(14) Closure of satellite programs. Whenever a new program becomes certified in a county being served by a satellite program, the owner(s) of the satellite program will have one year to obtain program certification or close the satellite program.~~

~~Rule 290-4-10-.19 Student Contracts~~

~~(1) Contract required. Each program and student must enter into a contract for both program components. Original contracts must be maintained by the program for a period of five years from the date of execution.~~

~~(2) Contract format. All contracts must be pre-numbered, follow a format authorized by the department and must contain all information and provisions required by the department.~~

~~(3) Contract execution. A copy of a completed contract must be furnished to the student or offender prior to the delivery of any service and each contract must be signed by the student and owner, director or instructor for the program prior to the commencement of any program component.~~

~~Rule 290-4-10-.20 Certificates of Completion~~

~~Pre-numbered certificates of completion must be supplied to certified programs by the department. These pre-numbered certificates of completion are the property of the department and programs are responsible for each certificate of completion.~~

~~(a) Request for Certificates of Completion. Upon written request of an owner or director, certificates of completion will be sent within two weeks to the program mailing address currently on file with the department. If a program requests that the certificates of completion be sent express mail or overnight mail, the program will be responsible for the mailing expense.~~

~~(b) Issuance of Certificates of Completion to programs. Certificates of completion sent to programs will be accompanied with a transmittal form that must be signed by the program owner or director and returned to the department within 10 business days. Programs that fail to return the signed transmittal form will not be issued additional certificates of completion until said form is returned to the department.~~

~~(c) Issuance of Certificates of Completion to students. Immediately upon successful completion of all requirements, including passing a final examination with a grade of at least 70 percent, the program must issue the student a certificate of completion signed by the instructor who taught the class. All information provided on the certificate must be complete and accurate. The program must record the certificate number on the class roster in numerical order. Any voided certificate must be recorded on and attached to the class roster and forwarded to the department. No certificate of completion may be issued to a student prior to successful completion of the intervention component.~~

~~(d) Security of Certificates of Completion. Each certificate must be maintained in a secure location until it is issued to the student. Each program must be able to account at all times for each certificate number issued to it. If any certificate is believed to be stolen, the program must immediately upon discovery file a police report. In addition, if any certificate is believed to be lost or stolen, the program must so notify the department orally no later than the end of the next business day following the discovery of the loss or theft. The program then must follow up in writing to the department within 48 hours of discovery of the loss or theft.~~

~~(e) Replacement Certificates. The program may not provide any student with a duplicate certificate of completion. The program may issue replacements on a form supplied by the department and titled "Replacement Certificate" for certificates that were lost or destroyed. The cost may not exceed five dollars (\$5.00) to the student. The program may issue department provided replacement certificates to any student who reports a lost or stolen certificate after verifying attendance through program records. The Replacement Certificate must only be signed by the owner, director, or the instructor who taught the class.~~

~~(f) Falsifying or altering certificates. Pursuant to Title 16 of the Georgia Code, it is a crime to knowingly and willfully alter, falsify or fraudulently use a Certificate of Completion or a Replacement Certificate.~~

~~Rule 290-4-10-.21 Confidentiality of Records~~

~~All program records that identify any student or offender by name or inference must be maintained as confidential and must not be released to any person, other than the department or DPS, without the written consent of the student/offender or upon court order. Records cannot be released in response to a subpoena.~~

~~Rule 290-4-10-.22 Program Advertising and Solicitation~~

~~Any program that advertises or solicits business must meet the following requirements:~~

~~(a) except as provided in subparagraph (b) below, a program must be currently certified by the department in order to advertise in any manner and any program advertisement must contain the program's full name and certification number;~~

~~(b) all program telephone directory listings in both white and yellow pages must be listed with the program's approved certified name;~~

~~(c) a program applicant, upon written authorization from the department, may apply for advertising to any yellow pages or other advertising directory if there is a reasonable expectation that the program will be certified before the directory is published;~~

~~(d) no program may advertise in any manner that is false or misleading, nor may any program advertisement make any false or misleading claim, including but not limited to,~~

~~statements suggesting or implying that the program is affiliated with or endorsed by the Department of Public Safety or the department, that reinstatement of a driver's license is guaranteed to students or offenders enrolling in a particular program, or that free or reduced fees will be given to any student or offender;~~

~~(e) no program may use the logo of the department or of the Department of Public Safety or the seal of the State of Georgia in any advertising or on any program stationary or correspondence; and~~

~~(f) no program owner, director, employee, or agent may directly or indirectly solicit business by personal solicitation on public property, by phone or by mail.~~

~~Rule 290-4-10-.23 Fees~~

~~(1) Fees charged to students by programs for any program component will be in accordance with O.C.G.A. 40-5-83(e).~~

~~(2) An additional fee shall be set by the department for required student program materials. This fee must be charged by each program. It is not optional unless specifically exempted by law.~~

~~(3) No program, director, agent, or employee may offer any program component free of charge or charge a reduced or inflated fee for any program component or required student program materials.~~

~~(4) Fees for the assessment component must be paid prior to administering the assessment, and fees for the intervention component must be paid prior to the scheduled class beginning time.~~

~~Rule 290-4-10-.24 Rebates to the State of Georgia~~

~~Each program must rebate to the state a fee for each student assessed.~~

~~(a) As a condition of certification, each program must agree in writing to tender the rebate as required by law. Each program must tender payment of rebate fees to the department monthly by the tenth calendar day of each month. Payment must be made in the form of money order, cashiers check, or check drawn on the program's business account. The check must be made payable to the Georgia Department of Human Resources. Checks must identify that payment is for the Risk Reduction Program and must show the full program name, program ID number and the FACS (Customer) number.~~

~~(b) A copy of the rebate check must be attached to the original assessment roster mailed to the department.~~

~~Rule 290-4-10-.25 Inspections, Investigations, and Program Monitoring~~

~~The department or its designated representative(s) are authorized and empowered to conduct inspections and investigations of programs to determine and monitor compliance with program requirements.~~

~~(a) Inspections. The department or its designated representative(s) are authorized and empowered to conduct periodic inspections at any time during the established operating hours of such programs in order to assess compliance with program requirements.~~

~~(b) Investigations. The department or its designated representative(s) are authorized and empowered to conduct public or private investigations inside or outside of this state to determine whether any program requirements have been or are being violated by any program. Such investigations may be conducted at any site, location, or place, may be initiated any time during operating or other reasonable hours, may continue during the pendency of any administrative action initiated by the department, and may involve any person who may have information related to an alleged or suspected violation by a program. Investigations may be initiated by the department, at its discretion, when it suspects actual or potential noncompliance with program requirements on the part of a program, or when any person alleges facts which, if true, likely would constitute a violation of program requirements. If the department conducts undercover monitoring or investigations that requires a department representative to pay any program fees, the program is responsible for the reimbursement of those funds upon demand by the department.~~

~~1. Consent to entry and access. An application for certification or the issuance of the same by the department constitutes consent by the applicant or program and the owner of the premises for the department's representatives to enter the premises for the purpose of conducting an inspection, investigation, or program monitoring.~~

~~2. Department representatives must be allowed immediate entrance and meaningful access to the program premises and to sources of information determined by the department to be pertinent to making a full compliance determination. This information includes, but is not necessarily limited to: all instructors and staff, all parts of the program premises, students/offenders; and all documents related to the initial or continued certification of a program or instructor.~~

~~3. The department additionally shall have the authority to require the program to provide it with photocopies of any relevant documents or portions thereof. This authority extends to documents to which confidentiality or privilege otherwise would attach; however any claim of confidentiality or privilege will be preserved and will not be considered to have been waived as a result of the department's access.~~

~~(c) Cooperation with inspection. Program instructors, staff, employees, representatives, and any agents thereof, must cooperate with any inspection or investigation by the~~

~~department and must provide, without delay, any information reasonably requested by department representatives.~~

~~(d) Noncompliance with program requirements. The department will notify any program found during any inspection, investigation, or otherwise not to be in compliance with program requirements. The department shall provide any such notification in writing and shall state the specific rule(s) violated and the factual basis for its finding of noncompliance. The program then must correct all violations within a reasonable period of time, as determined by the department.~~

~~Rule 290-4-10-.26 Enforcement of Program Requirements~~

~~The department shall have the authority to deny, suspend, and revoke certification of a program or instructor for noncompliance with program requirements. Additionally, it shall have the authority to assess an administrative fine against any program for noncompliance with program requirements.~~

~~(a) Grounds for denial, suspension, revocation or assessment of an administrative fine. The department may base the denial, suspension, revocation or assessment of an administrative fine upon any of the following applicable grounds:~~

- ~~1. knowingly making any verbal or written false or misleading statement of material fact or omitting to state a material fact in connection with an application for certification or recertification or in connection with an inspection or investigation;~~
- ~~2. failing or refusing to provide department representatives with meaningful access to the program premises, instructors and staff, student/offenders, or records (including refusing to allow department representatives to obtain copies of documents reasonably necessary to making a compliance determination);~~
- ~~3. the applicant for certification or recertification having an overall poor record of compliance, including but not limited to, denial of certification within the previous 12 months, certification revocation at any time in the past in this or any other state, or suspension within the previous two years;~~
- ~~4. changing ownership of a program in order to avoid or avert the denial, revocation, or suspension of certification;~~
- ~~5. aiding or assisting any person in attempting to obtain a driver's license or reinstatement of a driver's license by dishonest or fraudulent means;~~
- ~~6. Altering or falsifying any program records;~~
- ~~7. Failure or refusal by a program to remit to the department the required rebate fee as outlined in these rules; and~~
- ~~8. Failing or refusing to comply with any of these rules and regulations, program requirements or violating any law relating to the operation of a program.~~

~~(b) Choice of revocation or suspension. The department, in its discretion, may choose whether to impose suspension or revocation against a program or instructor. In considering which to impose, the department may consider the program/instructor's history of compliance; the seriousness of the violations; whether the program or instructor voluntarily reported problems giving rise to any violation; and whether the program or instructor exhibited good faith efforts to correct areas of noncompliance prior or subsequent to their discovery by the department.~~

~~(c) Administrative fines. The department has the authority to assess an administrative fine, not to exceed \$1,000.00 per violation, against any program that fails to comply with any program requirement. In determining the amount of the fine, the department may consider the seriousness of the violation, whether the same or any other program requirement has been violated previously by the same program owner, director, or instructor, and whether procedures designated to prevent the violation were in place and were followed. When the department determines that a fine will be imposed, violations will be assigned a category based on the following:~~

~~1. CATEGORY I (\$500-\$1,000). Violations involving fraud, providing false information or documents, failure to account for official state documents, such as issuing a certification of completion to a person who has not completed all course requirements or not being able to account for all blank certificates.~~

~~2. CATEGORY II (\$300-\$700). Violations involving noncompliance with program certification requirements such as failure to pay rebate fees, failure to submit required documents and failure to maintain and use required equipment and materials.~~

~~3. CATEGORY III (\$100-\$500). Violations involving program operating requirements such as failure to maintain required office hours or failure to maintain required records. The specific amount of the fine for each violation in each category will depend on whether the same or similar violation has previously been cited in the past two years. Generally, the fine amount for an initial violation within a two-year period will be the bottom figure in the appropriate category, the fine amount for a second violation will be an amount that equals the middle of the appropriate category and the fine amount for a third or repeat violation will be the top figure in the appropriate category. In individual cases the fine amount may be adjusted upward or downward depending on the existence of mitigating or aggravating circumstances. In any case in which the department finds a violation of applicable law, rules or any other program requirement, the department has the discretion to determine the appropriate sanction, i.e. fine, suspension or revocation. No program has a right to an administrative fine in lieu of a suspension or revocation.~~

~~(d) Effectuation of suspension or revocation. If suspension or revocation of certification is imposed in accordance with the provisions of Sec. 50-13-18 of the Georgia Administrative Procedure Act, the program or instructor must return said certification to~~

~~the department. The certification must be returned within ten days of the program's or instructor's receipt of the notification of the final imposition. The revocation or suspension becomes effective on the date indicated by the department's order, but no time will be credited to the period of suspension or revocation until the affected certificate(s) have been received by the department. Upon the termination of any period of suspension, and upon a showing that the program or instructor has achieved full compliance with program requirements in addition to meeting any reinstatement requirements, the department shall reissue the certification. However, nothing in these rules shall be construed to prevent the department from denying program or instructor certification prior to any hearing on such action.~~

~~Rule 290-4-10-.27 Applicability of Administrative Procedure Act~~

~~This Chapter and all actions resulting from its provisions shall be administered in accordance of Chapter 13 of Title 50 of the Official Code of Georgia, the "Georgia Administrative Procedure Act." The department shall notify the program or applicant of any intended enforcement action. Any such notice shall set forth the proposed action or actions and the factual and legal basis or bases therefor. A program or instructor desiring a hearing in response to an enforcement action against it must make a request in writing and must submit the request to the department no later than ten (10) calendar days from the date of receipt of any notice of intent by the department to take an enforcement action.~~

~~Rule 290-4-10-.28 Severability~~

~~In the event that any rule, sentence, clause or phrase of any of these rules and regulations may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof. The remaining rules or portions thereof shall remain in full force and effect, as if such rule or portions thereof so determined, declared, or adjudicated invalid or unconstitutional were not originally a part of these rules.~~

~~Rule Chapter 290-4-12. NARCOTIC TREATMENT PROGRAMS.~~

~~Rule 290-4-12-.01 Legal Authority~~

~~These rules are adopted and published pursuant to the Official Code of Georgia Annotated (O.C.G.A.) Sec. 26-5-2et seq.~~

~~Rule 290-4-12-.02 Title and Purposes~~

~~These rules shall be known as the Rules and Regulations for Narcotic Treatment Programs. The purposes of these rules are to provide for the licensing and inspection of narcotic treatment programs.~~

~~Rule 290-4-12-.03 Definitions~~

~~In these rules, unless the context otherwise requires, the words and phrases set forth herein mean the following:~~

- ~~(a) "Department" means the Department of Human Resources or its successor.~~
- ~~(b) "Final Administrative Decision" means:
 - ~~1) the issuance of a ruling by the Commissioner of the Department of Human Resources or his or her designee on any appeal from a decision of an administrative law judge pursuant to a contested case involving the imposition of a sanction;~~
 - ~~2) when a decision of an administrative law judge becomes final by operation of law because no appeal is made to the Commissioner of the Department of Human Resources;~~
 - ~~3) where the parties to a contested case dispose of the case by settlement; or~~
 - ~~4) where a facility does not contest within the allotted time period a sanction imposed by the department.~~~~
- ~~(c) "Governing body" means the community service board, the partnership, the corporation, the association, or the person or group of persons who maintains and controls the program and who is legally responsible for the operation.~~
- ~~(d) "Inspection" means any examination by the department or its representatives of a provider, including but not limited to the premises, and staff, persons in care, and documents pertinent to initial and continued licensing so that the department may determine whether a provider is operating in compliance with licensing requirements or has violated any licensing requirements. The term inspection includes any survey, monitoring visit, complaint investigation, or other inquiry conducted for the purposes of making a compliance determination with respect to licensing requirements.~~
- ~~(e) "License" means the official permit issued by the department which authorizes the holder to operate a narcotic treatment program for the term provided therein.~~
- ~~(f) "Medical Director" means a physician licensed by the Georgia Composite State Board of Medical Examiners who has been designated by the governing body of the NTP to be responsible for the administration of all medical services performed by the NTP, including compliance with all federal, state, and local laws and rules regarding medical treatment of narcotic addiction. The medical director shall have the experience and credentials specified in section .09 of these rules.~~

~~(g) "Narcotic treatment program" or "NTP" means any program for chronic heroin or opiate-like drug users that administers narcotic drugs under physicians' orders either for detoxification purposes or for maintenance treatment in a rehabilitative context; the term program includes any community service board, partnership, corporation, association, or person or groups of persons.~~

~~(h) "Program director" or sponsor means the person designated by the program's governing body who is responsible for the operation of the program, for overall compliance with federal, state and local laws and regulations regarding the operation of narcotic treatment programs, and for all program employees including practitioners, agents, or other persons providing services at the program.~~

~~(i) "Program physician" means any physician, including the medical director, who is employed by a NTP to provide medical services to patients. Any program physician who is not a medical director must work under the supervision of the program's medical director.~~

~~(j) "State Board of Pharmacy" means the board created to regulate the practice of pharmacy pursuant to O.C.G.A. Title 26, Chapter 4, Article 2.~~

~~(k) "State Narcotic Authority" or SNA means the agency that has been designated in Georgia to exercise the responsibility and authority for governing the treatment of narcotic addiction with a narcotic drug in accordance with 21 CFR Part 291, as amended.~~

Rule 290-4-12-.04 Governing Body

~~Each licensed program shall have a clearly identified governing body. The chairperson or chief executive officer of the governing body shall complete a statement of responsibility on behalf of the governing body in connection with any application for a license on a form provided by the department. If a program is individually owned, then the owner(s) will complete the statement of responsibility.~~

Rule 290-4-12-.05 Licenses

~~No governing body may operate a narcotic treatment program in the state without first obtaining a license from the department.~~

~~(a) License. A license will be issued, upon presentation of evidence satisfactory to the department, that the program is in compliance with these rules and all applicable federal and state laws for the handling and dispensing of drugs and all state and local health safety, sanitation, building, and zoning requirements. A license shall remain in force and effect for a period determined by the department unless sooner suspended or revoked by the department.~~

~~(b) Compliance with Requirements of Other State and Federal Agencies. To obtain a license, a program must submit evidence satisfactory to the department that it will operate in compliance with the requirements of the Food and Drug Administration (FDA), the Drug Enforcement Administration (DEA), the State Board of Pharmacy and any other applicable federal or state agency.~~

~~(c) License is Nontransferable. A license to operate a NTP is nontransferable for a change of location or governing body. Each license shall be returned to the department in cases of changes in location or governing body or if suspended or revoked. When a licensee intends to relocate or there is a change in governing body, it must notify the department and submit an application in accordance with Rule .06 below.~~

~~(d) Existing Programs. Unless otherwise specified in these rules, programs in existence at the time these rules become effective will have a period of six months from the effective date of these rules to come into compliance with all the requirements of these rules.~~

Rule 290-4-12-.06 Applications

~~(1) An application for a license to operate a narcotic treatment program must be submitted to the department on forms provided by the department, must contain all information and documents designated by the department and must include assurances satisfactory to the department that the program is in compliance with all applicable federal and state laws for the handling and dispensing of drugs and all state and local health, safety, sanitation, building, and zoning requirements. The application must also include a comprehensive outline of the program to be operated by the applicant, including written operating standards which demonstrate an organizational capability to meet these rules.~~

~~(2) Approval by the FDA, DEA and the State Board of Pharmacy. An application must include assurances satisfactory to the department that the program will meet the requirements for approval by the FDA or other applicable federal agency, DEA and State Board of Pharmacy.~~

~~(3) False or Misleading Information. An application for a license must be truthfully and fully completed. In the event that the department has reason to believe that an application has not been completed truthfully, the department may require additional verification of the facts alleged. The department may refuse to issue a license where false statements have been made on or in connection with an application.~~

~~(4) History of Compliance. When an existing licensee applies to operate another program, the department will consider the licensee's history of compliance in Georgia or any other state when determining the applicant's eligibility for another license. When an applicant that has previously operated a program applies to operate a new program, the~~

~~department will consider the compliance history of the applicant in Georgia or any other state.~~

~~Rule 290-4-12-.07 Inspections and Plans of Corrections~~

~~(1) The department is authorized to conduct on-site inspections of any program to verify compliance with these rules and all relevant laws or regulations. A program shall permit any authorized department representative to enter upon and inspect any and all program premises which, for the purposes of these rules, shall include access to all parts of the facility staff, persons in care, and documents pertinent to initial and continued licensure. Failure to permit entry and inspection is a violation of this rule and may result in the denial of any license applied for or the suspension or revocation of a license.~~

~~(2) If as a result of an inspection, violations of these rules are identified, the department may issue a written inspection report that identifies the rules violated and requires the program to submit a written plan of correction that states what the program will do to correct each of the violations identified. The department will provide written inspection reports to the program within 30 days of the on-site inspection, unless there is a determination by the SNA that the complexity of the issues or other extenuating circumstances require an extension of this time period. The program may offer any explanation or dispute the findings of violations in the written plan of correction so long as an acceptable plan of correction is submitted within 30 days of the receipt of the inspection report. Failure to submit an acceptable plan of correction may constitute cause for the department to deny a license or suspend or revoke a license. Nothing in this paragraph will be interpreted to mean that programs must be afforded an opportunity to correct all violations. Upon the discovery of any violation of these rules, the department may proceed to suspend or revoke a program's license in accordance with section .19 of these rules. In determining the appropriate response to rule violations, the department will consider whether the violations can be corrected, the program's history of compliance, the nature and seriousness of the violations, the impact of the violations on the safety and welfare of the program's patients and the surrounding community and any other relevant circumstances.~~

~~Rule 290-4-12-.08 Administration~~

~~(1) Program Purpose. A licensed program shall develop and implement written policies and procedures that specify its philosophy, purpose, and program orientation. Such policies and procedures must identify the types of drug abusers and the ages of the patients that it serves, including referral sources.~~

~~(2) Program Description. A licensed program shall develop and implement written policies and procedures that describe the range of treatment and services provided by the program. These policies and procedures must describe how identified treatment and~~

~~services will be provided and how such treatment and services will be assessed and evaluated. A program description must show what services are provided directly by the program and what treatment and services are provided in cooperation with available community or contract resources.~~

~~(3) Finances. The governing body shall provide for the preparation of an annual budget and approve such budget. Copies of the current year's budget and expenditure records must be available upon request by the department for examination and review by the department.~~

~~(4) Fees. The program shall develop and implement a written schedule of patient fees. The schedule must identify all fees which are chargeable to patients and a copy of the schedule shall be provided to the patient, or parent, or guardian, or responsible party during the admission process.~~

~~(5) Patient Records. Programs must organize and coordinate patient records in a manner which demonstrates that all pertinent patient information is accessible to all appropriate staff and to the department. The patient Central Registry I.D. number must be shown on each page of the patient record. Each patient record must contain, at a minimum, the following:~~

- ~~(a) ——— Basic identifying information including name, current address, current telephone number, date of birth, sex, and race;~~
- ~~(b) ——— If applicable, the names, addresses, and telephone numbers of parents, or guardians, or responsible parties;~~
- ~~(c) Persons to notify in case of an emergency if different from above;~~
- ~~(d) ——— Evidence of a one year history of opiate addiction;~~
- ~~(e) ——— Records of screening and assessment, including information about expected charges for services;~~
- ~~(f) If applicable, documentation of why the patient was not admitted for treatment and suggested referrals given to patient;~~
- ~~(g) ——— Written consent as required in rule .11(1)(c)1;~~
- ~~(h) ——— Documentation of Central Registry clearance as required in rule .18;~~
- ~~(i) Documentation of orientation as required in rule .11(1)(c)3;~~
- ~~(j) Individualized treatment plan and documentation of patient involvement in the development of the plan;~~
- ~~(k) Medical reports, nursing notes, laboratory results, including reports of drug screens, progress notes, and documentation of current dose and other dosage data, with all entries signed and dated by the appropriate professional staff;~~

- ~~(l) Dated and signed case entries of all significant contacts with or concerning patients, including a record of each counseling session in chronological order;~~
- ~~(m) Correspondence with patient, family members, other individuals and a record of each referral for service and the results thereof;~~
- ~~(n) Documentation of all exception requests made to the SNA;~~
- ~~(o) Discharge summary, including reasons for discharge and any referral; and~~
- ~~(p) other information as designated by the SNA.~~

~~(6) Confidentiality of Patient Records. Written policies and procedures shall be established and implemented for the maintenance and security of patient records specifying who shall supervise the maintenance of such records, who shall have custody of such records, and to whom records may be released, how they may be released and for what purposes they may be released. Confidentiality of patient records and release of such records must comply with 42 CFR, Part 2 Confidentiality of Alcohol and Drug Abuse Patient Records.~~

~~(7) Drug Records. Medication orders and dosage changes must be written or printed on a form which clearly displays the physician's signature. Dosage dispensed, prepared, or received must be recorded and accounted for by written or printed notation in a manner which achieves a perpetual and accurate inventory at all times. Every dose must be recorded in the patient's individual medication record at the time the dose is dispensed or administered. If initials are used, the full signature and credentials of the qualified person administering or dispensing must appear at the end of each page of the medication sheet. The perpetual inventory must be totaled and recorded in milligrams daily. Where computer-based recording is utilized, the program shall show that hard-copy records are maintained for inspection.~~

~~(8) Personnel Records. A program shall maintain written records for each employee and an individual file shall include:~~

- ~~(a) Identifying information including name, current address, current telephone number, emergency contact person(s);~~
- ~~(b) A ten-year employment history or a complete employment history if the person has not worked ten years;~~
- ~~(c) Records of educational qualifications if applicable;~~
- ~~(d) Date of employment;~~
- ~~(e) The person's job description or statements of the person's duties and responsibilities;~~
- ~~(f) Documentation of training and orientation required by these rules;~~
- ~~(g) Any records relevant to the employee's performance; and~~

~~(h) — Evidence that any professional license required as a condition of employment is current and in good standing.~~

~~(9) Referral to Other Programs. Each program shall have arrangements for referral of patients to other programs that offer different treatment modalities.~~

~~(10) Closing of a Program. A program that intends to voluntarily close shall notify the state authority no later than thirty days prior to closure. In order to assure continuity of care, any program which closes, either voluntarily or involuntarily, will comply with all directions received from the state authority regarding the orderly transfer of patients and their records.~~

~~(11) Hours of Operation. Program hours of operation shall accommodate persons involved in activities such as school, homemaking, child care and variable shift work. Programs shall offer comprehensive services, including, but not limited to, individual and group counseling, medical exams, and referral services, at least five days per week. In order to accommodate patients who are not receiving take-home medication, programs must be open for dispensing seven days per week. Programs shall provide the state authority with at least two weeks notice prior to any change in program hours.~~

~~(12) Community Liaison and Concerns.~~

~~(a) — A program shall be responsible for assuring that its patients do not cause unnecessary disruption to the community by loitering in the vicinity of the program, or acting in a manner that would constitute disorderly conduct or harassment. Patients who consistently cause disruption to the community or to the program should be discharged from the program.~~

~~(b) — Each program shall provide the department, when requested, with a specific plan describing the efforts it will make to avoid disruption of the community by its patients and the actions it will take to assure responsiveness to community needs. The department may require that such plan include the formation of a committee to consist of representative members of the community. Such committee shall meet on a regular basis.~~

~~(c) Further actions to assure responsiveness may include, but are not limited to, the assignment of a staff member to act as community liaison and the establishment of a hot line between the community and the program administration.~~

Rule 290-4-12-.09 Staffing

~~(1) Staff Ratios and Responsibilities. The program shall have sufficient types and numbers of staff to provide the treatment and services required by all applicable state and federal laws and regulations and as outlined in its program description.~~

~~(a) — Program Director. The governing body of each program shall designate in writing a program director who is responsible for the operation of the program and~~

~~overall compliance with federal, state and local laws and regulations regarding the operation of narcotic treatment programs, and for all program employees including practitioners, agents, or other persons providing services at the program. Programs must notify the department in writing within ten calendar days whenever there is a change in program director.~~

~~(b) ——— Medical Director. The governing body of each program shall designate in writing a medical director to be responsible for the administration of all medical services, including compliance with all federal, state and local laws and regulations regarding the medical treatment of narcotic addiction. No physician may serve as medical director of more than one NTP without the prior approval of the SNA. Programs must notify the department in writing within ten calendar days whenever there is a change in medical director.~~

~~(c) Program Physician. Programs are required to provide sufficient physician coverage to provide the medical treatment and oversight necessary to serve patient needs. A program physician's responsibilities include, but are not limited to, performing medical history and physical exams, determination of diagnosis under current DSM criteria, determination of narcotic dependence, reviewing treatment plans, determining dosage and all changes in doses, ordering take-home privileges, discussing cases with the treatment team and issuing any emergency or verbal orders relating to patient care. At all times a program is open and a physician is not present, a program physician must be available for consultation and emergency orders. Programs must be able to document a referral agreement with a local hospital or health care facility.~~

~~(d) ——— Physician's Assistants and Nurse Practitioners. Licensed physician's assistants and certified nurse practitioners may be employed by programs and perform any functions permitted under Georgia law.~~

~~(e) ——— Nurses. Programs shall insure that adequate nursing care is provided at all times the program is in operation and that a nurse is present at all times medication is administered at the program. Programs that do not employ a registered nurse to supervise the nursing staff must ensure that licensed practical nurses adhere to written protocols and are properly supervised by the medical director.~~

~~(f) Counselors. There must be at least one counselor for every forty patients.~~

~~(2) Staff Qualifications.~~

~~(a) ——— Medical Director. All medical directors shall be licensed to practice medicine in Georgia, shall maintain their licenses in good standing and shall have the following experience and/or credentials.~~

- ~~1. — Three years documented experience in the provision of services to persons who are addicted to alcohol or other drugs, including at least one year of experience in the treatment of narcotic addiction with a narcotic drug; or~~
- ~~2. — Board eligibility in psychiatry and two years of documented experience in the treatment of persons who are addicted to alcohol or other drugs; or~~
- ~~3. — Certification as an addiction medicine specialist by the American Society of Addiction Medicine.~~

~~(b) — Variance From Medical Director Qualifications. Programs that are unable to secure the services of a medical director who meets the requirements of subparagraph (a) above may apply to the SNA for a variance. The SNA has the discretion to grant such a variance when there is a showing that:~~

- ~~1. — The program has made good faith efforts to secure a qualified medical director, but has failed;~~
- ~~2. — The program can secure the services of a licensed physician who is willing to serve as medical director and participate in the training plan;~~
- ~~3. — A training plan has been developed which is acceptable to the SNA and which consists of a combination of continuing education in addiction medicine and in-service training by a medical consultant who meets the qualifications specified in paragraph (a) above; and~~
- ~~4. — A medical consultant who meets the requirements of paragraph (a) above will be available to oversee the training of the medical director and the delivery of medical services at the program requesting the variance.~~

~~(c) Program Physician. All program physicians must be licensed to practice medicine in Georgia, must maintain their licenses in good standing and must have at least one year of documented experience in the treatment of persons addicted to alcohol or other drugs.~~

~~(d) — Variance From Program Physician Qualifications. Programs seeking to employ a program physician, in addition to the program medical director, but are unable to secure the services of a program physician who meets the requirements of subparagraph (c) above may apply to the SNA for a variance. The SNA has the discretion to grant such a variance when there is a showing that:~~

- ~~1. — The program has made good faith efforts to secure a qualified program physician, but has failed;~~
- ~~2. — The program can secure the services of a licensed physician who is willing to serve as program physician and participate in the training plan;~~

- ~~3.—— A training plan has been developed which is acceptable to the SNA and which consists of a combination of continuing education in addiction medicine and in-service training by the program's medical director; and~~
 - ~~4.—— The program employs a qualified medical director who has the experience and credentials specified in subparagraph (a) above, has completed the training program specified in subparagraph (b) above or has completed the continuing education specified in subparagraph (c) below.~~
 - ~~(e)—— Current Medical Directors and Program Physicians. All physicians serving as medical director or program physicians as of the effective date of these rules who do not meet the criteria specified above will be deemed qualified provided that they obtain 50 hours of continuing education in addiction medicine approved by the SNA within two years from the effective date of these rules. At least 25 hours of this continuing education must be obtained within one year from the effective date of these rules.~~
 - ~~(f) Nurses. All registered nurses and licensed practical nurses must be licensed to practice in Georgia and must maintain their licenses in good standing.~~
 - ~~(g)—— Counselors. All counselors must be qualified by training, education and experience to provide addiction counseling services, and must have at least one year experience in providing counseling services to persons who are addicted to narcotics.~~
 - ~~(h)—— Program Directors. All program directors must have at least one year of supervisory or administrative experience in the field of substance abuse treatment.~~
 - ~~(i) Professional Practice. All professional staff, including but not limited to, physicians, pharmacists, physicians' assistants, nurses, and counselors may perform only those duties that are within the scope of their applicable professional practice acts and Georgia licenses.~~
- ~~(3) Staff Training and Orientation. Prior to working with patients, all staff who provide treatment and services must be oriented in accordance with these rules and must thereafter receive additional training in accordance with these rules.~~
- ~~(a)—— Orientation must include instruction in:
 - ~~1.—— The program's written policies and procedures regarding its program purpose and description; patient rights, responsibilities, and complaints; confidentiality; and other policies and procedures that are relevant to the employee's range of duties and responsibilities;~~
 - ~~2.—— The employee's assigned duties and responsibilities; and~~~~

~~3. Reporting patient progress and problems to supervisory personnel and procedures for handling medical emergencies or other incidents that affect the delivery of treatment or services.~~

~~(b) Additional training consisting of a minimum of eight clock hours of training or instruction must be provided annually for each staff member who provides treatment or services to patients. Such training must be in subjects that relate to the employee's assigned duties and responsibilities, and in subjects about current clinical practice guidelines for narcotic treatment such as dosage, based on physician's clinical decision-making and individual patient needs; drug screens; take-home medication practices; phases of treatment; treating abusers of multiple substances; narcotic treatment during pregnancy; HIV and other infectious diseases; co-morbid psychiatric conditions; and referring patients for primary care or other specialized services. Programs shall maintain records documenting that each staff member has received the required annual training.~~

~~(4) Employee Drug Screening. Programs shall establish and implement written policies and procedures for pre-employment and ongoing random drug screening of all program employees. Each sample collected must be screened for opiates, methadone, amphetamines, cocaine, benzodiazepines, THC, and other drugs as indicated by the SNA.~~

~~Rule 290-4-12-.10 Physical Plant and Safety~~

~~(1) Required Approvals.~~

~~(a) A program shall be in compliance with all applicable local health, safety, sanitation, building, and zoning requirements.~~

~~(b) A program shall be in compliance with all applicable laws and rules issued by the State Fire Marshal, the proper local fire marshal or state inspector, and shall have a certificate of occupancy, if required.~~

~~(2) All buildings and grounds shall be constructed and maintained in a safe manner in accordance with these rules.~~

~~(3) A program shall have appropriate and sufficient space to meet the programmatic needs of its patients, and carry out the program's array of services. Such space must include areas conducive to privacy for dosing, counseling and group activities, reception/waiting areas, and bathrooms that assure privacy for collection of urine specimens.~~

~~Rule 290-4-12-.11 Screening, Admission, and Orientation of Patients~~

~~(1) A program may only admit and retain patients whose known needs can be met by the program in accordance with its program purpose and description and applicable~~

~~federal and state laws and regulations. Written policies and procedures for patient referral, intake, assessment, and admission must be established and implemented and must include the following provisions or requirements.~~

~~(a)—— Screening. All applicants for admission must be initially screened by program staff to determine eligibility for admission. No applicant may be processed for admission until it has been verified that he or she meets all applicable criteria, and that the sources and methods of verification have been recorded in the applicant's case folder. The screening process must include:~~

- ~~1.—— Verification, to the extent possible, of an applicant's identity, including name, address, date of birth, and other identifying data;~~
- ~~2.—— Drug history and current status, including determination and substantiation, to the extent possible, of the duration of substance dependence, determination by medical examination performed by a program physician of dependence on opium, morphine, heroin or any derivative or synthetic drug of that group, and determination of current DSM diagnosis;~~
- ~~3.—— Medical history, including HIV status, pregnancy, current medications (prescription and nonprescription), and active medical problems;~~
- ~~4.—— Psychiatric history and current mental status exam;~~
- ~~5.—— Physical assessment and laboratory tests, including drug screens and HIV status (if the applicant consents to be tested), pregnancy, STD, and Mantoux TB tests;~~
- ~~6.—— If an applicant has previously been discharged from treatment at another methadone clinic or program, the admitting program must initiate an investigation into the applicant's prior treatment history, inquiring of the last program attended the reasons for discharge from treatment;~~
- ~~7.—— Determination if the applicant needs special services, such as alcoholism, or psychiatric services, and determination that the program is capable of addressing these needs either directly or through referral;~~
- ~~8.—— Explanation of treatment options, detoxification rights, and clinic charges, including the fee agreement, signed by the applicant;~~
- ~~9.—— If an applicant is 21 years of age or older, verification of dependence on opium, morphine, heroin or any derivative or synthetic drug of that group for a period of one year; and~~
- ~~10.—— If an applicant is under 21 years of age, verification of dependence on opium, morphine, heroin or any derivative or synthetic drug of that group for a period of two years.~~

~~(b) — Assessment. Each patient admitted to the program must be evaluated by the medical director or program physician and clinical staff who have been determined to be qualified by education, training, and experience to perform or coordinate the provision of such assessments. The purpose of such assessments shall be to determine whether narcotic substitution, short-term detoxification, long-term detoxification, or drug free treatment will be the most appropriate treatment modality for the patient. The evaluation must include an assessment of the patient's needs for other services including treatment, educational, and vocational.~~

~~(c) Admission:~~

~~1. — Consent. Except as otherwise authorized by law, no person may be admitted for treatment without written authorization from the patient and parent, guardian, or responsible party, if applicable. The following information must be explained by a trained staff person to the patient and other consenters, and documented in the patient file.~~

~~(i) — The program's services and treatment;~~

~~(ii) — The specific condition that will be treated;~~

~~(iii) — The expected charges for services including any charges that might be billed separately to the patient or other parties; and~~

~~(iv) — The program's rules regarding patient conduct and responsibilities.~~

~~2. — Admission Clearance. No person may be admitted unless the program conducts an inquiry with the Central Registry in accordance with rule .18.~~

~~3. — Orientation. The program shall provide orientation to patients who are admitted for treatment within 24 hours of admission. Orientation must be done by a staff person who has been determined to be qualified by education, training, and experience to perform the task. Programs ensure that each patient signs a statement confirming that the following information has been explained to the patient:~~

~~(i) — The expected benefits of the treatment that the patient is expected to receive;~~

~~(ii) — The patient's responsibilities for adhering to the treatment regimen and the consequences of non-adherence;~~

~~(iii) — An explanation of individualized treatment planning;~~

~~(iv) — The identification of the staff person who is expected to provide treatment or coordinate the treatment;~~

~~(v) — Program rules including requirements for conduct and the consequences of infractions;~~

- ~~(vi) — Patient's rights, responsibilities, and complaint procedures;~~
- ~~(vii) — Drug screening policies and procedures; and~~
- ~~(viii) — HIV information.~~

~~(2) Drug dependent pregnant females must be given priority for admission and services when a program has a waiting list for admissions and it is determined that the health of the mother and unborn child is more endangered than are the health of other patients awaiting services. Pregnancy tests for females must be conducted at admission and least annually thereafter, unless otherwise indicated.~~

~~(3) No program may provide a bounty, free services, medication or other reward for referral of potential patients to the clinic.~~

~~(4) Non-Admissions. The program shall maintain written logs that identify persons who were considered for admission or initially screened for admission but were not admitted. Such logs must identify the reasons why the persons were not admitted and what referrals were made for them by the program.~~

Rule 290-4-12-12 Individual Treatment Planning

~~A program must develop an individual treatment plan for each patient within thirty days of admission. Patients must be involved in the development of their treatment plans. Treatment plans must document a consistent pattern of substance abuse treatment services and medical care appropriate to individual patient needs.~~

~~(a) Medical care, including referral for necessary medical service, and evaluation and follow-up of patient complaints must be compatible with current and accepted standards of medical practice. All patients must receive a medical examination at least annually. All other medical procedures performed at the time of admission must be reviewed by the medical staff on an annual basis, and all clinically indicated tests and procedures must be repeated. The medical director or program physician shall record the results of this annual medical examination and review of patient medical records in each patient's record.~~

~~(b) In recognition of the varied medical needs of patients, the case history and treatment plan must be reviewed at least every 90 days for patients in treatment less than a year and at least annually for patients in treatment more than a year. This review will be conducted by the medical director or program physician along with the primary counselor and other appropriate members of the treatment team for general quality controls and evaluation of the appropriateness of continuing the form of treatment on an ongoing basis. This review must also include an assessment of the current dosage and schedule and the rehabilitative progress of the individual, as part of a determination of whether additional medical services are indicated. If this review results in a~~

determination that additional or different medical services are indicated, the program must ensure that such services are made available to the patient.

~~(c) When the program physician prescribes other controlled substances to patients in the program, the program shall ensure that such prescription is in accord with all applicable statutes and regulation and with current and accepted standards of medical practice. Such prescriptions shall not be issued to any patient unless the physician first sees the patient and assesses the patient's potential for abuse of such medications.~~

~~(d) As part of the rehabilitative services provided by the program, each patient must be provided with individual and group counseling appropriate to his/her needs. The frequency and duration of counseling provided to patients must be determined by appropriate program staff and be consistent with the treatment plan. Treatment plans must indicate a specific level of counseling services needed by the patient as part of the rehabilitative process.~~

~~(e) All patients shall receive HIV risk reduction education appropriate to their needs.~~

~~(f) When appropriate, each patient shall be enrolled in an education program, or be engaged in a vocational activity (vocational evaluation, education or skill training) or make documented efforts to seek gainful employment. Deviations from compliance with these requirements must be explained in the patient's record. Each program shall take steps to ensure that a comprehensive range of rehabilitative services, including vocational, educational, legal, mental health, alcoholism and social services are made available to the patients who demonstrate a need for such services. The program can fulfill this responsibility by providing support services directly or by appropriate referral. Support services recommended and utilized must be documented in the patient record.~~

~~(g) All programs will develop and implement policies for matching patient needs to treatment. These policies may include treatment phasing in which the intensity of medical, counseling and rehabilitative services provided to a patient varies depending upon the patient's phase of treatment. Phases of treatment may include intensive stabilization for new patients and those in need of acute care, graduated rehabilitation phases, and for long-term stable patients, a medical maintenance or methadone-tapering phase.~~

~~Rule 290-4-12-.13 Discharge and Aftercare Plans~~

~~A program must complete an individualized discharge and aftercare plan for patients who complete their course of treatment. This plan must be developed prior to discharge and must be completed within seven days of discharge by the person who has primary responsibility for coordinating or providing for the care of the patient. It must include a final assessment of the patient's status at the time of discharge and a description of aftercare plans for patients. The patient must participate in discharge and aftercare~~

planning, and if applicable parents, or guardian, or responsible persons should participate.

Rule 290-4-12-14 Narcotic Drugs

Programs shall develop and implement written policies and procedures for prescription and administration of narcotic drugs and their security. These policies and procedures must include the following:

(a) Administration.

1. A program physician shall determine the patient's initial and subsequent dose and schedule. If the physician did not perform the medical assessment required in Rule 12, the physician must consult with the person who performed the assessment before determining the patient's initial dose and schedule. The physician shall communicate the initial and subsequent dose and schedule to the pharmacy or the person supervising medication. The physician may assign such dose and schedule by verbal order, however, all such orders must be confirmed in writing by the physician within 72 hours.

2. Proper dose should be based on the clinical judgment of the program physician who has examined the patient and who has considered all available relevant information, including, but not limited to, drug screens, quantitative methadone levels, patient interview, and specific circumstances pertaining to the individual patient.

3. The initial dose of methadone may not exceed 30 milligrams. Additional dosage may be given in the first day where the physician documents that 30 milligrams does not suppress withdrawal symptoms. Only in extraordinary circumstances may the total dose for the first day exceed 40 milligrams. A transferring patient may receive an initial dosage of no more than the last daily dosage authorized at the former program unless in the clinical judgement of the medical director, there are extenuating circumstances documented in the record which justify an initial dosage that is greater than the last daily dosage authorized at the former program.

4. Patients are stabilized on methadone when they are receiving a therapeutic dose that is sufficient to stop opioid use and sufficient to keep the patient comfortable for at least 24 hours with no need to resort to illicit opiates to satisfy opiate cravings.

5. The dose must be administered by a professional authorized by law to do so. No methadone may be administered unless the applicant has undergone all of the screening and admission procedures required, unless there is an emergency situation that is fully documented in the records. In that case, intake procedures must be completed on the next working day. No take-home medication may be given in such an emergency.

~~6. No dose of methadone in excess of 120 milligrams may be ordered or administered without the prior approval of the state narcotic authority.~~

~~(b) Any narcotic drug prescribed and administered shall be documented on an individual medication administration record that is filed with the individual treatment plan. The record must include:~~

~~1. Name of medication;~~

~~2. Date prescribed;~~

~~3. Dosage;~~

~~4. Frequency;~~

~~5. Route of administration;~~

~~6. Date and time administered; and~~

~~7. Documentation of staff administering medication or supervising self-administration.~~

~~(c) Take-home doses of methadone shall be handled in accordance with applicable rules of the Food and Drug Administration or other applicable federal agency. All requests for take home exceptions that exceed two weeks must be reviewed and approved by the SNA.~~

~~(d) Adverse drug reaction and errors must be reported to a program physician immediately and corrective action initiated. The adverse reaction or error must be recorded in the drug administration record, the nurse progress notes and the individual treatment plan, and all persons who are authorized to administer medication or supervise self-medication must be alerted.~~

~~(e) All medications must be stored in a locked safe when not being administered or self-administered.~~

Rule 290-4-12-.15 Drug Screens

~~The program shall develop and implement written policies and procedures for random drug screens. These policies and procedures will be for the purposes of assessing the patient abuse of drugs and making decisions about the patient's treatment. These policies and procedures must include the following provisions:~~

~~(a) Urine drug screens must be conducted on a random basis weekly for new patients during the first thirty days of treatment and at least monthly thereafter. However, patients on a monthly schedule whose drug screen reports indicate drug abuse will be returned to a weekly schedule for at least two weeks, or longer if clinically indicated.~~

~~(b) Each sample collected shall be screened for opiates, methadone, amphetamines, cocaine, benzodiazepines, THC and other drugs as indicated by individual patient use patterns or that are heavily used in the locale of the patient or as directed by the SNA.~~

~~(c) Programs shall develop policies to ensure that urine collected from patients is unadulterated. Such policies may include random direct observation which shall be conducted professionally, ethically, and in a manner which respects patients' privacy.~~

~~Rule 290-4-12-.16 Quality Improvement~~

~~(1) Programs shall develop and implement written policies and procedures for ongoing quality improvement. These policies and procedures will include, but not be limited to, the following areas:~~

~~(a) ——— A structural assessment which addresses program management, staffing, policies and procedures, and general operations;~~

~~(b) ——— A service delivery assessment which evaluates appropriateness of treatment plans and services delivered, completeness of documentation in patient records, quality of and participation in staff training programs, linkage to and utilization of primary care and other out-of-program services, and availability of services and medications for other conditions.~~

~~(c) An assessment of utilization and cost effectiveness of the services delivered which shall examine treatment slot utilization and cost per slot, staff to patient ratios, and cost per counseling session and other support services.~~

~~(d) ——— An assessment of medication-related issues including take home procedures, security, inventory, and dosage issues.~~

~~(2) Such process shall serve to continuously monitor the program's compliance with the requirements set forth in these rules. Responsibility for administering and coordinating the quality improvement process must be delegated to a staff person who has been determined to be qualified by education, training, and experience to perform such tasks. The medical director shall be actively involved in the process.~~

~~(3) Programs shall participate in quality improvement outcome studies as directed by the SNA.~~

~~Rule 290-4-12-.17 Patients Rights, Responsibilities, and Complaints~~

~~Programs shall develop and implement written policies and procedures regarding the rights and responsibilities of patients, and the handling and resolution of complaints.~~

~~(1) These policies and procedures must include a written notice of rights and responsibilities provided to each patient at orientation. The required notice must contain the following items:~~

- ~~(a) Right to a humane treatment environment that affords reasonable protection from harm, exploitation, and coercion;~~
- ~~(b) Right to be free from physical and verbal abuse;~~
- ~~(c) Right to be informed about the individualized plan of treatment and to participate in the planning, as able;~~
- ~~(d) Right to be promptly and fully informed of any changes in the plan of treatment;~~
- ~~(e) Right to accept or refuse treatment;~~
- ~~(f) Right to confidentiality of patient records;~~
- ~~(g) Right to be informed of the program's complaint policy and procedures and the right to submit complaints without fear of discrimination or retaliation and to have them investigated by the program within a reasonable period of time;~~
- ~~(h) Right to receive a written notice of the address and telephone number of the state licensing authority, i.e. the department; and~~
- ~~(i) Right to obtain a copy of the program's most recent completed report of licensing inspection from the program upon written request. The program is not required to release a report until the program has had the opportunity to file a written plan of correction for the violations as provided for in these rules.~~

~~(2) These policies and procedures shall also include provisions for clients and others to present complaints, either orally or in writing, and to have their complaints addressed and resolved as appropriate in a timely manner.~~

~~Rule 290-4-12-.18 Central Registry~~

~~(1) To prevent simultaneous enrollment of a patient in more than one program, all programs shall participate in a central registry approved by the department. Patients must be informed of the program's participation in the central registry and prior to initiating a central registry inquiry, the program must obtain the patient's signed consent. Within 72 hours of admission, the program shall initiate a clearance inquiry by submitting to the approved central registry, the name, date of birth, anticipated date of admission, and any other relevant information required for the clearance procedure. No person shall be admitted to a program who is reported by the central registry to be participating in another such program, or in the event a dual enrollment is found, the patient must be discharged from one program in order to continue enrollment at another program. Reports received by the central registry shall be treated as confidential and~~

~~shall not be released except to a licensed program, or as required by law. Information made available by the central registry to programs shall also be treated as confidential.~~

~~(2) To prevent simultaneous enrollment of persons in different programs located in different states, if a program operates within 125 miles of any adjoining state and that state also has a central registry, the program shall, at the direction of the SNA, participate in the central registries of the adjoining state.~~

~~Rule 290-4-12-19 Enforcement and Penalties~~

~~(1) When the department finds that an applicant for a license fails to fulfill the requirements of these rules, the department may, subject to notice and opportunity for a hearing, refuse to grant the license (denial). The department is not required to hold a hearing prior to taking such action.~~

~~(2) When the department finds that any licensed program violates any requirements of this chapter, the department may, subject to notice and opportunity for a hearing, suspend or revoke the license.~~

~~(a) License Suspension.~~

~~1. The department may suspend any license for a definite period calculated by the period necessary for the facility to implement longterm corrective measures and for the facility to be deterred from lapsing into noncompliance in the future. As an alternative to suspending a license for a definite period, the department may suspend the license for an indefinite period in connection with the imposition of any condition or conditions reasonably calculated to elicit longterm compliance with licensing requirements which the program must meet and demonstrate before it may regain its license.~~

~~2. In lieu of a full suspension, the department may revoke the authority of the narcotic treatment program to grant take-home privileges or to admit new patients.~~

~~3. If the sanction of license suspension is finally imposed, as defined by a final administrative decision, the program must return its license to the department. Upon the expiration of any period of suspension, and upon a showing by the program that it has achieved compliance with licensing requirements, the department shall reissue the program license. Where the license was suspended for an indefinite period in connection with conditions for the re-issuance of a license, once the program can show that any and all conditions imposed by the department have been met, the department shall reissue the program license.~~

~~(b) License Revocation. If the sanction of license revocation is finally imposed, as defined by a final administrative decision, the program must return its license to the department.~~

~~(3) The department is authorized to take emergency actions against any program when it determines that the public health, safety, or welfare requires such action.~~

~~(4) All enforcement actions resulting from this chapter shall be administered in accordance with Chapter 13 of Title 50 of the Official Code of Georgia Annotated, the "Georgia Administrative Procedure Act." Any requests for hearings in response to enforcement actions must be in writing and must be submitted to the department no later than ten (10) calendar days from the date of receipt of any notice of intent by the department to impose an enforcement action. The department's notice of intent to impose an enforcement action must be made within ninety days after an application is submitted or within 90 days of when the grounds for the actions are discovered.~~

~~Rule 290-4-12-.20 Severability~~

~~In the event that any rule, sentence, clause or phrase of any of these rules and regulations may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof. The remaining rules or portions thereof shall remain in full force and effect, as if such rule or portions thereof so determined, declared or adjudged invalid or unconstitutional were not originally a part of these rules.~~

~~Rule Chapter 290-4-13. CLINICAL EVALUATION AND SUBSTANCE ABUSE TREATMENT FOR DUI OFFENDERS.~~

~~Rule 290-4-13-.01 Legal Authority~~

~~These rules are adopted and published pursuant to the Official Code of Georgia Annotated (O.C.G.A.) Sec. 37-7-2.~~

~~Rule 290-4-13-.02 Title and Purposes~~

~~These rules shall be known as the Rules and Regulations for Clinical Evaluation and Substance Abuse Treatment for DUI Offenders. The purpose of these rules is to provide for the approval of clinical evaluators and substance abuse treatment providers to evaluate and treat DUI offenders, to set minimum qualifications for clinical evaluators and treatment providers and to provide for the enforcement of these rules.~~

Rule 290-4-13-.03 Definitions

In these rules, unless the context otherwise requires, the words and phrases set forth herein shall mean the following:

- (a) ~~"American Society of Addiction Medicine (ASAM) Patient Placement Criteria" means the current Patient Placement Criteria for the Treatment of Substance-Related Disorders by the National Association of Addiction Treatment Providers and American Society of Addiction Medicine.~~
- (b) ~~"Clinical evaluation" means the evaluation process designated by the department which is used to diagnose an individual's substance abuse and/or dependence and, if indicated, refer the individual to appropriate treatment.~~
- (c) ~~"Clinical evaluator" means a licensed or certified individual who meets the qualifications set forth in Section 290-4-13-.04 and is approved by the department to provide clinical evaluations for DUI offenders who are required pursuant to O.C.G.A. 40-5-63.1 or O.C.G.A. 40-6-391 to undergo a clinical evaluation for substance abuse treatment needs.~~
- (d) ~~"Clinical interview" means the face-to-face interview with a clinical evaluator intended to gather information on the client including, but not limited to demographics, medical history, alcohol concentration of current offense, social and family history, substance abuse history, and vocational background and mental status.~~
- (e) ~~"Department" means the Department of Human Resources or its successor.~~
- (f) ~~"DSM" means the current edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.~~
- (g) ~~"Multiple or habitual offender" means a person who has been convicted of two or more offenses as described in O.C.G.A. 40-6-391.~~
- (h) ~~"Registry of Clinical Evaluators" means the list of clinical evaluators who have been approved by the department to provide clinical evaluations for DUI offenders who are required pursuant to O.C.G.A. 40-5-63.1 or O.C.G.A. 40-6-391 to undergo a clinical evaluation.~~
- (i) ~~"Registry of Treatment Providers" means the list of substance abuse treatment providers who have been approved by the department to provide treatment to DUI offenders who are required pursuant to O.C.G.A. 40-5-63.1 or O.C.G.A. 40-6-391 to complete a treatment program.~~
- (j) ~~"Risk reduction program" means a program approved by the Department of Driver Services to provide education regarding alcohol and substance use and abuse and driving a vehicle or boat, for the purpose of reducing the risk of incidences of driving or boating under the influence of drugs or alcohol. Risk reduction programs are also commonly referred to as "DUI schools."~~

(k) ~~"Treatment provider" means a licensed or certified individual who meets the qualifications set forth in Section 290-4-13-.06 and is approved by the department to provide substance abuse treatment to DUI offenders pursuant to O.C.G.A. 40-5-63.1 or O.C.G.A. 40-6-391.~~

~~Rule 290-4-13-.04 Registry of Clinical Evaluators~~

(1) ~~Application Process. No person may conduct clinical evaluations pursuant to O.C.G.A. 40-5-63.1 or O.C.G.A. 40-6-391 without first having obtained approval by the department, having been placed by the department on the registry of clinical evaluators, and, as applicable, being on active registry status. All applications shall be submitted on forms prepared by the department, following a procedure outlined by the department. The application shall include all information, fees, and documents designated by the department and shall be truthful, accurate and complete. The department may require any applicant for clinical evaluator to submit additional information or verification that is reasonably related to making an approval determination. In addition, the department may require applications or related documents to be submitted electronically, through a secure website, following procedures specified by the department.~~

(2) ~~Initial Qualifications. In order to be placed on the registry of clinical evaluators, an individual must have one of the following combinations of professional licensure, credentials or experience:~~

(a) ~~— Certification as an addiction medicine specialist by the American Society of Addiction Medicine;~~

(b) ~~— Certification in addiction psychiatry by the American Board of Psychiatry and Neurology;~~

(c) ~~Certification by the Georgia Addiction Counselors Association as a Certified Addiction Counselor II;~~

(d) ~~— Certification by the National Association of Alcoholism and Drug Abuse Counselors Association;~~

(e) ~~— Certification by the International Certification and Reciprocity Consortium;~~

(f) ~~Certificate of Proficiency in the Treatment of Alcohol and Other Psychoactive Substance Use Disorders from the American Psychological Association's College of Professional Psychology; or~~

(g) ~~— Licensure under O.C.G.A. Title 43 as a physician, psychologist, professional counselor, social worker, marriage and family therapist, advanced practice nurse, registered nurse with a bachelor's degree in nursing and:~~

1. ~~— documentation of at least 2,000 hours in the five-year period prior to application, of clinical experience in the treatment of persons who are addicted to~~

~~alcohol or other drugs, with at least 500 hours of that experience in the actual administration of substance abuse clinical evaluations, and~~

~~2. documentation of the completion of at least 20 hours of continuing education in the field of substance abuse, with not more than five of these hours consisting of in-service training, in the two-year period prior to application.~~

~~(3) Training and Continuing Education. Each clinical evaluator shall attend up to two days of training and orientation sponsored by the department within six months prior to being placed on the registry. Each clinical evaluator shall complete, every two years, 20 contact hours of continuing education in the field of substance abuse approved by the department. The department will not approve more than five hours of in-service training in each two-year period.~~

~~(4) Ongoing Qualifications.~~

~~(a) Each clinical evaluator who is approved and placed on the registry of clinical evaluators shall continue to maintain the required initial qualifications and meet continuing education requirements, and upon request shall provide documentation showing evidence thereof. Upon renewal or reissuance of any applicable licensure, certification or credentialing, or upon request by the department, the treatment provider shall provide a copy of the renewed or reissued license, certification or credentialing to the department.~~

~~(b) Each clinical evaluator shall notify the department within 30 days of the occurrence if the evaluator's license, certification or credentialing is revoked, suspended, terminated, or lost for any other reason. The evaluator may not administer clinical evaluations after the effective date of revocation, suspension, termination or other loss of license, certification, or credentialing.~~

~~(c) If any evaluator fails to submit documentation as required, or fails to maintain the required license, certification, or credentialing, the approval as an evaluator may be revoked, and the evaluator may be removed from the registry effective as of the date of the revocation, suspension, termination or other loss of licensure, certification, or credentialing.~~

~~(5) Active Registry Status. The department may provide for the registry to be available for viewing on the Internet. Once placed on the registry of clinical evaluators, an individual will continue to be listed in active registry status unless one of the following events occurs, which event shall constitute a basis for revocation:~~

~~(a) The evaluator fails to administer any clinical evaluations within any continuous twelve-month period;~~

~~(b) The evaluator fails to comply with the requirements of these regulations or of the department;~~

~~(c) The evaluator notifies the department that the evaluator no longer wishes to remain on the registry;~~

~~(d) The evaluator ceases to meet the qualifications listed above; or~~

~~(e) The evaluator provides false or misleading information to the department.~~

~~(6) Reinstatement. If an evaluator is removed from active registry status in accordance with the above, the evaluator's approval is revoked and the evaluator must submit a new application in order to return to active registry status, including an application fee, the amount of which shall be determined from time to time by the Board of Human Resources. The department may also require the treatment provider to comply satisfactorily with a corrective action plan to correct any deficiencies under these rules or other requirements of the department.~~

Rule 290-4-13-.05 Clinical Evaluation Process

~~(1) Clinical evaluations shall only be administered at locations approved by the department by clinical evaluators who have been approved by the department to conduct such evaluations and who appear on the registry of clinical evaluators.~~

~~(2) All clinical evaluations shall consist of a clinical interview and a review of the client's standardized screening instrument administered by the risk reduction program. In addition, the clinical evaluator shall utilize one or more assessment instruments approved by the department.~~

~~(3) Information obtained from the clinical evaluation must be sufficient to diagnose or rule out a substance-related disorder according to current DSM criteria and to recommend an appropriate ASAM level of service. If treatment is recommended, the evaluator shall recommend either short term treatment for clients requiring services no higher than ASAM level I, or longer term treatment for a client requiring services at ASAM level I or higher. The department will direct and define by policy the range of hours per week and the range of weeks of treatment required for short term treatment and longer term treatment.~~

~~(4) Clinical evaluators shall complete written evaluation reports for each client within seven days of completion of the clinical interview. The report must show the referral and the basis for the referral. The department may prescribe a format for preparation of these reports.~~

~~(5) If the evaluation results in a referral to treatment, the clinical evaluator must provide the client with a list of approved treatment providers for the level of treatment recommended.~~

~~(6) If the clinical evaluator determines that no referral to treatment is indicated:~~

~~(a) — for a person with a first conviction only under O.C.G.A. 40-6-391, the clinical evaluator shall transmit a summary of the evaluation to the department for review within seven (7) days of completion of the clinical interview. The department may prescribe a form for these summary reports.~~

~~(b) — for a multiple or habitual offender, the clinical evaluator must transmit a complete copy of the clinical evaluation, along with any other documents required, to the department for review within seven days of completion of the interview.~~

~~(c) The department will complete its review of the clinical evaluation within two weeks of the receipt of the evaluation or summary of the evaluation, as applicable. If the evaluation is approved, the department will issue a Requirements Met Certificate directly to the client. If the evaluation is not approved, the department will contact the clinical evaluator regarding modification of the evaluation to include a referral to a specific ASAM level of service. If the clinical evaluator disagrees with the department's recommendation, the department will arrange for a panel of three professional peers to review the clinical evaluation and the department's recommendation. The department and the clinical evaluator will abide by the decision of the peer review panel.~~

~~Rule 290-4-13-.06 Registry of Treatment Providers~~

~~(1) Application Process. No provider may provide treatment required pursuant to O.C.G.A. 40-5-63.1 or O.C.G.A. 40-6-391 without first having obtained approval by the department, having been placed by the department on the registry of treatment providers and, as applicable, being on active registry status. All applications shall be submitted on forms prepared by the department, following a procedure outlined by the department. In addition, the department may require applications or related documents to be submitted electronically, through a secure website, following procedures specified by the department. The application shall include all information, fees, and documents designated by the department and shall be truthful, accurate and complete. The department may require any applicant for treatment provider to submit additional information or verification that is reasonably related to making an approval determination.~~

~~(2) Criteria for Approval.~~

~~(a) — In order to be placed on the registry of treatment providers, a treatment provider must provide a program description specifying which ASAM levels of care will be offered and demonstrating the capability to offer the specified level(s) of care;~~

~~(b) — Treatment providers offering services at ASAM level II.1 or higher must be licensed by the department's Office of Regulatory Services as a drug abuse treatment program;~~

~~(c) Treatment providers who will only offer ASAM level I services must provide direct treatment services or clinical supervision of treatment services. An ASAM level I treatment provider must have one of the following combinations of professional licensure, credentials and experience:~~

- ~~1. — Certification as an addiction medicine specialist by the American Society of Addiction Medicine;~~
- ~~2. — Certification in addiction psychiatry by the American Board of Psychiatry and Neurology;~~
- ~~3. — Certification by the Georgia Addiction Counselors Association as a Certified Addiction Counselor II;~~
- ~~4. — Certification by the National Association of Alcoholism and Drug Abuse Association;~~
- ~~5. — Certification by the International Certification and Reciprocity Consortium;~~
- ~~6. — Certificate of Proficiency in the Treatment of Alcohol and Other Psychoactive Use Disorders from the American Psychological Association's College of Professional Psychology; or~~
- ~~7. — Licensure under O.C.G.A. Title 43 as a physician, psychologist, professional counselor, social worker, marriage and family therapist, advanced practice nurse, registered nurse with bachelor's degree in nursing, or certification as an employee assistance professional, and~~
 - ~~(i) — documentation of at least 3,000 hours in the five-year period prior to application, of clinical experience in the treatment of persons who are addicted to alcohol or other drugs, and~~
 - ~~(ii) — documentation of the completion of at least 20 hours of continuing education in the field of substance abuse, with not more than five of these hours consisting of in-service training, in the two-year period prior to application.~~

~~(3) Training and Continuing Education. Each treatment provider will attend training and orientation sponsored by the department within six months prior to being placed on the registry. Each treatment provider will ensure that all persons whom the treatment provider supervises in providing direct services will complete, every two years, a minimum of 20 contact hours of continuing education in the field of substance abuse which has been approved by the department. The department will not approve more than five hours of in-service training in each two-year period.~~

~~(4) Ongoing Qualifications.~~

~~(a) — Each treatment provider who is approved and placed on the registry of treatment providers shall continue to meet at least the required criteria for approval~~

~~and meet continuing education requirements for placement on the registry, and upon request shall provide documentation showing evidence thereof. Upon renewal or reissuance of any applicable licensure, certification or credentialing, or upon request by the department, the treatment provider shall provide a copy of the renewed or reissued license, certification or credentialing to the department.~~

~~(b) — Each treatment provider shall notify the department within 30 days of the occurrence if the provider's license, certification or credentialing is revoked, suspended, terminated, or otherwise lost. The treatment provider may not provide treatment after the effective date of the revocation, suspension, termination, or other loss of licensure, certification or credentialing.~~

~~(c) If any treatment provider fails to submit documentation as required, or fails to maintain the required licensure, certification or credentialing, the treatment provider's approval as a treatment provider may be revoked, and the treatment provider may be removed from the Registry.~~

~~(5) Active Registry Status. The department may provide for the registry to be available for viewing on the Internet. Once placed on the registry of treatment providers, an individual will continue to be listed in active registry status unless one of the following events occurs, which event shall constitute a basis for revocation:~~

~~(a) — The treatment provider fails to submit any treatment enrollment, transfer and completion reports to the department for two consecutive quarters;~~

~~(b) — The treatment provider fails to maintain client files as required by these regulations or otherwise fails to comply with the requirements of these regulations or of the department;~~

~~(c) The treatment provider notifies the department that the treatment provider no longer wishes to be listed on the registry;~~

~~(d) — The treatment provider ceases to meet the qualifications listed above, including but not limited to failing to complete required continuing education and training, failing to ensure the training and adequate supervision of persons providing direct services, or the loss of any licensure, certification or credentialing upon which approval was based; or~~

~~(e) — The treatment provider provides false or misleading information to the department.~~

~~(6) Reinstatement. If a treatment provider is removed from active registry status in accordance with the above, the treatment provider's approval is revoked and the treatment provider must submit a new application in order to return to active registry status, including an application fee, the amount of which shall be determined from time to time by the Board of Human Resources. The department may also require the~~

~~treatment provider to comply satisfactorily with a corrective action plan to correct any deficiencies under these rules or other requirements of the department.~~

~~Rule 290-4-13-.07 Treatment Requirements~~

~~(1) In order to obtain a certificate of treatment completion, a client must remain in treatment for at least the period of time recommended by the clinical evaluator. Treatment providers shall require that clients complete, at a minimum, services of the same number of days and hours per week as recommended by the clinical evaluator. Treatment providers may, at their clinical discretion, require that a client complete services for a longer number of days, a greater number of hours per week, or both, than recommended by the clinical evaluator. However, no client who has complied with a treatment plan can be required to remain in treatment longer than one year.~~

~~(2) Longer term treatment (ASAM level I, or higher levels) shall consist of a minimum of three hours of treatment per week. Such treatment may include individual and group counseling, family therapy, vocational counseling, occupational and recreational therapy, psychotherapy and other therapies. In addition attendance at 12-step or other self-help meetings may be required, but time spent attending such groups will not count as part of the required three-hour treatment minimum.~~

~~(3) Treatment providers may only enroll clients whose referral to treatment matches the ASAM level of service offered by the provider except that when there are no providers offering the appropriate ASAM level of service in the geographic area in which the client lives, the client may contact the department for approval to enroll in treatment with a provider that offers a different ASAM level of care.~~

~~(4) When more than 60 days has passed between the completion of the clinical evaluation report and a client's enrollment in treatment, the treatment provider may, if necessary, re-evaluate the client utilizing the clinical evaluation report in order to confirm the appropriate level of services, number of days and hours per week required for that client.~~

~~(5) Treatment services may only be provided at locations approved by the department.~~

~~(6) Treatment providers may not collect from a client any fee which is not authorized by the department. No person or entity other than the department, the clinical evaluator or treatment provider or the accountability court's treatment team may direct or control any clinical, administrative, or financial aspect of the treatment services for an offender.~~

~~Rule 290-4-13-.08 Records~~

~~(1) Confidentiality. All client records shall be confidential and shall be maintained and disclosed in accordance with the provisions of Volume 42 of the Code of Federal Regulations, 42 Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records," as~~

~~now and hereafter amended, as well as the Health Insurance Portability and Accountability Act of 1996 and attendant privacy and security regulations, as now and hereafter amended.~~

~~(2) Transfer of Records.~~

~~(a) ——— DUI Alcohol or Drug Risk Reduction Screening Instrument. DUI alcohol or drug risk reduction programs shall transfer a copy of the results of the screening instrument to the clinical evaluator designated by the offender within five business days of the receipt by the risk reduction program of an authorization for disclosure of information in a format acceptable to the department and signed by the offender. The screening instrument may not be transferred to more than two clinical evaluators without the prior approval of the department. Programs may charge a transfer fee up to \$10.00 for each transfer.~~

~~(b) ——— Clinical Evaluation Results. Clinical evaluators shall transfer a copy of the results of the clinical evaluation to the treatment provider designated by the client within seven days of the receipt by the clinical evaluator of an authorization for disclosure of information in a format acceptable to the department and signed by the offender.~~

~~(3) Clinical Evaluators. Each clinical evaluator shall maintain, at a location approved by the department, the following records which shall be legible, complete, accurate and available for inspection and copying by the department.~~

~~(a) ——— Evaluation Report. Each clinical evaluator shall make monthly electronic reports online to the department showing all clients evaluated each month and each client's referral.~~

~~(b) ——— Submission of Evaluation Reports to the Department. Clinical evaluators shall submit the monthly online electronic evaluation report to the department by the tenth day of the calendar month following each month reported.~~

~~(c) Client Files. Each clinical evaluator shall maintain a file for each client evaluated which shall be labeled with the client's name and risk reduction certificate of completion number and which will be maintained in alphabetical order by client's last name. Each client file must contain the following information:~~

- ~~1. ——— Copy of the risk reduction program certificate of completion;~~
- ~~2. ——— Original Evaluation Contract;~~
- ~~3. ——— Screening instrument results transferred from risk reduction program;~~
- ~~4. ——— Evaluation results and treatment referral;~~
- ~~5. ——— Signed authorizations for release(s) of information;~~

- ~~6. Copy of referral/enrollment form along with name and address of treatment provider to whom referral was sent;~~
- ~~7. Documentation of eligibility for sliding scale fee, if applicable; and~~
- ~~8. Any other information designated by the department.~~

~~(4) Treatment Providers. Each treatment provider shall maintain, at a location approved by the department, the following records which shall be legible, complete, accurate and available for copying and inspection by the department.~~

~~(a) Treatment Enrollment, Transfer and Completion Report. Each treatment provider shall prepare monthly treatment enrollment, transfer and completion reports on an electronic form designated by the department and submit the forms electronically as designated by the department. These reports will show all clients who have enrolled in treatment, transferred to another program and completed treatment each month.~~

~~(b) Submission of Treatment Enrollment, Transfer and Completion Reports to the Department. Treatment providers shall transmit the original monthly treatment enrollment, transfer and completion reports to the department by the tenth day of the calendar month following each month for all clients who have enrolled in treatment, transferred to another program or completed treatment the previous month.~~

~~(c) Withdrawal or Dismissal From Treatment. Treatment providers shall report to the department each time a multiple or habitual DUI offender voluntarily withdraws or is involuntarily dismissed with cause from treatment prior to completion. These reports, which will include the treatment provider's reasons for dismissal if applicable, will be made on forms designated by the department and will be sent to the department by fax or mail within five business days of the client's withdrawal or dismissal.~~

~~(d) Client Files. Each treatment provider shall maintain a file for each client evaluated which shall be labeled with the client's name and risk reduction certificate of completion number and which will be maintained in alphabetical order by the client's last name. Each client file must contain the following information:~~

- ~~1. Copy of the Referral/Enrollment Form;~~
- ~~2. Copy of clinical evaluation report;~~
- ~~3. Original Treatment Service Contract;~~
- ~~4. Documentation of eligibility for sliding scale fee, if applicable;~~
- ~~5. Intake paperwork, treatment plan and progress notes;~~
- ~~6. Copy of Certificate of Treatment Completion; and~~

~~7.—Any other information designated by the department.~~

~~Rule 290-4-13-.09 Client Contracts~~

~~Clinical evaluators and treatment providers shall enter into written contracts with clients for the provision of clinical evaluations and substance abuse treatment services respectively. Original contracts shall be maintained for a period of six years from the date of execution. All contract formats shall be approved by the department and shall contain all information and provisions required by the department. A copy of the completed contract shall be furnished to the client prior to the delivery of services.~~

~~Rule 290-4-13-.10 Treatment/Enrollment Forms for Multiple or Habitual Offenders~~

~~Pre-numbered treatment/enrollment forms shall be supplied to treatment providers by the department. Treatment providers are responsible for completing the form relating to clinical evaluation and enrollment in treatment and providing the completed form to the client. These forms are the property of the department and treatment providers are responsible for the security of the forms and for ensuring that the information on the forms is complete and accurate.~~

~~(a) Requests for Treatment/Enrollment Forms. Upon written request of a treatment provider, the department will send treatment/enrollment forms within two weeks to the treatment provider's mailing address currently on file with the department.~~

~~(b) Security of Treatment/Enrollment Forms. Each treatment/enrollment form shall be maintained in a secure location until it is issued to the client. Each treatment provider must be able to account at all times for each treatment/enrollment form issued. If any treatment/enrollment form is believed to be stolen, the treatment provider shall immediately upon discovery file a police report. In addition, if any treatment/enrollment form is believed to be lost or stolen, the treatment provider shall notify the department orally within one business day following the discovery of the loss or theft. The treatment provider must then follow up in writing to the department within 48 hours of discovery of the loss or theft.~~

~~(c) Electronic Transmittal of Treatment/Enrollment Forms. The department may implement the issuance of treatment/enrollment forms by electronic means, providing for direct and secure electronic transmittal of treatment enrollment forms to the Department of Driver Services.~~

~~(d) Falsifying or Altering Treatment/Enrollment Forms. Treatment/enrollment forms are official state documents which under some circumstances can be used to obtain a probationary driver's license or for driver's license reinstatement. Pursuant to Title 16 of the Georgia Code it is a crime to knowingly falsify, alter or fraudulently use an official document or certificate.~~

~~Rule 290-4-13-.11 Certificates of Treatment Completion~~

~~Pre-numbered certificates of treatment completion shall be supplied to treatment providers by the department. These certificates are the property of the department and treatment providers are responsible for each certificate of completion. Upon completion of treatment, treatment providers shall issue a certificate of treatment completion to the client. All information provided on the certificate must be complete and accurate. No certificate of treatment completion may be issued to a client prior to completion of treatment. Clients may be required to pay all treatment fees prior to receiving a certificate of treatment completion.~~

~~(a) Requests for Certificates of Treatment Completion. Upon written request of a treatment provider, certificates of treatment completion will be sent within two weeks to the provider mailing address currently on file with the department.~~

~~(b) Security of Certificates of Treatment Completion. Each certificate shall be maintained in a secure location until it is issued to the client. Each treatment provider shall be able to account at all times for each certificate issued to it. If any certificate is believed to be stolen, the provider shall immediately upon discovery, file a police report. In addition, if any certificate is believed to be lost or stolen, the provider shall notify the department orally no later than the end of the next business day following the discovery of the loss or theft. The provider shall then follow up in writing to the department within 48 hours of the discovery of the loss or theft.~~

~~(c) Replacement Certificates. Treatment providers may provide a client with a new certificate of treatment completion for certificates that are lost or destroyed. The cost may not exceed \$15.00 to the client.~~

~~(d) Electronic Transmittal of Certificates of Treatment Completion. The department may implement the issuance of certificates of treatment completion by electronic means, providing for direct and secure electronic transmittal of certificates of treatment completion to the Department of Driver Services.~~

~~(e) Falsifying or Altering Certificates. Certificates of treatment completion and replacement certificates are official state documents which can be used for driver's license reinstatement. Pursuant to Title 16 of the Georgia Code, it is a crime to knowingly alter, falsify or fraudulently use an official document or certificate.~~

~~Rule 290-4-13-.12 Inspections and Investigations~~

~~The department is authorized to inspect the records and facilities of clinical evaluators and treatment providers in order to verify compliance with these rules. Clinical evaluators, treatment providers and their employees and representatives shall cooperate with any inspection or investigation by the department and shall provide without delay any information reasonably requested by the department. If violations of these rules are identified as a result of an inspection or investigation, the department~~

~~may issue a written inspection report which identifies the rules violated and requires the clinical evaluator or treatment provider to submit a written plan of correction specifying what steps will be taken to correct the violations.~~

~~Rule 290-4-13-.13 Enforcement of Program Requirements~~

~~(1) When the department finds that any applicant for the registry of clinical evaluators or treatment providers does not fulfill the requirements of these rules, the department may, subject to notice and opportunity for a hearing, refuse to place the applicant on the applicable registry; provided, however, that the department shall not be required to hold a hearing prior to taking such action.~~

~~(2) The department may remove a clinical evaluator or treatment provider from the registry for noncompliance with program requirements. Removal from the registry can be temporary, in the form of a suspension, or permanent, depending on the severity of the violation and the evaluator's or provider's history of compliance. In lieu of removal, the department may revoke the authority of the clinical evaluator or treatment provider to evaluate or enroll new clients.~~

~~Rule 290-4-13-.14 Applicability of Georgia Administrative Procedure Act~~

~~All enforcement actions resulting from this chapter shall be administered in accordance with Chapter 13 of Title 50 of the Official Code of Georgia Annotated, the Georgia Administrative Procedure Act. Any request for a hearing in response to any enforcement action taken pursuant to this chapter shall be in writing and must be submitted to the department no later than 10 calendar days from the date of receipt of any written notice of intent by the department to impose an enforcement action.~~

~~Rule 290-4-13-.15 Severability~~

~~In the event that a rule, sentence, clause or phrase of any of these rules and regulations may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof. The remaining rules or portions thereof shall remain in full force and effect, as if such rule or portions thereof so determined, declared or adjudged invalid or unconstitutional were not originally a part of these rules.~~

~~Rule Chapter 290-5-5. HOSPITAL CARE FOR THE INDIGENT.~~

~~Rule 290-5-5-.01 Introduction~~

~~(1) Act No. 397, Georgia Laws 1957, contains legislative authority for the creation of a "Hospital Care for the Indigent" program. The purpose of the program is "to assist counties in the purchase of hospital care for persons who are ill or injured, and who can be helped by treatment in a hospital, and who are financially unable to meet the full cost of hospital care from their own resources or from the resources of those upon whom they are legally dependent."~~

~~(2) This program is a State-County jointly financed and administered approach to providing hospital care for the medically indigent. However, participation in the program is voluntary with each county. The program will support the preservation of the professional freedom of physicians and the local control of hospitals. Furthermore, local program administration will be encouraged.~~

~~(3) Generally speaking, payment for hospital care is the responsibility of the individual and the local community. It is the intent of this program to supplement local action. Accordingly, the program should not be construed as replacing Federal, State, or local programs for the indigent. It is a basic program objective to provide financial means for the payment of hospital care for indigent patients who are hospitalized outside of their respective county or residency.~~

~~(4) The "Hospital Care for the Indigent" Program has been developed in close liaison with the Medical Association of Georgia, the Georgia Association of County Commissioners, the Georgia Association of Hospital Governing Boards, and the Georgia Hospital Association. Each of these organizations have representation on the Hospital Care Advisory Council.~~

~~(5) The Legislature delegated the administration of the program to the State Board of Health. The Act authorizes the State Board of Health, after consultation with the Hospital Care Council, to adopt and promulgate such rules and regulations as may be necessary for the proper administration of the program.~~

~~Rule 290-5-5-.02 Method for County Participation in the Program~~

~~(1) Procedure for County Participation:~~

~~(a) ——— For a county to initiate participation in the Program, the governing authority of such county, by formal resolution or by contract agreement, must satisfy the provisions of 290-5-5-.02(2).~~

~~(b) ——— For continued participation in the Program, the county must comply with the Rules and Regulations governing the administration of the Program, and the governing authority of the county annually must adopt a renewal resolution or renew its contract agreement. The annual resolution or contract must satisfy the provisions of 290-5-5-.02(2) and the required document must be filed with the Georgia Department of Public Health on or before the first day of April to assure participation for the entire ensuing fiscal year.~~

~~(c) The Georgia Department of Public Health shall make the determination, on a uniform state-wide basis, or whether a formal resolution, a contract agreement, or both shall be submitted by the county for participation in the Program.~~

~~(2) Requirements Regarding the Resolution or the Contract:~~

~~(a) ——— The resolution or contract must declare the desire of the County to participate in the Program.~~

~~(b) ——— The resolution or contract must certify that the County has approved a local budget providing funds necessary for participation in the Program. The amount of this local budget shall be specified in the resolution or contract. (See 290-5-5-.02(3) for comments on "Determining the Local Budget.")~~

~~(c) The resolution or the contract must indicate that the County has designated the County Board of Health as the local administrative agency or that the County has so designated an agency acceptable to both the governing authority of the county and the Georgia Department of Public Health.~~

~~(d) ——— The resolution or contract must state that the County agrees to pay, within the limitations of the Program budget, for authorized or emergency out-of-county hospital care rendered to county residents who are properly certified as indigent or medically indigent.~~

~~(e) ——— The resolution or contract should indicate that both the local medical society and the local hospital authority, if such exist, favor participation by the county in the Program.~~

~~(f) The resolution or contract must declare that the County will comply with the Rules and Regulations of the Program as promulgated by the State Board of Health.~~

~~(3) Determining the Local Budget:~~

~~(a) ——— The amount of local funds budgeted for the Program shall be determined by the governing authority of the county; however, such local budget should match available State funds except where a lesser amount is reasonably related to Program needs.~~

~~(b) ——— The availability of State funds does not reduce local responsibility regarding hospital care, and it should not be used to justify termination of existing agreements with hospitals regarding the financing of operating deficits.~~

~~(c) The amount of State funds budgeted under the Program to each county shall be determined by the Georgia Department of Public Health on the basis of available State funds, the matching formula, and the available county funds.~~

~~(4) Effective Date of Participation. A County may request participation in the Program at any time; however, after the first year of the Program, the actual commencement of~~

~~Program participation, as evidenced by an allotment of State funds, shall be only on July 1 or January 1.~~

~~(5) A County may request the Georgia Department of Public Health to approve a revised resolution or contract prior to the expiration of a previously filed document for a given year. Decisions regarding such requests will be based on the circumstances and facts as submitted in each instance.~~

~~Rule 290-5-5-.03 Method of Allotment and Matching of State Funds~~

~~(1) Calculating the Allotment of State Funds:~~

~~(a) Within the one dollar (\$1.00) per capita legal limitation, State funds shall be allotted to each participating county according to two factors: population and median income.~~

~~1. The population shall be the latest official decennial population count of the U.S. Census Bureau, adjusted to exclude military personnel and wards of State institutions.~~

~~2. The median income, which is an index of relative economic ability, shall be obtained from the most recent "Characteristics of Population" for Georgia as prepared by the U. S. Census Bureau in connection with its official decennial population count.~~

~~(b) In calculating the county allotment, the following statistical procedure shall be used:~~

~~1. One thousand (1,000) divided by each county's median income to obtain the reciprocal weighting value.~~

~~2. Each county's population multiplied by the county's reciprocal weighting value to obtain county's weighted population.~~

~~3. The appropriation (or State funds available) divided by the sum of weighted population of all counties to obtain per capita allotment.~~

~~4. Per capita allotment multiplied by each county's weighted population to obtain each county's allotment.~~

~~(c) The above procedure shall be used in the initial allocation of State funds during a year, in the reallocation of any unexpended or unallotted funds, and in the allocation of any additional funds which may become available during a year.~~

~~(2) Matching Formula:~~

~~(a) All State funds allocated to a County, through an agreed joint participating budget, must be matched by local funds according to the matching formula.~~

~~(b) — The matching formula for each county shall be determined by the following table:~~

~~1950 Population of County State Share Local Share~~

5,000 and under	75%	25%
5,001 - 10,000	65%	35%
10,001 - 20,000	55%	45%
20,001 - 50,000	50%	50%
50,001 - 100,000	40%	60%
Over 100,000	30%	70%

~~(3) Method of Payment:~~

~~(a) — Each Participating County must establish a "Hospital Care for the Indigent" Fund which shall consist of the local share of the approved joint budget.~~

~~(b) — The Georgia Department of Public Health shall establish a State "Hospital Care for the Indigent" Fund which shall consist of all State funds available to the Program.~~

~~(c) The method of payment shall be to hospitals on an individual patient basis according to a dual payment procedure. Under this method, the County shall pay the hospital for the local share of authorized hospitalization and the Georgia Department of Public Health shall pay the hospital for the State share of authorized hospitalization.~~

~~(d) — Disbursement to a hospital from the Georgia Department of Public Health will be made only on proper local certification and after the County has paid the local share of the request for payment as submitted by the Participating Hospital.~~

~~(e) — The official per diem rate shall be used by each Participating County when authorizing hospital care under the Program and the local share of such rate shall be the basis for county payment under the Program.~~

~~(f) The County is primarily responsible for obligations authorized by its certifications and the Georgia Department of Public Health will assist only to the extent of State funds allocated to that county.~~

Rule ~~290-5-5-.04~~ Method of Local Administration

~~(1) Supervision of Local Program:~~

~~(a) — The governing authority of the county shall have the following Program role:~~

- ~~1. — to determine whether the Program should be activated in the county and to establish the local budget needed;~~
- ~~2. — to review and to adopt the County Program Plan;~~
- ~~3. — to make an annual review of Program performance and to determine whether the Program is to be continued in its county.~~

~~(b) — The County Board of Health shall have the following Program role:~~

- ~~1. — to bear responsibility for the proper administration of the Program in its county;~~
- ~~2. — to develop or supervise the development of a County Program Plan;~~
- ~~3. — to adopt local policies necessary to Program administration;~~
- ~~4. — to delegate administrative Program functions as it deems desirable.~~

~~(c) The County Board of Health, except as indicated in paragraph (a) above shall represent the county in official negotiations with the Division of Hospital Services, Georgia Department of Public Health.~~

~~(2) County Program Plan:~~

~~(a) — Annually, the County Board of Health shall prepare a County Program Plan which contains the following elements:~~

- ~~1. — a selection of hospitals to be used by the County in accordance with 290-5-5-.04(3);~~
- ~~2. — resolutions from the medical staff and the governing board of each selected hospital stating acceptance of participation in the local Program;~~
- ~~3. — a policy or standard for determining indigency and medical indigency in accordance with 290-5-5-.05;~~
- ~~4. — a policy or method for determining the need for hospitalization in accordance with 290-5-5-.06;~~
- ~~5. — a policy or method relating to out-of-county hospital care in accordance with 290-5-5-.06(3);~~
- ~~6. — a method or procedure for the payment of funds in accordance with 290-5-5-.03(3);~~

~~7. — a statement defining the area of responsibility for any agency to which the county has delegated administrative Program responsibility in accordance with 290-5-5-.04(4).~~

~~(b) — The County Program Plan shall be prepared so as to provide a logically interrelated set of policies for the local Program.~~

~~(c) The County Program Plan shall be submitted for review and approval to the governing authority of the county and to the Georgia Department of Public Health.~~

~~(3) Selection of Participating Hospitals:~~

~~(a) — The County Program Plan shall contain the selection of a reasonable number of Participating Hospitals so that geographic Program Coverage will conform, in General, with the pattern of medical care for the area.~~

~~(b) — In the selection of Participating Hospitals to be used by the local Program, consideration should be given to the probable needs of individual patients, the necessity for referrals between hospitals, the geographic convenience of patients, and the desires of local practicing physicians.~~

~~(c) To the fullest degree consistent with sound local Program management, the local selection of Participating Hospitals should be limited to general hospitals providing medical and surgical services.~~

~~(d) — The Eugene Talmadge Memorial Hospital shall not be selected for inclusion in any County Program Plan; however, emergency or highly specialized hospital care may be authorized at this hospital.~~

~~(e) — In an emergency wherein the medical condition of the patient prevents utilization of a selected participating hospital, hospitalization may be authorized in any Participating Hospital without reference to the County Program Plan.~~

~~(f) The county may amend its selection of Participating Hospitals by written notice to the Georgia Department of Public Health.~~

~~(4) Local Program Administration:~~

~~(a) — The County Board of Health shall have authority to administer the local Program, including the following areas:~~

- ~~1. — to make the necessary investigation for the final determination of indigency and medical indigency;~~
- ~~2. — to make the final determination of the need for hospitalization;~~
- ~~3. — to authorize and to approve payments for hospital care;~~
- ~~4. — to maintain Program records and to prepare reports of its activities;~~

- ~~5. — to properly account for funds made available to the local Program;~~
- ~~6. — to maintain liaison with public and private agencies interested in the Program.~~

~~(b) — The County Board of Health may delegate definable aspects of local Program administration to a governmental official, an agency, or an organization which perform a public and necessary governmental function. Any delegation must be on an annual basis and does not relieve the County Board of Health of its total Program responsibility.~~

~~(c) The County Board of Health, at its option, may elect to establish a Screening Committee to advise in local program administration.~~

- ~~1. — The Act specifies that a Screening Committee, created by a County, should be delegated the function of making determinations and certifications relative to the indigency of persons applying for assistance under this Program.~~
- ~~2. — Such a Screening Committee should consist of three responsible and public-minded local citizens. At least one member of a Screening Committee must be designated by the local medical society.~~

Rule 290-5-5-.05 Criteria for Determining Indigency

~~(1) General Statement on Determining Financial Eligibility:~~

- ~~(a) — The State Board of Health desires that each county have as much freedom as possible in determining the eligibility of its residents under the provisions of this Program.~~
- ~~(b) — Recognizing the differences in the socio-economic level of the several counties, there shall be no rigid state-wide formula devised for determining indigency and medical indigency.~~

~~(2) A Local Policy or Standard Required:~~

- ~~(a) — The County Board of Health shall develop a policy or standard which shall be used in determining indigency and medical indigency under the Program for the residents of that county.~~
- ~~(b) — The local policy or standard shall be established in such a manner as to satisfy the following provisions:
 - ~~1. — It must contain reasonable assurance of a uniform basis of review for all requests for financial assistance under the Program for residents of that county.~~
 - ~~2. — It must contain specified standards of eligibility relative to family income, family assets, hospitalization insurance, and number of dependents.~~~~

~~3. — It must contain a procedure which requires and specifies an inventory of economic resources on persons for whom assistance is requested.~~

~~4. — It must recognize the need for a higher priority in those instances where an indigent or medically indigent resident is hospitalized outside of the county.~~

~~(3) Investigation of Individual Applicants:~~

~~(a) — There shall be an investigation or review of the economic condition of each applicant to determine eligibility.~~

~~(b) — Each applicant shall be required to certify that he is unable to pay for the full cost of hospital care as deemed necessary by a physician.~~

~~(c) Each applicant, from family resources or hospitalization insurance, shall be required to pay as large a share as possible of the cost of his hospitalization.~~

~~(4) Payment from Other Sources:~~

~~(a) — For days of hospitalization authorized under the Program, there may be a supplemental county payment above the amount based on the official per diem rate, provided such action is based upon a contract agreement between the hospital and the governing authority of the county. There shall be no State participation in a supplemental county payment.~~

~~(b) — When payment is made or expected to be made to the hospital on behalf of the patient from hospitalization insurance or family resources, the amounts so collected by or due to the hospital shall be deducted from that sum which would otherwise be payable to the hospital under the Program, except as stated in 290-5-5-05(4)(c).~~

~~(c) When the patient's stay in the hospital is greater than the days of hospitalization authorized under the Program, payment to the hospital from hospitalization insurance or family resources may be applied, according to the hospital's normal business practice, to those days of hospital care not authorized under the Program.~~

~~(d) — After payment has been made for days of hospital care not authorized under the Program, any balance of hospitalization insurance or family resources shall be applied to days of authorized hospital care in accordance with 290-5-5-05(4)(b).~~

~~Rule 290-5-5-.06 Criteria for Hospitalization~~

~~(1) Certification of Hospital Care:~~

~~(a) — This Program shall provide essential hospitalization for the acutely ill or injured who are eligible otherwise under Program requirements and who are certified by the county of residency.~~

~~(b) — Each Participating County has the option of including or excluding normal obstetrics as eligible under the Program.~~

~~(c) A standard application form shall be required for all patients who receive services under the Program.~~

~~(d) — All applications for hospitalization under the Program must be initiated by a physician.~~

~~(e) — Hospitalization under the Program for any one patient shall not exceed thirty days in any twelve-month period.~~

~~(f) The applicant's attending physician, in recommending hospitalization shall certify the following:~~

~~1. — That the applicant is acutely ill or injured;~~

~~2. — That in his professional judgment intensive care normally provided by a hospital is required;~~

~~3. — That there is likelihood of substantial benefit from hospitalization;~~

~~4. — That he has reason to believe that the applicant is indigent;~~

~~5. — That he has reason to believe the applicant is NOT eligible for care under any other program.~~

~~(g) — The applicant's attending physician in recommending hospitalization shall indicate, to the best of his judgment, the number of days of hospitalization required and the hospital providing the type of care needed by the applicant.~~

~~(h) — The County Board of Health, or its authorized agent, shall make the final decision on the following matters:~~

~~1. — Selection of the Hospital to be used by the applicant.~~

~~2. — The number of hospitalization days which will be authorized.~~

~~(i) The County Board of Health, or its authorized agent, shall promptly notify the Georgia Department of Public Health regarding all hospital care authorized under the Program.~~

~~(2) Relationship with Other Medical Care Programs:~~

~~(a) — The Program shall not be construed as replacing existing Federal, State or local hospital and medical care programs for the indigent but may supplement such programs.~~

~~(b) — The Program may supplement other Federal or State programs in the following manner:~~

~~1. — On proper local certification, a person who is acutely ill or injured may receive hospital care under the Program even though the person is currently eligible for or receiving care under another program for a different type of disability or illness.~~

~~2. — After exhausting eligibility under another program and on proper local certification, a person who is acutely ill or injured may receive hospital care under the Program for an acute illness or injury normally cared for under the program of prior sponsorship.~~

~~3. — On proper local certification, persons with diagnosed tuberculosis, who because of the critical degree of their condition cannot be safely transported to Battey State Hospital may be temporarily hospitalized under provisions of the Program.~~

~~(c) When a person receives hospitalization under both this Program and another program, the authorization under this Program shall be prepared in such a manner as to avoid an overlapping payment for hospital care received.~~

~~(3) Out-of-County Hospital Care:~~

~~(a) — There shall be free movement of patients and funds between counties so that the location of hospital care may become a medical determination and that payment for such hospital care may become void of artificial barriers.~~

~~(b) — Out-of-county hospital care may be a medical referral in which the patient goes from the county of residence to an out-of-county hospital after it is determined that care is needed. In this instance, the county of residency shall determine both the need for hospitalization and whether the person is eligible as indigent or as medically indigent.~~

~~(c) Out-of-county hospital care may be an emergency wherein neither the patient nor his physician would have advanced plans regarding hospitalization. In this instance, the medical staff of the hospital shall determine the need for hospitalization relating to the emergency condition, and the county of residency shall determine whether the person is eligible as indigent or medically indigent.~~

~~(d) — In emergency cases, the hospital and the attending physician shall complete the appropriate parts of the application form, and such application shall be received by the patient's county of residency within five days after admission of the patient. In such instances, the hospital shall indicate its approved per diem rate when transmitting the application.~~

~~(e) — In the event there is an absence of negotiations between the parties concerned regarding the financial aspect of out-of-county hospital care, the Georgia Department of Public Health may earmark and reserve that sum of State funds which it deems advisable for the purpose of payment for out-of-county hospital care.~~

Rule 290-5-5-.07 Method for Approval of Participating Hospitals

~~(1) Procedure for Becoming a Participating Hospital:~~

~~(a) Prerequisite to any hospital becoming a Participating Hospital under the Program, the governing authority of the hospital must elect to participate in the Program.~~

~~(b) In expressing the desire of the hospital to participate in the Program, a responsible officer of the hospital shall complete a standard application form and shall submit such application to the Georgia Department of Public Health.~~

~~(c) A hospital once approved will continue as a Participating Hospital until it voluntarily withdraws or its approval is revoked.~~

~~(2) Requirements for Becoming a Participating Hospital:~~

~~(a) To be eligible to participate in the Program, a hospital must have a physician as chief of staff and must have been issued a current licensure permit, either annual or provisional, under authority of the Georgia Hospital Regulations Act No. 623, Georgia Laws, 1946.~~

~~(b) Any hospital electing to participate in the Program must select one of the two following methods of payment for hospital care that it renders:~~

~~1. A calculated per diem related to the non-profit basic cost;~~

~~2. A fixed sum not to exceed ten dollars (\$10.00) per patient-day of care.~~

~~(c) Any hospital selecting method (b) 1. above must submit appropriate accounting data necessary to substantiate a "non-profit basic cost".~~

~~(3) Lists of Participating Hospitals. The Georgia Department of Public Health shall maintain a roster of hospitals participating in the Program and shall furnish a list of such hospitals to each County Board of Health annually or more frequently if justified by the volume of changes.~~

~~(4) Discontinuance as a Participating Hospital:~~

~~(a) A participating Hospital has the right to withdraw from the Program at any time, after proper notice of this intent to the Georgia Department of Public Health, provided that the rights of patients are not jeopardized.~~

~~(b) Should a Participating Hospital, at some future date, fail to comply with the Act and the Regulations thereunder, the Georgia Department of Public Health shall remove the hospital from the roster of participating hospitals and shall advise the hospital concerned and the County Board of Health in each participating county that the hospital is no longer a Participating Hospital under the Program.~~

~~(5) Calculating the Per Diem Rate:~~

- (a) ~~———— The non-profit basic cost shall be determined from an analysis of the hospital's financial records and reports, and all submitted cost statements must bear the certification of a qualified auditor who is not an employee of the hospital.~~
- (b) ~~———— The Georgia Department of Public Health shall establish for each Participating Hospital an official per diem rate, which shall be an established percentage of the non-profit basic cost.~~
- (c) ~~The method of calculation of the official per diem rate for this Program shall be in harmony with the policies of other medical care programs under the sponsorship of the State of Georgia.~~
- (d) ~~———— By electing the calculated per diem method, the hospital grants to the Georgia Department of Public Health the right to audit its financial records and the right to inform counties of its per diem rate.~~
- (e) ~~———— For any Participating Hospital, the official per diem rate shall not exceed the average patient-day income for the hospital.~~

~~Rule 290-5-5-.08 General Provisions~~

- (1) ~~Definition of Terms. The following words, terms, or phrases when used in these Rules and Regulations, shall have the meaning ascribed to them in this section, except when the context clearly indicates a different meaning:~~
 - (a) ~~———— "Program" means the Hospital Care for the Indigent Program, established by Act No. 397, Georgia Laws, 1957;~~
 - (b) ~~———— "Physician" means a doctor of medicine duly licensed to practice medicine in Georgia in accordance with Section 84-901, et seq., Georgia Code Annotated.~~
 - (c) ~~"Indigent Person" or "indigent" means any person who is ill or injured and who from his own resources or from resources of those upon whom he is legally dependent is financially unable to meet the full cost of hospital care as prescribed or ordered by a physician.~~
 - (d) ~~———— "financially unable" means an economic status in which a person, who because of his level of income, property, or intrafamily assistance, is not able to pay for the cost of needed hospital care without depriving himself or his dependents of necessary food, shelter, clothing, and the other minimum necessities of life within specified limits of an economic inventory.~~
 - (e) ~~———— "full cost" means the total cost of an entire period of hospitalization wherein the ill or injured person is or becomes indigent in reference to a portion of the hospital cost.~~
 - (f) ~~"hospital care needed" means the hospital care as prescribed or ordered by a physician.~~

~~(g) ——— "resident" means any person who is in the county for other than temporary or transitory purposes and who has lived continuously in Georgia for a period of not less than six months. The six months residency requirement may be waived when a physician certifies that the illness or injury constitutes an emergency which requires immediate hospital care.~~

~~(h) ——— "Applicant" means a resident indigent ill or injured person who makes applications for service under this Program, according to prescribed rules and regulations.~~

~~(i) "ill or injured" means indisposed for a medical reason which requires, in the professional judgment of a physician, intensive care normally provided by a hospital, and there is a likelihood of material benefit from hospitalization.~~

~~(j) "Participating County" means a county, the governing authority of which by appropriate action has agreed to participate in the Program, has adopted the rules and regulations set forth for the administration of the Program, and is current with its prorated share of funds necessary for the hospital care of county residents.~~

~~(k) "County" means the governing or taxing authority of a county.~~

~~(l) "Participating Hospital," "Participating Hospitals," or "participating hospital" means hospitals that have agreed to cooperate with the Program and have been certified as eligible according to the eligibility criteria set forth in the Rules and Regulations.~~

~~(m) ——— "County Board of Health" means a County Board of Health created under and by virtue of an Act of the General Assembly of Georgia (Acts of 1914, page 124-125 as amended) codified as Section 88-201 et. seq., Georgia Code Annotated; or the agency designated under the provision of 290-5-5-.02(c) of these Rules and Regulations.~~

~~(2) Appeal Procedure:~~

~~(a) ——— An applicant, a physician, or a Participating Hospital may appeal to the County Board of Health wherein the applicant resides, if the application is not acted upon within a reasonable length of time or if the application is denied, in whole or in part, by seemingly arbitrary action.~~

~~(b) ——— The governing authority of the county, the County Board of Health, a Participating Hospital, or the local medical society have the right to appeal by a written request and to be granted a fair hearing by the Georgia Department of Public Health on administrative matters pertaining to local policies, procedures, or methods.~~

~~(c) The governing authority of a Participating County, or the County Board of Health have the right to appeal by a written request and to be granted a fair hearing by the~~

~~State Board of Health relative to administrative procedures and decisions of the Georgia Department of Public Health.~~

~~(3) Revision of Rules and Regulations. Within the framework and intent of the Act, these Rules and Regulations may be revised or modified from time to time by the State Board of Health after consultation with the Hospital Care Advisory Council.~~

~~**Rule 290-5-5-.09 Appendix**~~

~~Act No.397~~

~~Georgia Laws 1957~~

~~AN ACT~~

~~To provide additional powers and duties to be vested in the State Board of Health in order to promote and preserve the life and health of the people of the State through a program for the hospital care of the indigent; to provide assistance to the several counties of the State in purchasing hospital care for citizens thereof who are in need of and are financially unable to provide such care for themselves; to appropriate funds to be used to match and supplement local, federal or other funds made available for this purpose; to provide for the administration of the Act by the State Board of Health; to authorize the appointment of a Hospital Care Council by the Governor to advise and assist in the development of rules, regulations and standards necessary and proper to the implementation and administration of this Act; to repeal conflicting laws, and for other purposes.~~

~~BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:~~

~~SECTION 1.~~

~~In order to promote and preserve the public health there is hereby established a "Hospital Care for the Indigent" program to be administered by the State Board of Health. The purpose of this program is to assist counties in the purchase of hospital care for persons who are ill or injured, and who can be helped by treatment in a hospital, and who are financially unable to meet the full cost of hospital care from their own resources or from the resources of those upon whom they are legally dependent.~~

~~The purchase of such hospital care shall be limited to the non-profit basic cost of hospital care needed for the treatment of the ill or injured, as deemed necessary and ordered by the physician in charge of the case in accordance with the provisions of this Act and the rules, regulations and standards adopted and promulgated by the Board hereunder.~~

SECTION 2.

~~The following words, terms and phrases, when used in this Act shall have the following meaning ascribed to them in this section, except when the context clearly indicates a different meaning:~~

~~a.— Board—The State Board of Health;~~

~~b.— Program—The "Hospital Care for the Indigent" program;~~

~~c.— Participating Hospital—A publicly or privately owned hospital holding a valid permit issued pursuant to Section 99-1707, Georgia Code Annotated, and having a physician as chief of staff and provided further that the governing authority of the hospital elects to participate in the program in accordance with the provisions of this Act;~~

~~d.— Physician—A doctor of medicine duly licensed to practice medicine in Georgia in accordance with Sections 84-901, et seq., Georgia Code Annotated;~~

~~e.— Indigent Person—Any person who is ill or injured and who from his own resources or from the resources of those upon whom he is legally dependent is financially unable to meet the full cost of hospital care as prescribed or ordered by a physician;~~

~~f.— Resident—Any person who is in the State of Georgia for other than temporary or transitory purposes and who has lived continuously in this State for a period of not less than six (6) months;~~

~~g.— Participating County—A county, the governing authority of which, by appropriate action, has agreed to participate in the program and is current with its prorata share of funds necessary for the hospital care for its ill or injured indigent as herein defined and in accordance with the provisions of this Act.~~

SECTION 3.

~~Until such time as a specific appropriation may be made to the State Board of Health for the purpose of carrying out the provisions of this Act, the Budget Bureau is hereby authorized to make an allotment to the Board in such amounts as the bureau may deem necessary and proper for such purpose in accordance with the provisions of section 40-408 of the Georgia Code of 1933.~~

SECTION 4.

~~State funds appropriated to the board for the purpose of carrying out the provisions of this Act shall be expended by the board or its duly authorized agent so as to provide for the administration of this Act as it deems necessary and proper and to assist counties in providing hospital care for indigent residents. The board shall establish a graduated matching formula for the disbursement of State funds to assist counties as provided herein; provided the State share of any participating county budget shall not exceed one dollar (\$1.00) per capita based on the latest official decennial population count of the United States Census Bureau. The board may establish an amount of State funds of the total State and county participating budget to provide hospital care for indigent resident patients who may be hospitalized outside of the county of residency; provided, however, that any unexpected State funds budgeted to provide hospital care for the indigent resident patient who may be hospitalized outside the county of residency may be reallocated by the board according to the matching formula.~~

SECTION 5.

~~After the effective date of this Act the governing authority of the participating county shall on or before the first day of April of each year submit to the Board a Hospital Care for the Indigent budget containing an estimate and supporting data setting forth the amount of moneys needed to provide hospital care for the indigent residents for said county.~~

SECTION 6.

~~Upon certification, approved by the board, any participating county may receive credit for direct expenditures made during the period covered by the budget by the county to a hospital or hospitals when such expenditures can be shown to have been made for the care of indigent residents as herein defined.~~

~~SECTION 7.~~

~~The board, after consultation with the Hospital Care Council, shall adopt and promulgate such rules and regulations as it deems necessary to carry out the provisions of this Act.~~

~~SECTION 8.~~

~~A person to qualify for assistance under this program must be an indigent resident of this State and hospital care is not available to the person under any other program. The six (6) months residency requirement may be waived; provided a physician certifies that the illness or injury constitutes an emergency which requires immediate hospital care.~~

~~SECTION 9.~~

~~To qualify a county for assistance under this program the governing authority of said county shall have certified that:~~

- ~~a. The county elects to participate in the program;~~
- ~~b. A local budget providing the funds required by the graduated matching formula has been approved;~~
- ~~c. A local administrative agency or officer has been appointed;~~
- ~~d. A screening committee or agency has been appointed to make determinations and certifications relative indigency of persons applying for assistance as provided for in this Act.~~

~~SECTION 10.~~

~~The board is authorized and empowered to enter into agreements with other State Departments, boards and agencies of the United States Government, local governmental agencies, and voluntary organizations to obtain funds for hospital care~~

~~that may be available for needy persons and the board is authorized to receive and administer any funds available by such agreements in conformity with the provisions of this Act; provided, that the authority granted in this Act shall not prevent the State Department of Public Welfare from complying with the provisions of a Social Security Act Governing Medical Care (U.S.C.A. 14-701, et seq.).~~

~~SECTION 11.~~

~~The board is authorized and empowered to accept and expand any and all gifts and donations that may be made available to said board for purposes of this Act.~~

~~SECTION 12.~~

~~There shall be established a Hospital Care Council, the members of which shall be appointed by the Governor. The council shall advise with the board relative to policies, procedures and standards to be embodied in rules and regulations adopted and promulgated by the board. The membership of the council shall consist of two (2) county commissioners appointed from nominations made by the Association of County Commissioners of Georgia; two (2) hospital trustees appointed from nominations made by the Association of Hospital Governing Boards; two (2) physicians appointed from nominations made by the Medical Association of Georgia; two (2) hospital administrators appointed from nominations made by the Georgia Hospital Association; and three (3) citizens, not members of any of the foregoing groups, appointed by the Governor and representing the State at large, the Director of the State Department of Public Health, ex officio; and the Director of the State Department of Public Welfare, ex officio. Appointments made by the Governor as provided for above shall be from lists of nominees furnished by the Associations herein named and such lists shall contain two nominees for each appointment to be made. If any of the above named Associations ceases to function then the Governor shall make appointments for the association. When the appointments are first made one member from each of the associations shall be appointed for a term of two (2) years and one (1) member from each association shall be appointed for a term of four (4) years, and of the three members representing the State at large, one (1) shall be appointed for a term of two (2) years, one (1) for a term of three (3) years, and one (1) for a term of four (4) years. After the expiration of the first appointments all appointments shall be made for a period of four (4) years. The term of any ex officio member shall expire with his term of office and his successor in office shall succeed him as a member of the council. An ex officio member may designate a deputy to serve in his place as a member of the council. Such deputy member shall be subject to the same duties and responsibilities as would be imposed~~

~~upon the ex officio member. Vacancies in the membership of said council shall be filled in the same manner as the original appointments. The council shall select one of its members to serve as chairman and one of its membership to serve as vice chairman. The council shall meet at the call of the chairman or upon written request of any seven (7) members and seven (7) members shall constitute a quorum for the transaction of business. The council is authorized to adopt such by-laws, rules and regulations as it may deem necessary for the proper conduct of its proceedings in the carrying out of its duties. The Director of the State Department of Public Health shall furnish the necessary clerical assistance from among employees of the Department of Public Health as may be required by the council.~~

SECTION 13.

~~The ex officio members of the Hospital Care Council shall be paid actual and necessary travel and other expenses incurred in carrying out the functions and duties of the Council and all other members shall receive twenty dollars (\$20.00) per day for each day they are engaged in their duties as members of the council, in lieu of their personal expense incurred thereby, and shall receive mileage, at the rate provided by law, to and from the place of meeting by the nearest practical route for their respective homes. All such expenses, shall be paid from the funds appropriated to the Department of Public Health. Members of the council shall receive no emoluments or compensation for their services as such members.~~

SECTION 14.

~~This Act shall not be construed as replacing Federal, State or local programs for the indigent but may supplement such programs for hospital care of the indigent.~~

SECTION 15.

~~Any person knowingly obtaining or attempting to obtain, or who aids or abets any other person to obtain or attempt to obtain by means of a wilfully false statement or representation or impersonation, or other fraudulent device, any benefits provided by this Act, to which he is not lawfully entitled shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.~~

~~SECTION 16.~~

~~In the event any section, subsection, sentence, clause or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses or phrases of this Act, which shall be and remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional was not originally a part thereof. The legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared or adjudged invalid or unconstitutional.~~

~~SECTION 17.~~

~~This Act shall become effective when State funds become available for carrying out the provisions of this Act.~~

~~SECTION 18.~~

~~All laws and parts of laws in conflict herewith are hereby repealed.~~

~~**Rule Chapter 290-5-12. USE OF HATTERS' MERCURIAL CARROTING SOLUTIONS.**~~

~~**Rule 290-5-12-.01 Definitions**~~

~~For the purpose of carrying out the provisions of these regulations the following terms are defined:~~

~~(a) Hatters' Fur is any animal fiber or other substance used in the manufacture of hats, which is treated or otherwise prepared by the process of, or, in a manner similar to that of carroting.~~

~~(b) Carroting is the process of treating hatters' fur with mercury nitrate or any other solution or material for the purpose of rendering the hatters' fur suitable in the manufacture of hats.~~

~~(c) Mercurial carrot is any solution or material containing mercury or its compounds in combination with nitric acid or other materials and used in the carroting or preparation of hatters' fur.~~

~~Rule 290-5-12-.02 Prohibiting Use of Mercurial Carrot~~

~~Effective December 1, 1941, the use of mercurial carrot in the preparation of hatters' fur, or the use of mercurial-carroted hatters' fur in the manufacture of hats, is prohibited. Provided, that any hat manufacturer or fur cutter in this State having mercurial-carroted hatters' fur on hand December 1, 1941, may use said fur until it is consumed.~~

~~Rule Chapter 290-5-22. X-RAY.~~

~~Rule 290-5-22-.01 General Provisions~~

~~(1) Purpose and Scope.~~

~~(a) ——— To set forth rules and regulations which implement the mandates of the Radiation Control Act, O.C.G.A. Chapter 31-13, as it relates to the registration and regulation of users of radiation machines.~~

~~(b) ——— Except as otherwise specifically provided, these regulations apply to all uses of radiation machines in the healing arts, industry, educational and research institutions.~~

~~(2) Human Radiation Exposure. Radiation shall not be applied to individuals except as prescribed by persons licensed to practice in the healing arts or as otherwise provided in these regulations. Only licensed practitioners and authorized operators shall apply radiation to a person.~~

~~(3) Prohibited Use The operation of any radiation machine in this state is prohibited unless the user is registered with the Department.~~

~~(4) Definitions. Unless a different meaning is required by the context of a rule, the terms used in these regulations have the definitions set forth below.~~

~~(a) ——— "Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.~~

~~(b) ——— "Act" means the Radiation Control Act, Chapter 13 of Title 31 of the Official Code of Georgia Annotated.~~

~~(c) "Analytical x-ray machine" means any device, including but not limited to x-ray diffraction, x-ray diffractometry, and x-ray spectroscopy, which utilizes x-rays to examine the micro-structure of materials.~~

~~(d) ——— "Aperture" means any opening in the external surface, other than a port, which remains open during the production of x-rays.~~

~~(e) ——— "Applicant" means the responsible person in authority who applies for registration of the x-ray machine(s).~~

~~(f) "Barrier" means attenuating materials used to reduce radiation exposure:~~

~~1. "Primary barrier" is one sufficient to attenuate the useful beam to the required degree as specified in section 290-5-22-.03 of this chapter.~~

~~2. "Secondary barrier" is one sufficient to attenuate the sum of leakage and scattered radiation to the required degree as specified in section 290-5-22-.03 of this chapter.~~

~~(g) "Beam-limiting device" or "collimating device" means a device which provides a means to restrict the dimensions of the x-ray field.~~

~~(h) "Beam scattering filter" means a filter used in order to scatter a beam of electrons.~~

~~(i) "Cabinet x-ray machine" means an x-ray machine with the x-ray tube installed in an enclosure independent of existing architectural structures except the floor on which it may be placed. The cabinet x-ray machine is intended to:~~

~~1. contain at least that portion of a material being irradiated;~~

~~2. provide radiation attenuation; and~~

~~3. exclude personnel from its interior during generation of radiation.~~

~~Included are all x-ray machines designed primarily for the inspection of carry-on baggage at airline, railroad, and bus terminals, and in similar facilities. An x-ray tube used within a shielded part of a building, or x-ray equipment which may temporarily or occasionally incorporate portable shielding, is not considered a cabinet x-ray machine.~~

~~(j) "Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged such that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter.~~

~~(k) "Certified machine" means any x-ray machine which has one or more certified component(s) as specified in the Code of Federal Regulations, Title 21, Chapter 1, Subchapter J, Part 1020.30.~~

~~(l) "Contact therapy machine" means an x-ray machine used for therapy with the x-ray tube port placed in contact with or within 5 centimeters of the surface being treated.~~

~~(m) "Control panel" means that part of the x-ray control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.~~

(n) ——— "Dead-man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure.

(o) ——— "Department" means the Department of Human Resources.

(p) ——— "Diagnostic type tube housing" means an x-ray tube housing so constructed that the leakage radiation at a distance of 1 meter from the target cannot exceed 100 mR in 1 hour when the tube is operated at any of its specified ratings.

(q) ——— "Diagnostic x-ray machine" means an x-ray machine designed for irradiation of any part of the human body for the purpose of diagnosis or visualization.

(r) "Disposal" for the purpose of these regulations, means the sale, gift, transfer, destruction, disassembly or any disposition of a radiation machine or its parts.

(s) "Dose" as used in these regulations shall mean absorbed dose or dose equivalent as appropriate.

1. "Absorbed Dose" means energy absorbed per unit mass of irradiated material at the place of interest. The special unit of absorbed dose is the Rad (see "Rad") or Gray (see "Gray").

2. "Dose equivalent" is a quantity that expresses on a common scale for all radiation a measure of the postulated effect on a given organ. It is defined as the absorbed dose in rads times certain modifying factors. The unit of dose equivalent is the rem (see "Rem") or Sievert (see "Sievert").

(t) "Dose monitor unit" means a unit response from the dose monitoring system from which the absorbed dose can be calculated.

(u) ——— "Entrance exposure rate" means the roentgens per unit time at the point where the center of the useful beam enters the patient.

(v) "Existing equipment" means therapy machines subject to these regulations which were manufactured on or before January 1, 1985.

(w) ——— "Exposure" means a measure of the ionization produced in a given volume of air by X or gamma radiation. The unit of exposure is the Roentgen or coulombs/kilogram.

(x) "Exposure rate" means the exposure per unit of time, i.e., as Roentgens per minute, or mR per hour as measured in air. (coulombs/kilogram/unit time).

(y) "External surface" means the outside surface of the cabinet x-ray machine including the plane across any aperture or port.

~~(z) "Facility" means the location at which one or more x-ray machines are installed and/or located within one building, vehicle, or under one roof and are under the same administrative control.~~

~~(aa) — "Failsafe" means a design feature which causes beam port shutters to close, or otherwise prevents emergence of the primary beam, upon the failure of a safety or warning device.~~

~~(bb) — "Filtration" means material in the useful beam which preferentially absorbs selected radiations.~~

~~1. "Added filtration" means any filtration which is in addition to the inherent filtration.~~

~~2. "Inherent filtration" means the filtration of the useful beam provided by the permanently installed tube assembly.~~

~~3. "Total Filtration" means the sum of the added filtration and inherent filtration in the useful beam.~~

~~(cc) — "General purpose radiographic x-ray machine" means any radiographic x-ray machine which, by design, is not limited to radiographic examination of specific anatomical regions.~~

~~(dd) — "Gray" (Gy) means unit of absorbed dose. One Gy equals 1 Joule of energy deposited in one kilogram of material. One gray equals one hundred rads.~~

~~(ee) — "Half-value layer" means the thickness of specified material which attenuates the beam of radiation so that the exposure is reduced to one-half of its original value.~~

~~(ff) — "Healing Arts" means the practice of medicine, chiropractic, dentistry, osteopathy, podiatry, and veterinary.~~

~~(gg) — "High Radiation Area" means any area, accessible to individuals, in which there exists radiation at such levels that a major portion of the body could receive in any one hour a dose in excess of 100 millirems.~~

~~(hh) — "Human use" means the administration of radiation to an individual.~~

~~(ii) "Industrial radiography" means the examination of the macroscopic structure of materials by nondestructive methods using sources of ionizing radiation to produce radiographic images.~~

~~(jj) "Inspection" means an official examination or observation to be performed by the Department including but not limited to, tests, surveys, evaluations and monitoring to determine compliance with rules, regulations, orders, requirements and conditions of the Department.~~

~~(kk) — "Irradiation" means the exposure of matter to ionizing radiation.~~

~~(ll) "Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.~~

~~(mm) "Leakage radiation" means radiation emanating through the diagnostic or therapeutic source assembly except for the useful beam.~~

~~(nn) "Leakage technique factors" means the technique factors associated with the tube housing assembly which are used in measuring leakage radiation. They are defined as follows:~~

~~1. For capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs, i.e., 10 millampere seconds, or the minimum obtainable from the unit, whichever is larger.~~

~~2. For field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential.~~

~~3. For all other equipment, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.~~

~~(oo) "Light field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor.~~

~~(pp) "New equipment" means x-ray machines subject to these regulations which were manufactured after January 1, 1985.~~

~~(qq) "Occupational dose" means exposure of an individual to radiation in the course of employment in which the individual's routine duties involve exposure to radiation.~~

~~(rr) "Open beam x-ray installation" means an installation in which the source and all objects exposed to the radiation source are within an area designated as a high radiation area.~~

~~(ss) "Operator" means that individual authorized by the registrant to operate the registrant's x-ray machine(s).~~

~~(tt) "Particle accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV.~~

~~(uu) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this~~

~~State, any other State or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing.~~

~~(vv) — "Personnel monitoring equipment" means devices (i.e., film badges, pocket dosimeters, and thermo-luminescent dosimeters) designed to be worn or carried by an individual for the purpose of estimating the dose received.~~

~~(ww) — "Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.~~

~~(xx) — "Port" means any opening in the external surface which is designed to remain open during the production of x-rays for the purpose of conveying material to be irradiated into or out of the machine or for partial insertion for irradiation of material whose dimensions do not permit the insertion of the entire object into the cabinet.~~

~~(yy) — "Practitioner" means a physician licensed in Georgia under authority of Chapter 34 of Title 43 of the Official Code of Georgia Annotated; a chiropractor licensed in Georgia under authority of Chapter 9 of Title 43 of the Official Code of Georgia Annotated; a podiatrist licensed in Georgia under authority of Chapter 35 of Title 43 of the Official Code of Georgia Annotated; a dentist licensed in Georgia under authority of Chapter 11 of Title 43 of the Official Code of Georgia Annotated; or a veterinarian licensed in Georgia under authority of Chapter 50 of Title 43 of the Official Code of Georgia Annotated.~~

~~(zz) — "Precertified x-ray systems" means a diagnostic x-ray machine produced prior to August 1, 1974 as specified in the Code of Federal Regulations, Title 21, Chapter 1, Subchapter J, Part 1020.30.~~

~~(aaa) — "Rad" (radiation absorbed dose) means the unit of absorbed dose. One rad = 100 ergs/gm or .01 Gy.~~

~~(bbb) — "Radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, and other nuclear particles.~~

~~(ccc) — "Radiation area" means any area, accessible to individuals, in which there exists radiation at such levels that a major portion of the body could receive in any one hour a dose in excess of 5 millirems, or in any 5 consecutive days a dose in excess of 100 millirems.~~

~~(ddd) — "Radiation detector" means a device which, in the presence of radiation, provides by either direct or indirect means, a signal or other indication suitable for use in measuring one or more quantities of incident radiation.~~

~~(eee) — "Radiation Machine" means any device that is designed for the controlled production of radiation or nuclear particles.~~

~~(fff) — "Radiation Therapist" shall be defined as a physician who has met the requirements for certification by the American Board of Radiology in radiation therapy or by the American Board in general radiology provided that the physician has had two years or more of additional experience in radiation therapy.~~

~~(ggg) — "Radiation therapy simulation machine" means a radiographic or fluoroscopic x-ray machine specifically designed for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.~~

~~(hhh) — "Registrant" means any user registered with the Department in accordance with these regulations.~~

~~(iii) — "Registration" means registration of the user(s) of x-ray machine(s) with the Department.~~

~~(jjj) — "Regulations" means the Department of Human Resources Rules and Regulations for X-Ray, Chapter 290-5-22.~~

~~(kkk) — "Rem" means a measure of the dose equivalent of any radiation to body tissue in terms of its estimated biological effect relative to a dose received from an exposure to one roentgen (R) of x-rays. For the purpose of these regulations, any of the following is considered to be equivalent to a dose of one rem:~~

- ~~1. An exposure of 1 R of x-, or gamma radiation.~~
- ~~2. A dose of 1 rad (.01 Gy) due to x-, gamma, or beta radiation.~~
- ~~3. A dose of 0.05 rad (5×10^{-4} Gy) due to particles heavier than protons and with sufficient energy to reach the lens of the eye.~~
- ~~4. A dose of 0.1 rad (1×10^{-3} Gy) due to neutrons or high energy protons.~~

~~(lll) — "Restricted area" (controlled area) means any area to which access is controlled by the registrant for purposes of protection of individuals from exposure to radiation. "Restricted area" shall not include any areas used for residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.~~

~~(mmm) — "Roentgen" (R) means the special unit of exposure. One roentgen equals 2.58×10^{-4} coulombs/kilogram of air.~~

~~(nnn) — "Sale" for the purpose of these regulations, means any act where a radiation machine is transferred from one person to another for money or other valuable consideration.~~

~~(ooo) — "Scattered radiation" means radiation that, during passage through matter, has been deviated in direction.~~

~~(ppp) — "Shielded-room radiography" means industrial radiography conducted in a room so shielded that radiation levels at every location on the exterior meet the limitations specified in Section .03 of these regulations.~~

~~(qqq) — "Sievert" (Sv) means a unit of dose equivalent. One sievert equals 100 rem.~~

~~(rrr) — "Source" means the focal spot (target) of the x-ray tube.~~

~~(sss) — "Source-image receptor distance" (SID) means the distance from the source to the center of the input surface of the image receptor.~~

~~(ttt) — "Spot check" means an abbreviated calibration procedure which is performed to assure that a previous calibration continues to be valid.~~

~~(uuu) — "Target" means that part of a radiation source which intercepts a beam of accelerated particles with subsequent emission of other radiation.~~

~~(vvv) — "Test" means an examination through the use of instrumentation, visual inspection, interviews with individuals, and checks of various devices used in connection with radiation generating equipment to determine compliance with a regulatory requirement.~~

~~(www) — "Therapy radiation" means the use of an ionizing radiation source for the purpose of treatment.~~

~~(xxx) — "Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one or more intermediate steps and that all comparisons have been documented.~~

~~(yyy) — "Transfer" for the purpose of these regulations, means the disposing of a radiation machine by any means including, but not limited to gift, sale, bailment, loan or lease.~~

~~(zzz) — "Unrestricted area" (uncontrolled area) means any area to which access is not directly controlled by the registrant for purposes of protection of individuals from exposure to radiation.~~

~~(aaaa) — "Unwanted by product" means ionizing radiation generated by an apparatus whose primary function and design is not intended to produce ionizing radiation.~~

~~(bbbb) — "Useful beam" means the radiation which passes through the tube housing port and the aperture of the beam-limiting device when the exposure switch or timer is activated.~~

~~(cccc) — "User" means any person who possesses a radiation machine which is utilized for the administration of radiation.~~

~~(dddd) —"Virtual source" means a point from which radiation appears to originate.~~

~~(eeee) —"X-Ray machine" for the purposes of these regulations means a radiation machine designed for the controlled production of x-rays.~~

~~(5) Variances, Waivers, and Exemptions The Department may, upon application, grant such variances, waivers, or exemptions from the requirements of these regulations as authorized by O.C.G.A. Section 31-2-4.~~

~~(6) Inspections.~~

~~(a) —The Department is the authorized agency empowered to inspect and determine compliance with the Act and these regulations.~~

~~(b) —Each registrant shall afford the Department at all reasonable times opportunity to inspect radiation machines and the premises and facilities wherein such radiation machines are used.~~

~~(c) Each registrant shall make available to the Department for inspection, upon reasonable notice, records maintained by the registrant pursuant to this Chapter.~~

~~(d) —The Department shall conduct periodic inspections of registrants to determine compliance with the Act and this Chapter.~~

~~(e) —The Department or its designated representative is authorized under the authority of O.C.G.A. Section 31-5-5(b) to classify as confidential and privileged documents, reports and other information and data obtained by them from persons, firms, corporations, municipalities, counties, and other public authorities and political sub-divisions where such matters relate to:~~

~~1. Trade secrets and commercial or financial information furnished to the Department on a privileged or confidential basis. Matters subject to this exemption are those which are customarily held in confidence by the originator. They include, but are not limited to:~~

~~(i) Information received in confidence, such as trade secrets, inventions, and proprietary data;~~

~~(ii) Technical reports and data, designs, drawings, specifications, formulas, or other types of proprietary information which are furnished to the Department or which are generated or developed by the Department or for the Department under contract.~~

~~2. Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Examples of files exempt from disclosure include, but are not limited to:~~

~~(i) Names or identifying information regarding individuals.~~

~~Discovery shall be subject to the statutory requirements found in O.C.G.A. Section 31-5-5.~~

~~(f) Whenever the Department finds that an emergency exists requiring immediate action to protect the public health and safety, the Department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provision of Chapter 13 of Title 31 of the Official Code of Georgia Annotated, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but on application to the department shall be afforded a hearing within ten days. On the basis of such hearing the emergency order shall be continued, modified or revoked within 30 days after such hearing, as the Department may deem appropriate under the evidence.~~

~~(7) Tests.~~

~~(a) — The Department has the authority to conduct such reasonable tests as it deems appropriate or necessary in the administration of this Chapter, including, but not limited to, tests of:~~

- ~~1. — sources of radiation;~~
- ~~2. — facilities wherein sources of radiation are used or stored;~~
- ~~3. — radiation detection and monitoring instruments; and~~
- ~~4. — other equipment and devices used in connection with utilization or storage of registered sources of radiation.~~

~~(8) Requirements for Radiation Protective Shielding.~~

~~(a) — Each facility shall be provided with such primary barriers and/or secondary barriers as necessary to assure compliance with Section .03(2)(a) and (b) of these Regulations titled "Standards for Protection Against Radiation".~~

~~(b) — In computing shielding requirements, only identified permanently installed construction materials or permanently installed lead shielding materials shall be considered. Cassettes, cassette holders, (except as specifically permitted elsewhere in this Chapter), patients, or non-permanent materials shall not be used as part of the radiation shielding.~~

- ~~1. — For energies up to 1 MeV:~~

~~(i) — This requirement shall be deemed to be met if the thickness of the barrier(s) is equivalent to that computed in accordance with National Council on Radiation Protection and Measurements (NCRP) Report No.49 "Structural Shielding Design and Evaluation for Medical Use of X-Rays and Gamma Rays of Energies Up to 10 MeV" or its current revision or replacement.~~

~~(ii) — A primary barrier in walls shall extend from the floor to a minimum height of 84 inches and shall have a width broad enough to intercept the~~

~~entire cross section of the useful beam plus an extension of at least one foot (30 cm) on each side of the barrier at the maximum SID used with the maximum beam dimensions permitted by the beam limiting device. All sections of the wall or adjacent areas including the floor that may be struck by the useful beam shall be considered primary barriers.~~

~~(iii) — In calculating radiation shielding requirements workloads shall be realistic, but in no case, except for intra-oral dental x-ray facilities, less than 15 milliamperere minutes (mAm) per week at 100 kVp, or at the maximum stated energy of the x-ray machine if it is less than 100 kVp.~~

~~2. — For energies of 1 MeV or greater: This requirement shall be deemed to be met if the thickness of barrier(s) is equivalent to that computed in accordance with the National Council on Radiation Protection and Measurements (NCRP) Report No.51, "Radiation Protection Design Guidelines for 0.1-100 MeV Particle Accelerator Facilities," or its current revision or replacement.~~

~~(c) Non-healing arts facilities shall meet the shielding design criteria described in .01(8)(a) and (b).~~

~~(d) — During the construction phase, the installation of shielding shall be evaluated pursuant to procedures outlined in NCRP Handbook 49 or NCRP Handbook 51 or its current revision or replacement. The registrant is responsible for ensuring that such evaluation is performed by an individual competent to perform such evaluation.~~

~~(e) — Facilities may be required to have a radiation integrity survey of the completed installation to assure that:~~

~~1. — materials used for shielding are not impaired by joints, openings for duct pipes, conduits, etc., passing through or embedded in the wall; and~~

~~2. — such materials meet the minimum lead equivalency as stated in submitted design.~~

~~The registrant is responsible for ensuring that such survey is performed by an individual competent to perform such survey.~~

~~(f) The final assessment of the adequacy of the design and construction of structural shielding shall be based on a radiation survey of the completed installation. If the radiation survey shows deficiencies, additional shielding and/or modifications shall be provided to the satisfaction of the Department.~~

~~(9) Shielding Design Plan Review.~~

~~(a) — Shielding designs, to include facility layout and machine orientation, shall be submitted to the Department for approval prior to the construction of a new facility or the modification (i.e., reorientation of equipment, increased workload,~~

~~exchange of radiation machine, etc.) of an existing facility using radiation machines for:~~

- ~~1.—Diagnostic or therapeutic purposes in the healing arts.~~
- ~~2.—Non-healing arts applications which includes, but is not limited to, industrial applications.~~

~~(b) Radiation shielding designs submitted for review shall contain at least the following information:~~

- ~~1.—The location of the radiation machine; Name, Address, Room number; and~~
- ~~2.—Travel and traverse limits permitted by the manufacturer; direction(s) of the useful beam; locations of windows and doors; the location of the operator's booth; and the location and dimensions of the x-ray control panel; and~~
- ~~3.—The structural composition and thickness or lead equivalency of all walls, doors, partitions, floors, and ceiling of the room(s) when considered as part of the shielding requirements; and~~
- ~~4.—The dimensions of the x-ray room(s); and~~
- ~~5.—The occupancy of all adjacent areas inclusive of space above and below the x-ray room(s); and~~
- ~~6.—The maximum technique factors which are anticipated; and~~
- ~~7.—The type and number of examination(s) or treatment(s) which will be performed with the equipment; or~~
- ~~8.—The anticipated workload of the radiation machine(s) in milliamp minutes per week (or rads/week at 1 meter for therapy machines only) at the maximum anticipated operating energy.~~

~~(c) X-Ray Room Design Requirements:~~

- ~~1.—Healing Arts:
 - ~~(i) Except for dental, dedicated podiatric and veterinary x-ray facilities, in all x-ray facilities built or modified after the effective date of these regulations, the x-ray room shall have minimum dimensions of 8 feet (2.4 m) by 10 feet (3.0 m) sufficient to assure source-to-image distances equal to those currently accepted in the healing arts to make standard radiographs of anatomical regions.~~
 - ~~(ii) There shall be sufficient work space allotted to the x-ray assistants to set up procedures.~~~~

~~2.—Other than healing arts. Sufficient space shall be allotted to adequately perform duties and assure radiation safety.~~

~~(d) —Radiation Machine Operator's Protective Barrier.~~

~~1.—Diagnostic x-ray facilities other than dental intraoral, dental panoramic, and veterinary, built or modified after the effective date of these regulations shall have a fixed operator's barrier.~~

~~(i) —Design Requirements for fixed operator's barrier.~~

~~(I) —The operator shall be allotted not less than 7.5 square feet (.697 sq.m.) of unobstructed floor space in the booth.~~

~~(II) —The operator's booth may be any geometric configuration with no dimension of less than 2 feet (0.61 m).~~

~~(III) —Structural Requirements:~~

~~I. —The barrier walls shall be permanently fixed and have a height of at least 7 feet (2.13 m) from the floor.~~

~~II. —When a door or movable panel is used as an integral part of the structure, it must have an interlock which will prevent an exposure when the door or panel is not closed.~~

~~III. —The barrier shall intercept any radiation that has been scattered only once and will insure that the limit of 100 mrem/wk (1 mSv/week) permitted for personnel exposure shall not be exceeded. Design guidelines should consider 10 mrem/week (.1 mSv/week).~~

~~(ii) —Radiation Machine Control Placement:~~

~~(I) —The x-ray control for the machine shall be fixed within the booth and:~~

~~(II) —placed so that the operator cannot conveniently leave the protection of the barrier during an exposure, and~~

~~(III) —will permit the operator to conveniently use available viewing devices.~~

~~(iii) —Viewing Device Requirements for Medical Facilities:~~

~~(I) —Each booth or barrier shall be equipped with at least one viewing device which will be so placed that the operator can easily view the patient during any exposure.~~

~~(II) — When the viewing system is by mirrors, the mirror(s) shall be so located as to accomplish the general requirements.~~

~~(III) — When the viewing system is by electronic means:~~

~~I. — the camera shall be so located as to accomplish the general requirements, and~~

~~II. — there shall be an equivalent viewing system as a backup for the primary system.~~

~~2. — Portable barriers may be substituted for .01(9)(d)1. where fixed barriers are inappropriate for the x-ray procedures but only upon written application to the Department stating the reasons a portable operator's barrier is necessary.~~

~~3. — Design Requirements for Portable barriers.~~

~~(i) — The barrier shall meet shielding and viewing requirements of .01(9)(d)1. (i) and (iii).~~

~~(ii) — Clear instructions on the placement and use of the barrier shall be posted on the operator's side of the barrier.~~

~~4. — Lead aprons shall be used by persons who assist in procedures where holding or close contact with a patient undergoing an x-ray procedure is required.~~

~~(10) Copy of Design Maintained. A copy of the shielding design as submitted to and approved by the Department shall be kept on file at the facility.~~

~~(11) Compliance. After receiving written notice that specific areas of non-compliance with these rules and regulations exist in a registered x-ray facility, the registrant shall make required corrections and notify the Department of the action(s) taken within the time authorized by the Department which shall not exceed 60 days.~~

~~(12) Impounding.~~

~~(a) — In the event of an emergency, the department shall have the authority to impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of the Act or these regulations.~~

~~(b) — The department may release such sources of radiation to the owner thereof upon terms and conditions in accordance with the Act and these regulations or may bring an action in the appropriate superior court for an order condemning such sources of radiation and providing for their destruction or other disposition so as to protect the public health and safety.~~

~~(13) Rules and Regulations. Each registrant shall possess a current copy of the Rules and Regulations for X-Ray, Chapter 290-5-22, which shall be maintained in the registered facility.~~

Rule 290-5-22-.02 Registration

~~(1) Registration.~~

~~(a) All users of radiation machines in Georgia are required to register with the Department.~~

~~(b) Application for registration shall be on forms provided by the Department.~~

~~(c) The user shall complete a separate application for registration for each facility at which he possesses a radiation machine.~~

~~(d) The user applying for initial registration shall certify to the Department in his registration application that he has determined through inspection that he is in compliance with these regulations. The user shall also certify that, when registered, he will use his machines in compliance with all standards set by the Department. For purposes of registration, inspections may be performed by employees of the Department. Should the user elect to obtain the services of persons other than employees of the Department, for the purpose of performing an inspection for certifying to the Department that his facility and machines are in compliance with these regulations prior to initial registration, the user shall insure that the individual possesses one set of the qualifications listed in .02(4):~~

~~(e) Additional requirements for initial registration.~~

~~1. The user shall submit shielding specifications for each facility for which he is registering.~~

~~2. The user is responsible to document that the required shielding was installed in accordance with design specifications. A report certifying test results shall be sent to the Department and a copy maintained at the facility.~~

~~(i) Tests shall be made pursuant to the procedures outlined in the National Council on Radiation Protection: Report 35 Dental X-Ray Protection; Report 49 Structural Shielding Design and Evaluation for Medical Use of X-Rays and Gamma Rays of Energies up to 10 Mev; Report 51 Radiation Protection Guidelines for 0.1-100 Mev Particle Accelerator Facilities; or, the published guidelines of other recognized authorities in the field of radiation protection.~~

~~3. Cabinet x-ray systems in addition to .02(1) of this rule, persons applying for registration shall provide written verification to the Department that the cabinet~~

~~x-ray system is installed and operating in accordance with the manufacturer's design specifications.~~

~~(f) The user of any radiation machine shall not initially place such machine in operation prior to registration with the Department.~~

~~(g) ——— Registration of Out of State Machines.~~

~~1. ——— When any radiation machine is to be brought into the state of Georgia and operated, the person proposing to bring such machine into the state of Georgia shall give written notice to the Department at least five (5) working days before such machine enters the state. The notice shall include the type of radiation machine the nature, duration, and scope of use; and the exact location(s) of use. Telephone notification may be used in cases where the five day notice would pose an undue hardship, but such notification shall be confirmed in writing as soon as possible thereafter.~~

~~2. ——— In addition, the out-of-state person shall comply with all applicable requirements of these regulations and supply the Department with such other information as the Department may reasonably request.~~

~~(2) Registration of Particle Accelerators. In addition to (1) of this rule persons applying for registration of particle accelerators shall submit the supplemental information required in Rule 290-5-22-.05(3) and if the particle accelerator is for human use the information required in Rule 290-5-22-.05(4).~~

~~(3) Failure to register as provided in .02(1) shall subject the offending person to a civil penalty not to exceed \$1000.00, and any other legal remedies available as required in O.C.G.A. 31-13-15.~~

~~(4) Formal Education or Certification plus Experience.~~

~~(a) Bachelor's degree in a physical science or mathematics.~~

~~Four years of applied health physics experience in a pro-gram with radiation safety problems similar to those in the program to be surveyed.~~

~~(b) Bachelor's degree in a physical science or a biological science with a physical science minor, and one year of graduate work in health physics.~~

~~Three years of applied health physics experience in a program with radiation safety problems similar to those in the program to be surveyed.~~

~~(c) Master's degree in health physics or radiological health.~~

~~Two years of applied health physics experience in a program with radiation safety problems similar to those in the program to be surveyed.~~

~~(d) Doctor's degree in health physics or radiological health.~~

~~One year of applied health physics experience in a program with radiation safety problems similar to those in the program to be surveyed.~~

~~(e) Certification by the American Board of Health physics or by the American Board of Radiology, or be a Fellow, Canadian College of Physicists in Medicine.~~

~~One year of applied health physics experience in a program with radiation safety problems similar to those in a program to be surveyed.~~

~~(5) The user shall maintain on file the qualifications of the non-Departmental individuals performing the inspection for purposes of initial registration.~~

~~(6) Renewal of Registration. Every registrant possessing a radiation machine shall renew registration at intervals as required by the Department.~~

~~(7) Report of Changes. The registrant shall notify the Department writing of any changes which would render the information contained in the current registration inaccurate. Notification of any changes in the radiation machine's location, shielding, operation, safety features, or occupancy of adjacent areas must also be made to the Department, and may require a radiation safety survey and re-registration prior to continued operation of the machine.~~

~~(8) Report of Sale, Lease, Transfer, or Disposal. Any person who sells, leases, transfers, or otherwise disposes of a radiation machine shall notify the Department in writing. Written notification shall include, when applicable, the name and address of the new owner or lessee, and/or facility, the date of the transaction, and the model and serial number of the machine or machines.~~

~~(9) Exemptions:~~

~~(a) ——— Electronic equipment that produces radiation incidental to its operation for other purposes (i.e. television receivers) is exempt from the registration and~~

~~notification requirements of this part, provided the dose equivalent rate averaged over an area of 10 square centimeters does not exceed 0.5 mRem per hour at 5 cm. from any accessible surface of such equipment. Production, testing, or factory service of such equipment shall not be exempt.~~

~~(b) ——— Radiation machines while inoperable or in transit or storage are exempt from the requirements of these regulations.~~

~~(10)Revocation. Registration may be revoked by the Department for failure to comply with or maintain compliance with Chapter 13 of Title 31 of the Official Code of Georgia Annotated or the provisions of this Chapter. Prior to revocation of any registration, the registrant shall be given notice of the grounds for revocation and shall have an opportunity to show cause why the revocation action should not proceed as provided in Article 1 of Chapter 5 of Title 31 of the Official Code of Georgia Annotated.~~

Rule 290-5-22-.03 Standards for Protection against Radiation

~~(1) General Provisions.~~

~~(a) ——— If it is more convenient to measure the neutron flux, or equivalent, than to determine the neutron absorbed dose in rads (grays), one rem (.01 Sv) of neutron radiation may, for purposes of these regulations, be assumed to be equivalent to 14 million neutrons per square centimeter incident upon the body; or, if there exists sufficient information to estimate with reasonable accuracy the approximate distribution in energy of the neutrons, the incident number of neutrons per square centimeter equivalent to one rem may be estimated from the following table:~~

~~Neutron Flux Dose Equivalents~~

Neutron energy (MeV)	Number of neutrons per square centimeter for a dose equivalent of 1 rem (neutrons/cm²)	Average flux density hours (neutrons/cm²)
Thermal	9.7&times;10⁶	670
0.00004	7.2&times;10⁶	500
0.005	8.2&times;10⁶	570
0.02	4.0&times;10⁶	280
0.1	1.2&times;10⁶	80
0.5	4.3&times;10⁵	30

1.0	2.6×10^5	18
2.5	2.9×10^5	20
5.0	2.6×10^5	18
7.5	2.4×10^5	17
10.0	2.4×10^5	17
10 to 30	1.4×10^5	10

(b) ~~For determining the doses specified in this section, a dose from x or gamma radiation up to 10 MeV may be assumed to be equivalent to the exposure measured by a properly calibrated appropriate instrument in air, at or near the body surface in the region of highest exposure rate.~~

(c) ~~Dose to the whole body shall include any dose to the entire body or any major portion thereof, gonads, active blood-forming organs, head and trunk, or lens of the eye.~~

(2) ~~Permissible Doses.~~

(a) ~~Occupational Exposure~~

1. ~~Except as provided in .03(2)(a)2., no registrant shall possess, own, use, or receive, sources of radiation in such a manner as to cause an occupationally exposed individual to receive, from all sources of radiation in the possession of the registrant, a dose in excess of the limits in the following table:~~

-	Rems (Sv) Per Calendar Quarter
Whole body; head and trunk; active blood-forming organs; lens of eyes; or gonads.....	$1 \frac{1}{4}$ rem (12.5 mSv)
Hands and forearms; feet and ankles.....	$18 \frac{3}{4}$ rem (187.5 mSv)
Skin of whole body.....	$7 \frac{1}{2}$ rem (75 mSv)

2. — ~~A registrant may permit an occupationally exposed individual to receive a dose to the whole body greater than that permitted under .03(2)(a)1. provided:~~

~~(i) — during any calendar quarter the dose to the whole body from sources of radiation in the possession of the registrant shall not exceed 3 rems (30 mSv);~~

~~(ii) — the dose to the whole body when added to the accumulated occupational dose to the whole body shall not exceed 5 (N-18) rems [50(N-18)mSv], where "N" equals the individual's age in years at his last birthday; and~~

~~(iii) — the registrant has determined the individual's accumulated occupational dose to the whole body on a Department form, or on a clear and legible record containing all the information required on that form.~~

3. — ~~Individuals under 18 years of age in x-ray training schools or employed in occupations which involve exposure to ionizing radiation shall have a personnel radiation monitoring device and shall not be permitted to receive a dose to the whole body in excess of 10% of the dose permitted in .03(2)(a)1.~~

~~(b) — Non-Occupational Exposure.~~

1. — ~~The dose limits for individuals employed in occupations which do not normally involve exposure to ionizing radiation shall be one-tenth of the occupational limits under .03(2)(a)1., excluding medical radiation for the purpose of diagnosis or therapy.~~

2. — ~~For the purposes of these regulations the embryo/fetus shall be considered to be a separate entity distinct from the occupationally exposed woman carrying it, and shall not be subject to occupational limits.~~

3. — ~~The embryo/fetus shall not be exposed to doses in excess of 50 mrem in any one month after the pregnancy is known. The total dose equivalent limit to the embryo/fetus shall not exceed 500 mrem over the period of gestation.~~

~~(c) Radiation Levels in Unrestricted (Uncontrolled) Areas.~~

1. — ~~Except as authorized by the Department pursuant to .03(2)(c)2., no registrant shall possess, own, or use sources of radiation in such a manner as to create in any uncontrolled area from such sources of radiation in his possession radiation levels which, if an individual were continuously present in the area, could result in an individual receiving:~~

~~(i) — a dose in excess of two millirems in any one hour; or~~

~~(ii) — a dose in excess of 100 millirems in any seven consecutive days.~~

~~2. Any registrant or prospective registrant may apply to the Department for proposed limits upon levels of radiation in uncontrolled areas in excess of those specified in .03(2)(c)1., resulting from the applicant's possession or use of sources of radiation. Such applications should include information as to anticipated average radiation levels and anticipated occupancy times for each uncontrolled area involved. The Department may approve the proposed limits if the applicant demonstrates to the satisfaction of the Department that the proposed limits would not cause an individual to receive doses to the whole body in any period of one calendar year in excess of 0.5 rem (5.0 mSv).~~

~~(3) Personnel Monitoring.~~

~~(a) Except as provided in .03(3)(c), each registrant shall supply appropriate personnel radiation monitoring devices and shall require the use of such equipment by:~~

~~1. Each individual who enters a controlled area under such circumstances that the individual receives, or is likely to receive, a radiation dose in any calendar quarter in excess of 25 percent of the applicable values specified in .03(2)(a)1. for occupational exposure;~~

~~2. Each individual under 18 years of age who enters a controlled area under such circumstances that the individual may receive a radiation dose in excess of 10 percent of the applicable value specified in .03(2)(a)1.~~

~~3. Each individual who enters a high radiation area.~~

~~(b) All individuals required to use personnel monitoring equipment shall be instructed in its proper use and purpose.~~

~~(c) Personnel monitoring will not be required for individuals undergoing diagnostic or therapeutic procedures.~~

~~(d) When using protective aprons, personnel monitoring shall be worn outside the apron at collar level.~~

~~(4) Caution Signs, Labels, and Signals.~~

~~(a) Radiation Symbol~~

~~1. Except as otherwise authorized by the Department, the symbol prescribed by this section is the conventional three-bladed warning sign commonly used in the radiological professions and shall use the conventional radiation caution colors (magenta or purple on yellow background).~~

~~2. In addition to the contents of signs and labels prescribed in these regulations, a registrant may provide any additional information on or near such signs and labels to indicate the nature of the radiation source, type of radiation,~~

~~limits of occupancy, and similar precautionary information which may be appropriate in aiding individuals to minimize exposure to radiation.~~

~~(b) — Radiation Areas. Each radiation area, except areas where diagnostic and therapeutic radiation machines are used solely in the healing arts, shall be conspicuously posted with a sign or signs bearing the radiation symbol and the words: CAUTION — RADIATION AREA.~~

~~(c) High Radiation Areas. Each high radiation area, except areas where diagnostic and therapeutic radiation machines are used solely in the healing arts, shall be conspicuously posted with a sign or signs bearing the radiation symbol and the words: CAUTION — HIGH RADIATION AREA.~~

~~(d) — Radiation Generator Warning Signals. Each radiation generator, except radiographic and fluoroscopic radiation machines used solely in the healing arts, which is capable of producing, in any area accessible to individuals, a dose rate in excess of 100 millirems per hour, shall be provided with a warning signal or light at the generator. Such a signal or light shall be so connected as to be activated automatically when the exposure switch is "on" in order to provide adequate warning against entering the area.~~

~~Rule 290-5-22-.04 X-Rays in the Healing Arts~~

~~(1) Scope. This part establishes requirements, for which a registrant is responsible, for use of x-ray equipment by or under the supervision of an individual authorized in accordance with State statutes to engage in the healing arts. The provisions of this part are in addition to, and not in substitution for, other applicable provisions of these regulations.~~

~~(2) General Requirements.~~

~~(a) — Training of Operators who Administer X-ray in the Healing Arts.~~

~~1. — The registrant shall assure the Department that all radiation machines and associated equipment under his control are operated only by individuals instructed in safe operating procedures.~~

~~2. — The registrant shall require persons operating his radiation machine and associated equipment to receive, at a minimum, six hours of instruction. The following subject categories shall be covered:~~

~~(i) — Protection Against Radiation~~

~~(I) — Protective Clothing~~

~~(II) — Patient Holding~~

~~(III) — Time, Distance, Shielding~~

- ~~(IV) — Radiation Protection Standards~~
 - ~~(ii) — Dark Room Techniques~~
 - ~~(I) — Developing Chemicals~~
 - ~~(II) — Film Protection~~
 - ~~(III) — Cassettes~~
 - ~~(IV) — Screens~~
 - ~~(iii) — Patient Protection~~
 - ~~(I) — Beam Limitation~~
 - ~~(II) — Setting Up Techniques~~
 - ~~(III) — Biological Effects of Radiation~~
 - ~~(iv) — Machine Safety~~
 - ~~(I) — Machine Functions~~
 - ~~(II) — Safety Procedures~~
 - ~~(III) — Recognizing Problems~~

~~3. — Instruction required by .04(2)(a)2. shall begin within 30 days after employment and shall be completed no later than 90 days after date of employment. The registrant shall maintain a record of all training for each operator. Such record shall be made available for Departmental inspection. This rule shall take effect 180 days after the effective date of these regulations.~~

~~4. — Persons who show written proof that they have received the required instruction are considered to meet the requirements of .04(2)(a)2.~~

~~(b) — Except for patients who cannot be moved out of the room, only the staff and ancillary personnel required for the medical procedure or training shall be in the room during the radiographic exposure. Other than the patient being examined:~~

~~1. — All individuals shall be positioned such that no part of the body will be struck by the useful beam, unless protected by at least 0.5 millimeter meter lead equivalent material; and~~

~~2. — Staff and ancillary personnel who must remain in areas because of their required presence during an x-ray procedure, shall be protected from direct scatter radiation by protective aprons or whole body protective barriers of not less than 0.25 millimeter lead equivalent; and~~

~~3. — Patients, other than the one being radiographed, who cannot be removed from the x-ray room shall be protected by a barrier of at least .25 mm Pb equivalent or be at least 2 meters from the tube head and the image receptor.~~

~~(c) Except for dental intraoral radiography, veterinary, or portable x-ray use, the operator's position at the controls shall be in a protected area that will meet the radiation protection requirements of rule .03(2)(a)1. of these regulations.~~

~~(d) — Except for therapy exposures, gonad shielding of not less than 0.25 millimeter lead equivalent shall be available and shall be used when the gonads are in the useful beam except when its use will interfere with the diagnostic information on the image receptor.~~

~~(e) — Individuals shall only be exposed to the useful beam for healing arts purposes except as required by law enforcement officials or their designated representatives in the interest of public safety. This provision specifically prohibits deliberate exposure of persons for non-productive x-ray procedures such as for training, demonstration, or for other non-healing arts purposes.~~

~~(f) When a patient or film must be provided with auxiliary support during a radiation exposure:~~

~~1. — Mechanical holding devices shall be used when the technique permits. Holding shall be used only when other means of support cannot be utilized.~~

~~2. — No individual shall be used routinely to hold film or patients.~~

~~3. — When holding is required, the person holding shall be provided with protective clothing and shall be positioned so that no part of the body is struck by the useful beam.~~

~~(g) — Portable equipment shall be used only for examinations where it impractical, for medical purposes, to transfer the patient to the x-ray suite.~~

~~(3) Information and Maintenance Records and Associated Information.~~

~~(a) — The registrant shall maintain the following information for each radiation machine for inspection by the Department:~~

~~1. — Model and serial numbers of x-ray tube housing and generator; and~~

~~2. — Records of surveys, calibrations, maintenance, and modifications performed on the radiation machine(s) with the names of persons who performed such services.~~

~~(b) — The vendor shall supply the registrant with a record of all maintenance performed, or parts replaced or installed, written in a clear and legible manner.~~

~~(4) Light Fields. When used for aligning or centering an x-ray field, a light field shall have a clearly defined perimeter and have illumination intensity equal to the needs for~~

~~collimation or alignment. For collimators equipped with beam defining lights, this requirement will be deemed to be met if the illumination at the receptor is visible to the x-ray operator under normal room illumination in all quadrants of the light field.~~

~~(5) Darkroom and Film Processors.~~

~~(a) — Darkrooms used for film processing and/or developing shall be light tight.~~

~~(b) — Each darkroom shall be equipped with a safelight which will meet or exceed the requirements of the radiographic film. This will be deemed to have been met if the film manufacturer's recommendations are followed.~~

~~(c) Except for automatic developing systems, each darkroom shall have and use a solution thermometer and timing device. Sight development shall be prohibited.~~

~~(d) — The chemical solution used for manual film development shall not be used for periods in excess of two (2) months. Records of solution changes shall be maintained.~~

~~(e) — When automatic film processing is used it shall be maintained in accordance with the manufacturer's recommendations and a record of cleaning and developer change shall be maintained.~~

~~(f) Unexposed film shall not be subject to radiation levels in excess of 0.2 mR during the period of storage.~~

~~(g) — Unexposed film which is outdated shall not be used for human radiographic procedures.~~

~~(6) General Requirements for all Diagnostic Radiation Machines. In addition to other requirements of this part, all diagnostic radiation machines shall meet the following requirements:~~

~~(a) — Warning Label. The control panel containing the main power switch shall bear the following warning statement, in a manner legible and accessible to view:~~

~~"WARNING: This x-ray unit may be dangerous to patient and operator unless safe exposure factors and operating instructions are observed"~~

~~(b) — Battery Charge Indicator. On battery-powered x-ray generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.~~

~~(c) Leakage Radiation From The Diagnostic Source Assembly. The leakage radiation from the diagnostic source assembly, measured at a distance of 1 meter in any direction from the source, shall not exceed 100 milliroentgens in 1 hour when the x-ray tube is operated at its leakage technique factors.~~

~~(d) Beam Quality.~~

~~1. Half-value layer.~~

~~(i) The half-value layer of the useful beam for a given x-ray tube potential shall be no less than the values shown in Table I. If it is necessary to determine the half-value layer at an x-ray tube potential which is not listed in Table I, linear interpolation or extrapolation may be made.~~

~~TABLE I~~

~~Design Operating Measured Potential Half-value layer~~

Range (Kilovolts Peak)	(Kilovolts Peak)	(Millimeters of Aluminum)
Below 50	30	0.3
-	40	0.4
-	49	0.5
50 to 70	50	1.2
-	60	1.3
-	70	1.5
Above 70	71	2.1
-	80	2.3
-	90	2.5
-	100	2.7
-	110	3.0
-	120	3.2
-	130	3.5
-	140	3.8
-	150	4.1

~~(ii) The requirements of .04(6)(d)1. (i) will be considered to have been met if it can be demonstrated that the aluminum equivalent of the total filtration in the primary beam is not less than that shown in Table II.~~

~~TABLE II~~

~~Filtration Required vs. Operating Voltage~~

Operating Voltage (kVp)	Total Filtration (inherent plus added) (millimeters aluminum equivalent)
Below 50	0.5 millimeters
50 to 70	1.5 millimeters
Above 70	2.5 millimeters

~~(iii) Beryllium window tubes shall have a minimum of 0.5 millimeter aluminum equivalent filtration permanently installed in the useful beam.~~

~~(iv) For capacitor energy storage equipment, compliance with the requirements of .04(6)(d)1. (i) shall be determined with the maximum quantity of charge per exposure.~~

~~(v) The required minimal aluminum equivalent filtration shall include the filtration contributed by all materials which are always present between the source and the patient.~~

~~2. — Filtration Controls. For radiation machines which have variable kVp and variable filtration for the useful beam, a device shall link the kVp selector with the filter(s) and shall prevent an exposure unless the minimum amount of filtration required by .04(6)(d)1. (i) or (ii) is in the useful beam for the given kVp which has been selected.~~

~~(7) Multiple Tubes. Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes which have been selected shall be clearly indicated prior to initiation of the exposure. This indication shall be both on the x-ray control panel and at or near the tube housing assembly which has been selected.~~

~~(8) Mechanical Support of Tube Head. The tube housing assembly supports shall be adjusted such that the tube housing assembly will remain stable during an exposure unless the tube housing movement is a designed function of the radiation machine.~~

~~(9) Technique Indicators. The technique factors to be used during an exam shall be indicated prior to any exposure. This requirement may be met by permanent markings on equipment having fixed technique factors. Indication of technique factors shall be visible from the operator's position except in the case of spot films made by the fluoroscopist.~~

~~(10) Exposure Timing.~~

~~(a) — Except in fluoroscopy a device shall be used to terminate and accurately reproduce the exposure at a preset time interval, preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor.~~

~~(b) — Except for fluoroscopy, dental intraoral and panoramic, veterinary, and procedures requiring the use of portable barriers, the exposure switch shall be so located that it cannot be conveniently operated outside of a shielded area.~~

~~(c) Except during serial radiography, the operator shall be able to terminate the exposure at any time during an exposure of greater than one-half second.~~

~~(d) — During serial radiography, the operator shall be able to terminate the x-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in process.~~

~~(e) — Automatic exposure controls.~~

~~1. — When an automatic exposure control is provided, indication shall be made on the control panel when this mode of operation is selected.~~

~~2. — When an automatic exposure control is provided, a backup timer shall be required. The backup timer shall be capable of terminating the exposure at a preset time should the automatic exposure control fail. The preset time shall be consistent with the technique used.~~

~~(f) The x-ray production shall be controlled by a deadman switch.~~

~~(g) — It shall not be possible to make an exposure when the time is set to a zero or off position if either position is provided.~~

~~(h) — Termination of an exposure shall cause automatic resetting of the timing device to its initial setting or to zero.~~

~~(11) Hand-held fluoroscopic screens are prohibited except for law enforcement or forensic requirements, and then only upon approval by the Department.~~

~~(12) Fluoroscopic Radiation Machines. All fluoroscopic radiation machines shall meet the following requirements:~~

~~(a) — Limitation of Useful Beam.~~

~~1. — Primary Barrier.~~

~~(i) — Image intensification shall be used with all fluoroscopic machines. The fluoroscopic imaging assembly shall be provided with a primary protective barrier which intercepts the entire cross section of the useful beam at any SID.~~

~~(ii) — The x-ray tube used for fluoroscopy shall not produce x-rays unless the barrier and image intensifier are in position to intercept the entire useful beam.~~

~~2. — X-Ray Field.~~

~~(i) — For image-intensified fluoroscopic equipment, neither the length nor the width of the plane of the image receptor shall exceed that of the visible area of the image receptor by more than 3 percent of the SID. The sum of the excess length and the excess width shall be no greater than 4 percent of the SID.~~

~~(b) — Spot film devices which are certified components shall meet the following additional requirements:~~

~~1. — Means shall be provided between the source and the patient for adjustment of the x-ray field size, in the plane of the film, to the size of that portion of the film which has been selected on the spot film selector; and~~

~~2. — It shall be possible to adjust the x-ray field size in the plane of the film to a size smaller than the selected portion of the film; and~~

~~3. — The center of the x-ray field in the plane of the film shall be aligned with the center of the selected portion of the film to within 2 percent of the SID.~~

~~(c) Pre-certified fluoroscopic machines are exempt from the requirements of .04(12)(a) and .04(12)(b) provided that:~~

~~1. — The machine was in service prior to the date of adoption of these regulations and meets all other applicable requirements for fluoroscopic machines. However, these machines shall be brought up to standards referenced in .04(12)(a) and (b) within three years from the date of adoption of these regulations or be taken out of service and electronically disabled.~~

~~2. — The shutter mechanism is adjusted so that the x-ray field diameter is limited to the dimensions of the film cassette used during spot filming at a 35 centimeters (14 inches) table to image receptor distance.~~

~~3. When spot films are either unnecessary or not required during a portion of the exam, the leading edge of the shutters shall be restricted to the edge of the image intensifier.~~

~~(d) Activation of the Fluoroscopic Tube. X-ray production in the fluoroscopic mode shall be controlled by a dead man switch. When recording serial fluoroscopic images, the fluoroscopist shall be able to terminate the x-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in process.~~

~~(e) Exposure Rate Limits.~~

~~1. Entrance Exposure Rate Allowable Limits.~~

~~(i) When the automatic brightness control is used, the exposure measured at the point where the center of the useful beam enters the patient shall not exceed 10 roentgens per minute, except during recording of fluoroscopic images.~~

~~(ii) When provided with optional high level control, the equipment shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 5 roentgens per minute at the point where the center of the useful beam enters the patient unless the high level control is activated.~~

~~(I) Special means of activation of high level controls shall be required. The high level control shall only be operable when a continuous secondary level of pressure is provided by the operator.~~

~~(II) When the high level control is activated the entrance exposure rate shall not exceed 10 R/min. except in the recording of fluoroscopic images.~~

~~(III) A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.~~

~~(iii) In addition to the other requirements of .04(12)(e)1. (i) and (ii), certified equipment which does not incorporate an automatic exposure control shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 5 roentgens per minute at the point where the center of beam enters the patient, except during recording of fluoroscopic images or when provided with an optional high level control.~~

~~(iv) Non-certified equipment shall not operate at any combination of tube potential and current which will result in an exposure in excess of 10 R/min.~~

~~2. Compliance with the requirements .04(12)(e)1. shall be determined as follows:~~

~~(i) Movable grids and compression devices shall be removed from the useful beam during the measurement;~~

~~(ii) With the source below the table, the exposure rate shall be measured 1 centimeter above the tabletop or cradle;~~

~~(iii) With the source above the table, the exposure rate shall be measured at 30 centimeters above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement;~~

~~(iv) In a C-arm type of fluoroscope, the exposure rate shall be measured 30 centimeters from the input surface of the fluoroscopic imaging assembly.~~

~~(f) Periodic measurement of Entrance Exposure Rate. The registrant shall cause periodic measurement of entrance exposure rate, including the exposure rate at staff positions around the table and panel, to be made for each fluoroscope by an individual competent to make such measurements. Results of these measurements shall be posted where any fluoroscopist may have ready access to them. An adequate period for such measurements shall be annually or after any maintenance of the unit if such maintenance might affect the exposure rate. Results of the measurements shall include the maximum possible R/minute of the fluoroscope at the maximum kVp and mA used. The posted data shall indicate the technique factors used to determine the data along with the name of the person and/or company performing the measurements and the date the measurements were performed.~~

~~1. Fluoroscopes that incorporate automatic exposure control shall have sufficient material placed in the useful beam to produce a milliamperage typical of the use of the x-ray machine; and~~

~~2. Fluoroscopes that do not incorporate an automatic exposure control shall utilize a milliamperage typical of the clinical use of the radiation machine.~~

~~(g) Barrier Transmitted Radiation Rate Limits. The exposure rate due to transmission through the primary protective barrier with the attenuation block in the useful beam shall not exceed 2 milliroentgens per hour at 10 centimeters from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor for each roentgen per minute of entrance exposure rate.~~

~~(h) Indication of Potential and Current. During fluoroscopy and cine-fluorography, the kV and the mA shall be continuously indicated.~~

~~(i) Source-Skin Distance. The source to skin distance shall not be less than:~~

1. ~~38 centimeters (15 inches) on stationary fluoroscopes;~~
2. ~~30 centimeters (12 inches) on all mobile fluoroscopes;~~
3. ~~20 centimeters (8 inches) for image intensified fluoroscopes, used for specific surgical application;~~
4. ~~30 centimeters (12 inches) on stationary precertified fluoroscopes.~~

~~(j) Fluoroscopic Timer. Means shall be provided to preset the cumulative "on" time of the fluoroscopic tube. The maximum cumulative time of the timing device shall not exceed 5 minutes without resetting. Termination of the exposure or a signal audible to the fluoroscopist shall indicate the completion of any preset cumulative on time. Such signal shall continue to sound while x-rays are produced or until the timing device is reset. Audible signals are recommended.~~

~~(k) Radiation Therapy Simulation Machines. Radiation therapy simulation shall be exempt from all the requirements of .04(12)(a), .04(12)(e), .04(12)(f) and of .04(12)(j) provided that:~~

1. ~~Such machines are designed and used so that no individual other than the patient is in the x-ray room during radiography procedures; and~~
2. ~~Such machines which do not meet the requirements of .04(12)(j) are provided with a means of indicating the cumulative exposure time for each individual patient. Procedures shall require in each case that the timer be reset between examinations.~~

~~(13) Radiographic Machines Other Than Fluoroscopic, Dental Intraoral, and Veterinary.~~

~~(a) Beam Limitation. The useful beam shall be limited to the area of clinical interest, and shall not be greater than the dimensions of the image receptor.~~

~~(b) General Purpose Stationary and Mobile Radiation Machines.~~

1. ~~Means for stepless independent adjustment in both the longitudinal and transverse direction of the x-ray field and a light for visually defining the perimeter of the x-ray field shall be provided.~~
2. ~~Means shall be provided to permit adequate light intensity at the film plane when the light field intersects with the image receptor at a 100 cm SID. This will be deemed to be met if a visual outline of the light field is visible at the receptor.~~
3. ~~Congruence of the x-ray and light fields shall not have a misalignment in excess of 2% of the SID in any one direction and not more than 3% of the SID when measured as the sum of the absolute misalignment in the longitudinal and transverse direction.~~

~~(c) Additional Requirements for Stationary General Purpose Radiation Machines. In addition to the requirements of .04(13)(b), all stationary radiation machines shall meet the following requirements:~~

- ~~1. Means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the film plane with respect to the center of the image receptor to within 2 percent of the SID, and to indicate the SID to within 2 percent; and~~
- ~~2. The beam-limiting device shall numerically indicate the field size in the plane of the image receptor to which it is adjusted.~~

~~(d) Machines Designed for or Provided With Special Attachments for Mammography.~~

- ~~1. Radiographic machines designed only for mammography and general purpose radiographic machines, when special attachments for mammography are in service, shall be provided with means to limit the useful beam such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor at any designated SID, except the edge of the image receptor designed to be adjacent to the chest wall where the x-ray field may not extend beyond this edge by more than 2 percent of the SID.~~
- ~~2. This requirement can be met with a machine which performs as prescribed in .04(13)(e).~~
- ~~3. Each image receptor support intended for installation on a system designed only for mammography shall have clear and permanent markings to indicate the maximum image receptor size for which it is designed.~~

~~(e) Special Purpose Radiation Machines. Radiation machines which are limited by design to radiographic examinations of a specific anatomical region shall meet the following requirements:~~

- ~~1. The x-ray field in the plane of the image receptor shall be limited such that the field does not exceed each dimension of the image receptor by more than 2 percent of the SID when the axis of the x-ray beam is perpendicular to the plane of the image receptor;~~
- ~~2. The center of the x-ray field shall be aligned with the center of the image receptor to within 2 percent of the SID, or means shall be provided to both size and align the x-ray field such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor;~~
- ~~3. Section .04(13)(e)2. may be met with a machine that meets the requirements for a general purpose radiation machine as specified in .04(13)(b) or, when alignment means are also provided;~~

~~4. — For special purpose cephalometric use, an assortment of removable, fixed-aperture, beam-limiting devices sufficient to limit the beam to areas of clinical interest may be used. Each such device shall have clear and permanent markings to indicate the image receptor size and the SID for which it is designed;~~

~~5. — Special purpose radiographic units will be exempt from the primary barrier requirements of .01(8)(b)1. provided that the tube housing assembly is electronically interlocked to a primary protective barrier, or the tube housing assembly is mechanically fixed such that the entire cross section of the useful beam is always intercepted by a primary barrier sufficient to attenuate the useful beam to the limits specified in .03(2). Secondary barriers shall meet the shielding requirements of .01(8)(b)1.~~

~~(f) Radiation Exposure Control Device.~~

~~1. — Each x-ray control shall meet the following requirements:~~

~~(i) — stationary radiation machines shall have the exposure switch permanently mounted in such a way as to prevent the operator from leaving the protected area of the operator's barrier during the exposure;~~

~~(ii) — except for unique situations such as those found in intensive care units or operating room suites, mobile and portable radiation machines which are used for greater than 1 week in 1 location, (i.e., 1 room or suite) shall meet the requirements of .04(13)(f)1. (i).~~

~~(iii) — The x-ray control device shall provide audible or visual indication observable at or from the operator's protected position whenever x-rays are produced. For certified radiation machines, a signal audible to the operator shall indicate that the exposure has terminated.~~

~~2. — Portable Equipment.~~

~~(i) — Provisions of .04(13)(f) apply except for exposure switch location.~~

~~(ii) — The exposure switch shall be so arranged that the operator can stand at least 1.8 meters (six feet) from the patient, the x-ray tube, and the useful beam unless there is shielding sufficient to assure compliance with .03(2)(a).~~

~~(iii) — The source-to-skin distance shall be limited to not less than 30 centimeters (12 inches).~~

~~(iv) — Protective aprons of at least 0.25 mm lead equivalent shall be available and their use shall be required of the operator.~~

~~(v) — Personnel monitoring is required of all operators.~~

~~(vi) — Mobile or portable Radiation machines which are used for greater than one week in one location, i.e., (one room or suite of rooms) shall meet the requirements of .01(8).~~

~~(g) — Structural Shielding.~~

~~1. — In addition to the requirements in .01(8), diagnostic radiation machines routinely used in one location shall meet the following requirements for structural shielding:~~

~~(i) — All areas of the walls, floors, and ceiling exposed to the primary beam shall have primary barriers; and~~

~~(ii) — Secondary protective barriers shall be provided in all wall, floor, and ceiling areas not having primary barriers or where primary barrier requirements are less than secondary barrier requirements.~~

~~2. — For stationary radiation machines and mobile or portable equipment routinely used in one location:~~

~~(i) — Except for those unique situations found in such uses as the intensive care unit, operating suite, etc., the operator's station at the controls shall be behind a protective barrier which will intercept any radiation that has been scattered only once.~~

~~(ii) — The operator's protective barrier shall be equipped with a glass window of lead equivalency equal to that required of the adjacent barrier, or a mirror system so placed that the entire patient can be seen by the operator while the exposure is made.~~

~~(iii) — Facilities constructed or modified after the effective date of these regulations shall have built-in operator's protective barriers which will insure that the limits specified in .03(2)(a) are not exceeded.~~

~~(h) — Source-to-Skin Distance.~~

~~1. — All radiographic machines, except as provided for in .04(13) (h)2., shall be provided with means to limit the source-to-skin distance to not less than 30 centimeters (12 inches).~~

~~2. — A radiographic machine intended for specific surgical and dental application may be used with a SSD less than 30 centimeters, (12 inches), but in no case less than 20 centimeters (8 inches).~~

~~(i) Radiation From Capacitor Energy Storage Equipment in Standby Status. Radiation emitted from the x-ray tube when the exposure switch or timer is not activated shall not exceed a rate of 2 milliroentgens per hour at 5 centimeters from any accessible surface of the diagnostic source assembly, with the beam-limiting device fully open.~~

~~(14) Intraoral Dental Radiographic Machines.~~

~~(a) — Source-to-Skin Distance. Radiation machines designed for use with an intraoral image receptor shall be provided with means to limit source-to-skin distance, i.e., SSD, to not less than 18 centimeters (7 inches), if operable above 50 kVp, or 10 centimeters (4 inches), if not operable above 50 kVp.~~

~~(b) — Field Limitation.~~

~~1. — Radiographic machines designed for use with an intra-oral image receptor shall be provided with means to limit the x-ray beam such that the diameter of the useful beam at the end of the cylinder shall not be greater than 7.0 centimeters (2.75 inches). For intraoral rectangular collimation the useful beam at the end of the spacer shall not have a diagonal measurement greater than 7.0 centimeters (2.75 inches). Positioning devices should be used to assure beam alignment.~~

~~2. — An open ended shielded cylinder, or other open ended shielded spacers that will meet the requirements of .04(14)(a) and (b)1. shall be used.~~

~~(c) Structural Shielding.~~

~~1. — The provisions of .01(8) shall apply, except that National Council on Radiation Protection and Measurements Report No. 35, "Dental X-Ray Protection," or its current revision or replacement, shall be referenced by the Department.~~

~~2. — When dental x-ray units are installed in adjacent rooms or areas, protective barriers sufficient to reduce the exposure to the requirements of .03(2) shall be provided between the rooms and/or areas.~~

~~(d) — Operating Procedures.~~

~~1. — Patient and film holding devices shall be used when the techniques permit.~~

~~2. — Neither the tube housing nor the position indicating device shall be hand-held during an exposure.~~

~~3. — Mechanical support of the tube head shall maintain the exposure position without drift.~~

~~4. — Dental fluoroscopy shall not be used without image intensification and shall meet the requirements of .04(12).~~

~~5. — Only persons required for the radiographic procedure shall be in the x-ray room during exposure. All persons shall be adequately protected.~~

~~6. — The operator shall be able to view the patient during an exposure.~~

~~7. During each exposure, the operator shall stand at least 1.8 meters (6 feet) from the patient and tube head and outside the path of the useful beam or behind a barrier that meets the requirements of .03(2).~~

~~(e) The total filtration in the useful beam shall not be less than the appropriate values stated in .04(6)(d)1. (i) or (ii).~~

~~(15) Veterinary Radiographic Installations.~~

~~(a) Equipment.~~

~~1. The tube housing shall be of the diagnostic type.~~

~~2. The primary beam for diagnostic purposes in radiography and fluoroscopy should not be larger than clinically necessary and shall not be greater than the image receptor. Cones, diaphragms, or adjustable collimators capable of restricting the primary beam to the area of clinical interest shall be used and shall provide the same degree of protection as is required in the tube housing.~~

~~3. Means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor.~~

~~4. The exposure switch shall be of a dead-man type.~~

~~5. The total filtration permanently in the useful beam shall not be less than the appropriate value stated in .04(6)(d)1. (i) or (ii).~~

~~6. A means shall be provided for aligning the center of the x-ray beam with the center of the image receptor prior to an x-ray examination.~~

~~7. An easily discernible indicator which shows whether or not x-rays are being produced shall be on the control panel.~~

~~8. The installation shall be so arranged that the operator can stand at least six feet from the animal, the x-ray tube and out of the useful beam.~~

~~9. Leaded gloves and aprons shall be available for use, and shall be used by all personnel in the room during an exposure.~~

~~10. The effectiveness of protective equipment (i.e., gloves, aprons, etc.), shall not be impaired.~~

~~(b) Operating Procedures.~~

~~1. Only persons whose presence is necessary shall be in the radiographic area during exposure. Protective clothing of at least 0.25 mm lead equivalent shall be provided and shall be worn by all individuals required to be in controlled areas, except when the individuals are entirely behind protective barriers while the equipment is energized.~~

2. ~~— Patient support:~~

~~(i) — When an animal patient or film must be held in position for radiography, mechanical supporting or restraining devices, or other means of immobilization, shall be used unless human holding is required by the technique.~~

~~(ii) — If an animal patient must be held or positioned manually, the individual holding the animal shall wear protective gloves having at least 0.5 mm lead equivalency and a protective apron of at least 0.25 mm lead equivalency;~~

~~(iii) — Personnel monitoring devices shall be used if radiation measurements indicate potential exposure in excess of 25 percent of the applicable values specified in Section .03(2)(a)1. to the head, or trunk of the body.~~

~~(c) Fluoroscopy.~~

~~1. — The provisions of .04(12) shall apply to fluoroscopic equipment.~~

~~(d) — Structural Shielding. The provisions of .01(8) shall apply except that the National Council on Radiation Protection and Measurements Report No. 36, "Radiation Protection in Veterinary Medicine," or its current revision or replacement, shall be referenced by the Department.~~

~~(16) Therapeutic Radiation Machines of Less Than One MeV.~~

~~(a) — Leakage Requirements. When the tube is operated at its leakage technique factors, the leakage radiation shall not exceed the value specified, at the distance specified for the classification of that radiation machine.~~

~~1. — Contact Therapy Machines. Leakage radiation shall not exceed 100 milliroentgens (.0258 mC/Kg) an hour at five (5) centimeters from the surface of the tube housing assembly.~~

~~2. — 0-150 kVp Machines.~~

~~(i) — Machines which were manufactured or installed prior to the date of adoption of these regulations shall not permit radiation leakage in excess of 1 Roentgen (.258 mC/Kg) in one (1) hour at one (1) meter from the source.~~

~~(ii) — In machines manufactured on, or after the date of adoption of these regulations, leakage radiation shall not exceed 100 mR (.0258 mC/Kg) in one (1) hour at one (1) meter from the source.~~

~~3. — 151 to 999 kVp Systems. The leakage radiation does not exceed one (1) roentgen (.258 mC/Kg) in one (1) hour at one (1) meter from the source except~~

~~systems that operate in excess of 500 kVp may have a leakage radiation at 1 meter from the source not to exceed 0.1 percent of the useful beam one meter from the source.~~

~~(b) Permanent Beam Limiting Devices. The registrant shall be responsible for assuring that permanent fixed diaphragms or cones used for limiting the useful beam shall provide at least the same protection as required by the tube housing assembly.~~

~~(c) Removable and Adjustable Beam Limiting Devices.~~

~~1. Removable beam limiting devices shall, for the portion of the useful beam to be blocked by these devices, transmit not more than 1 percent of the useful x-ray beam at the maximum kilovoltage and with maximum treatment filter.~~

~~2. Adjustable beam limiting devices installed after the effective date of these regulations shall transmit not more than 1 per cent of the useful x-ray beam.~~

~~3. Adjustable beam limiting devices installed before the effective date of these regulations shall transmit not more than 5 per cent of the useful x-ray beam.~~

~~(d) Filter System.~~

~~1. The filter system shall be so designed that the filters cannot be accidentally displaced from the useful beam at any possible tube orientation; and~~

~~2. The radiation at 5 centimeters from the filter insertion slot opening does not exceed 30 roentgens (7.74 mC/Kg) per hour under any operating conditions; and~~

~~3. Each filter shall be conspicuously inscribed as to its material of construction and its thickness. For wedge filters, the wedge factor and wedge angle shall appear on the wedge or wedge tray.~~

~~(e) Tube Immobilization. The tube housing assembly shall be capable of being immobilized during stationary treatments.~~

~~(f) Focal Spot Marking. The tube housing assembly shall be so marked that it is possible to determine the location of the focal spot to within 5 millimeters, and such marking shall be readily accessible for use during calibration procedures.~~

~~(g) Timer.~~

~~1. A timer shall be provided which has a display at the treatment control panel. The timer shall be graduated in minutes and fractions of minutes.~~

~~2. The timer shall have a preset time selector and an elapsed time indicator.~~

~~3. — The timer shall be a cumulative timer which activates with the radiation and retains its reading after irradiation is interrupted or terminated.~~

~~4. — After irradiation is terminated and before irradiation can be reinitiated, it shall be necessary to cycle the present time selector through zero time.~~

~~5. — The timer shall permit accurate presetting and determination of exposure times as short as 1 second.~~

~~6. — The timer shall not permit an exposure if set at zero.~~

~~7. — The timer shall not activate until the shutter is opened when irradiation is controlled by a shutter mechanism.~~

~~(h) — Control Panel Functions. The control panel, in addition to the displays required in other provisions of .04(16), shall have:~~

~~1. — an indication of x-ray production; and~~

~~2. — means for indicating kV and x-ray tube current; and~~

~~3. — means for terminating an exposure at any time; and~~

~~4. — a locking device which will prevent unauthorized use of the radiation machine; and~~

~~5. — for radiation machines installed after the date of adoption of these regulations, a positive display of specific filter(s) in the beam.~~

~~(i) Source-to-Skin Distance. There shall be means of determining the SSD distance to within 1 centimeter.~~

~~(j) Low Filtration X-Ray Tubes. Each radiation machine equipped with a beryllium or other low-filtration window shall be clearly labeled as such upon the tube housing assembly and at the control panel.~~

~~(k) Calibrations and Spot Checks.~~

~~1. — Calibrations.~~

~~(i) — The calibration of therapeutic radiation machines shall be performed at intervals not to exceed 1 year and after any change or replacement of components which could cause a change in the radiation output.~~

~~(ii) — The registrant shall insure that such calibration is performed by an individual competent to perform such work.~~

~~(iii) — Records of calibrations performed shall be maintained by the registrant for at least 5 years after completion of the calibration.~~

~~(iv) — A copy of the most recent radiation machine calibration shall be available at the control panel.~~

~~(v) — The radiation machine shall not be used in the administration of radiation therapy unless the calibrations required by .04(16)(k)1. (i)-(iv) have been met.~~

~~2. — Spot Calibration Checks. Spot calibration checks on radiation machines capable of operation at greater than 150 kVp shall be performed in accordance with written procedures. A record of such checks shall be maintained for a two (2) year period after completion of the spot-check measurements.~~

~~(17) Additional Facility Design Requirements for Therapy Radiation Machines Capable of Operating Above 50 kVp and less than 1 MeV.~~

~~(a) — Voice Communication. Provision shall be made for two-way aural communication between the patient and the operator at the control panel.~~

~~(b) — Viewing Systems.~~

~~1. — Windows, mirrors, closed-circuit television, or an equivalent system shall be provided to permit continuous observation of the patient during irradiation and shall be so located that the operator can observe the patient from the control panel.~~

~~2. — When the primary viewing system is by electronic means, an alternate viewing system, which may also be electronic, shall be available for use in the event of electronic failure.~~

~~3. — In the event of total failure of patient viewing, therapy shall be discontinued until the system is functioning.~~

~~(c) Structural Shielding. In addition to the provisions of .01(8):~~

~~1. — For existing equipment operating above 125 kVp the required operator's barrier(s) shall be an integral part of the building;~~

~~2. — For all therapeutic machines operating below 150 kVp, built or modified after the effective date of these regulations, the operator's barrier(s) shall be an integral part of the building;~~

~~3. — For equipment operating above 150 kVp, the control panel shall be within a protective booth equipped with an interlocked door, or located outside the treatment room.~~

~~(d) — Additional Requirements for Radiation Machines Capable of Operation Above 150 kVp and less than 1 MeV.~~

~~1. — All necessary shielding, except for any beam interceptor, shall be provided by fixed barriers;~~

- ~~2. The control panel shall be outside the treatment room;~~
- ~~3. All doors of the treatment room shall be electrically connected to the control panel such that x-ray production cannot occur unless all doors are closed;~~
- ~~4. When the treatment room door is opened during any exposure, the exposure shall terminate immediately;~~
- ~~5. After termination of the exposure, it shall be possible to restore the radiation machine to full operation only upon closing the door, and subsequently reinitiating the exposure at the control panel.~~

~~(e) Operating Procedures.~~

- ~~1. Therapeutic radiation machines shall not be left unattended unless the machine is secured.~~
- ~~2. When a patient must be held in position for radiation therapy, mechanical supporting or restraining devices shall be used.~~
- ~~3. The tube housing assembly shall not be held by an individual during exposures.~~
- ~~4.~~
 - ~~(i) For radiation machines operating above 150 kVp, no individual other than the patient shall be in the treatment room during exposures.~~
 - ~~(ii) For machines operating below 150 kVp, no individual other than the patient shall be in the treatment room unless such individual is protected by a barrier sufficient to meet the requirements of these regulations.~~

~~(18) X-Ray and Electron Therapy Machines with Energies of One MeV and Above.~~

~~(a) Scope. This part applies to medical facilities using therapy machines with energies of 1 MeV and above. Additional requirements for these machines are found in Section 290-5-22-.05 entitled "Radiation Safety Requirements for Particle Accelerators".~~

~~(b) Requirements for Equipment.~~

- ~~1. Leakage Radiation to the Patient Area.~~
 - ~~(i) New equipment shall meet the following requirements:~~
 - ~~(l) For operating conditions producing maximum leakage radiation, the absorbed dose in rads (grays) due to leakage radiation, including x-rays, electrons, and neutrons, at any point in a circular plane of 2 meters radius centered on and perpendicular to the central axis of the beam at the isocenter or normal treatment distance and outside the maximum useful~~

~~beam size shall not exceed 0.1 percent of the maximum absorbed dose in rads (grays) of the unattenuated useful beam measured at the point of intersection of the central axis of the beam and the plane surface. Measurements excluding those for neutrons shall be averaged over an area up to but not exceeding 100 square centimeters at the positions specified. Measurements of the portion of the leakage radiation dose contributed by neutrons shall be averaged over an area up to but not exceeding 200 square centimeters.~~

~~(II) — For each machine, the registrant shall determine or obtain from the manufacturer the leakage radiation existing at the positions specified in .04(18)(b)1. (i)(I) for the specified operating conditions. Records of leakage radiation measurements shall be maintained for inspection by the Department.~~

~~(ii) Existing equipment shall meet the following requirements:~~

~~(I) — For operating conditions producing maximum leakage radiation, the absorbed dose in rads (grays) due to leakage radiation excluding neutrons at any point in a circular plane of 2 meters radius centered on a perpendicular to the central axis of the beam 1 meter from the virtual source, and outside the maximum size useful beam, shall not exceed 0.1 percent of the maximum absorbed dose in rads (grays) of the unattenuated useful beam measured at the point of intersection of the central axis of the beam and the surface of the circular plane. Measurements shall be averaged over an area up to but not exceeding 100 square centimeters at the positions specified.~~

~~(II) — For each machine, the registrant shall determine or obtain from the manufacturer the leakage radiation existing at the positions specified in .04(18)(b)1. (ii)(I) for the specified operating conditions. Records of leakage radiation measurements shall be maintained for inspection by the Department.~~

~~2. — Leakage Radiation Outside the Patient Area for New Equipment.~~

~~(i) The absorbed dose in rads (grays) due to leakage radiation except in the area specified in .04(18)(b)1. (i)(I) when measured at any point 1 meter from the path of the charged particle, before the charged particle strikes the target or window, shall not exceed 0.1 percent for x-ray leakage nor 0.05 percent for neutron leakage of the maximum absorbed dose in rads (grays) of the unattenuated useful beam measured at the point of intersection of the central axis of the beam and the circular plane specified in .04(18)(b)1. (i)(I).~~

~~(ii) The registrant shall determine or obtain from the manufacturer, the actual leakage radiation existing at the positions specified in .04(18)(b)2. (i) for~~

~~specified operating conditions. Radiation measurements excluding neutrons shall be averaged over an area up to but not exceeding 100 square centimeters. Neutron measurements shall be averaged over an area up to but not exceeding 200 square centimeters.~~

~~3.—The registrant shall assure that adjustable or interchangeable beam limiting devices are provided and that such devices shall transmit no more than 2 percent of the useful beam at the normal treatment distance for the portion of the useful beam which is to be attenuated by the beam limiting device. Documentation of the transmission factors shall be maintained at the facility for inspection by the Department. The neutron component of the useful beam shall not be included in this requirement.~~

~~4.—Filters.~~

~~(i) Each filter which is removable from the system shall be clearly marked with an identification number. Documentation available at the control panel shall contain a description of the filter. For wedge filters, the wedge angle shall appear on the wedge or wedge tray.~~

~~(ii) For equipment manufactured after the effective date of these regulations which utilizes a system of wedge filters, interchangeable field flattening filters, or interchangeable beam scattering filters:~~

~~I) — irradiation shall not be possible until a selection of a filter has been made at the treatment control panel;~~

~~(II) — an interlock system shall be provided to prevent irradiation if the filter selected is not in the correct position;~~

~~(III) — a display shall be provided at the treatment control panel indicating the filter(s) in use;~~

~~(IV) — an interlock shall be provided to prevent irradiation if any filter selection operation carried out in the treatment room does not agree with the filter selection operation carried out at the treatment control panel.~~

~~5.—Beam Symmetry. In equipment manufactured after the effective date of these regulations, inherently capable of producing useful beams with asymmetry exceeding 5 percent, the asymmetry of the radiation beam in two orthogonal directions shall be monitored before the beam passes through the beam limiting device. Facilities shall be provided so that, if the difference in dose rate between one region and another region symmetrically displaced from the central axis of the beam exceeds 5 percent of the central axis dose rate, indication of this condition is made at the control panel; and if this difference exceeds 10 percent, the irradiation is terminated. It shall be the registrant's~~

~~responsibility to assure that the above requirements are met and that records of confirming tests are maintained for Departmental inspection.~~

~~6. Beam Monitors. All therapy accelerator machines shall be provided with radiation detectors in the radiation head.~~

~~(i) New equipment shall be provided with at least two radiation detectors. The detectors shall be incorporated into two separate dose monitoring systems.~~

~~(ii) Existing equipment shall be provided with at least one radiation detector. This detector shall be incorporated into a primary dose monitoring system.~~

~~7. Selection and Display of Dose Monitor Units.~~

~~(i) Irradiation shall not be possible until a selection of a number of dose monitor units has been made at the treatment control panel.~~

~~(ii) The preselected number of dose monitor units shall be displayed at the treatment control panel until reset manually for the next irradiation.~~

~~(iii) After termination of irradiation, it shall be necessary to zero before subsequent treatment can be initiated.~~

~~(iv) For equipment manufactured after the effective date of these regulations, it shall be necessary after termination of irradiation to manually reset the preselected dose monitor units before irradiation can be initiated.~~

~~8. Interruption Switches. It shall be possible to interrupt irradiation and equipment movements at any time from the operator's position at the treatment control panel. Following an interruption, it shall be possible to restart irradiation by operator action without any reselection of operating conditions. If any change is made of a preselected value during an interruption, irradiation and equipment movements shall be automatically terminated.~~

~~9. Termination of Irradiation by the Dose Monitoring System or Systems.~~

~~(i) Each of the required monitoring systems shall be capable of independently terminating irradiation.~~

~~(ii) Each primary system shall terminate irradiation when the preselected number of dose monitor units has been detected by the system.~~

~~(iii) If original design of the equipment included a second dose monitoring system, that system shall be capable of terminating irradiation when not more than 15 percent or 40 dose monitoring units above the preselected number of dose monitor units set at the control panel has been detected by the second dose monitoring system.~~

~~10.—Termination Switches. It shall be possible to terminate irradiation and equipment movements at any time from the operator's position at the treatment control panel.~~

~~11.—Timer.~~

~~(i) A timer shall be provided which has a display at the treatment control panel. The timer shall have a preset time selector and an elapsed time indicator.~~

~~(ii) The timer shall be a cumulative timer which activates with the production of radiation and retains its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it shall be necessary to reset the elapsed time indicator to zero.~~

~~(iii) ——— For equipment manufactured after the effective date of these regulations after termination of irradiation and before irradiation can be reinitiated, it shall be necessary to manually reset the preset time selector.~~

~~(iv) ——— The timer shall terminate irradiation when a preselected time has elapsed if the dose monitoring systems fail to do so.~~

~~12.—Selection of Radiation Type. Equipment capable of both x-ray therapy and electron therapy shall meet the following additional requirements:~~

~~(i) Irradiation shall not be possible until a selection of radiation type has been made at the treatment control panel.~~

~~(ii) An interlock system shall be provided to insure that the equipment can emit only the radiation type which has been selected.~~

~~(iii) ——— An interlock system shall be provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment control panel.~~

~~(iv) ——— An interlock system shall be provided to prevent irradiation with x-rays except to obtain a port film when electron applicators are fitted.~~

~~(v) An interlock system shall be provided to prevent irradiation with electrons when accessories specific for x-ray therapy are fitted.~~

~~(vi) ——— The radiation type selected shall be displayed at the treatment control panel before and during irradiation.~~

~~13.—Selection of Energy. Equipment capable of generating radiation beams of different energies shall meet the following requirements:~~

~~(i) Irradiation shall not be possible until a selection of energy has been made at the treatment control panel.~~

~~(ii) An interlock system shall be provided to prevent irradiation if any selected operations to be carried out in the treatment room do not agree with those selected operations carried out at the treatment control panel.~~

~~(iii) ——— The nominal energy value selected shall be displayed at the treatment control panel before and during irradiation.~~

~~(iv) ——— For new equipment, an interlock system shall be provided to terminate irradiation if the energy of the electrons striking the x-ray target or electron window deviates by more than 20 percent or 3 MeV, whichever is smaller, from the selected nominal energy.~~

~~14. Selection of Stationery Beam Therapy or Moving Beam Therapy.
Equipment capable of both stationary beam therapy and moving beam therapy shall meet the following requirements:~~

~~(i) Irradiation shall not be possible until a selection of stationery beam therapy or moving beam therapy has been made at the treatment control panel.~~

~~(ii) An interlock system shall be provided to insure that the equipment can operate only in the mode which has been selected.~~

~~(iii) ——— An interlock system shall be provided to prevent irradiation if any selected operations to be carried out in the treatment room do not agree with those selected operations carried out at the treatment control panel.~~

~~(iv) ——— The mode of operation shall be displayed at the treatment control panel.~~

~~(v) For new equipment, an interlock system shall be provided to terminate irradiation if:~~

~~(I) movement of the gantry occurs during moving stationary beam therapy; or~~

~~(II) ——— movement of the gantry stops during moving beam therapy unless such stoppage is a preplanned function.~~

~~(vi) ——— Moving beam therapy shall be controlled to obtain the selected relationships between incremental dose monitor units and incremental angle of movement.~~

~~(I) For new equipment, an interlock system shall be provided to terminate irradiation if the number of dose monitor units delivered in any 10 degrees of arc differs by more than 20 percent from the selected value.~~

~~(H) — for new equipment, where gantry angle terminates the irradiation in arc therapy, the dose monitor units shall differ by less than 5 percent from the value calculated from the absorbed dose per unit angle relationship.~~

~~(c) Facility and Shielding Requirements. In addition to Section .01(8) of these regulations, the following design requirements shall apply:~~

- ~~1. — The treatment control panel shall be located outside the treatment room; and~~
- ~~2. — Except for entrance doors or beam interceptors, all the required barriers shall be fixed; and~~
- ~~3. — Windows, mirrors, closed-circuit television, or other equivalent viewing devices shall be provided to permit continuous observation of the patient during irradiation and shall be so located that the operator may observe the patient from the treatment control panel. When the viewing system is by electronic methods, a secondary viewing system, which may also be electronic, shall be available for use in the event of failure of the primary system; and~~
- ~~4. — Provision shall be made for two-way aural communication between the patient and the operator at the treatment control panel; and~~
- ~~5. — The entrance to the treatment room shall be equipped with a steady, red warning light which operates when, and only when, radiation is being produced; and~~
- ~~6. — Interlocks shall be provided such that all entrance doors shall be closed before treatment can be initiated or continued. If the radiation beam is interrupted by any door opening, it shall be possible to restore the machine to operation only by closing the door and reinitiating exposure by manual action at the control panel.~~

~~(d) — Calibrations and Spot Checks.~~

- ~~1. — Calibration.
 - ~~(i) — A calibration of all new machines and existing machines not previously surveyed shall be performed prior to the initial irradiation of a patient and thereafter at time intervals not to exceed 12 months, and after any change which might significantly alter the calibration, spatial distribution, or other characteristics of the therapy beam. It shall be the responsibility of the registrant to ensure that the individual performing the calibration is competent to perform such calibrations.~~
 - ~~(ii) — The calibration of a particle accelerator machine shall be performed in accordance with a calibration protocol such as that published by the~~~~

~~American Association of Physicists in Medicine in Volume 10, number 6, issue of Medical Physics, or its current revision or replacement.~~

~~(iii)——Any calibration protocol used must contain the following minimum measurement criteria:~~

~~(I) full calibration measurements shall be performed using a dosimetry system that has been calibrated by the National Bureau of Standards or by a Regional Calibration Laboratory accredited by the American Association of Physicists in Medicine. The dosimetry system shall have been calibrated within the previous two years and after any servicing that may have affected system calibration.~~

~~(II) spot-check measurements shall be performed using a dosimetry system that has been calibrated in accordance with .04(18)(d)1. (iii)(I) of this rule. Alternatively, a dosimetry system spot-check measurements may be calibrated by direct intercomparison with a system that has been calibrated in accordance with .04(18)(d)1. (iii)(I) of this rule. This alternative calibration method shall have been performed within the previous one year and after each servicing that may have affected system calibration. Dosimetry systems calibrated by this alternative method shall not be used for full calibration measurements.~~

~~(iv)——The full calibration of the therapy beam shall include but not be limited to the following determinations:~~

~~(I) verification that the equipment is operating in compliance with the design specifications concerning the light localizer, the side light and back-pointer alignment with the isocenter when applicable, variation in the axis of rotation for the table, gantry and jaw system, and beam flatness and symmetry at the specified depth.~~

~~(II) the absorbed dose rate at various depths of water for the range of field sized used, for each effective energy, and for each treatment distance used for radiation therapy.~~

~~(III) the uniformity of the radiation field and any dependency upon the direction of the useful beam.~~

~~(IV) verification of depth-dose data and isodose curves applicable to the specific machine.~~

~~(V) verification of transmission factors for all accessories such as wedges shadow trays, etc.~~

~~(VI) records of full calibration measurements and dosimetry system calibrations shall be preserved for 5 years after completion of the full calibration.~~

~~(VII) — a copy of the latest full calibration performed as described in .04(18)(d)1. (iv)(I)-(VI) shall be available at the accelerator facility.~~

~~2. — Spot-Calibration Checks.~~

~~(i) — Spot calibration checks shall be performed on machines subject to .04(18)(b) during calibrations and thereafter at intervals not to exceed one month.~~

~~(ii) — Such spot calibration checks shall be in accordance with written procedures and shall include absorbed dose measurements in a phantom at intervals not to exceed one week.~~

~~(iii) — Where a system has built-in devices which provide a measurement of any parameter during irradiation, such measurement shall not be utilized as a spot check; and~~

~~(iv) — Records of spot check measurements performed pursuant to .04(18)(b) shall be maintained by the registrant for a period of 2 years after completion of the spot check measurements and any necessary corrective actions.~~

~~(e) — Qualified Expert. The registrant shall determine if a person is an expert qualified by training and experience to calibrate a therapy machine and establish procedures for (and review the results of) spot check measurements. The registrant shall determine that the person calibrating their therapy machine:~~

~~1. — is certified by the American Board of Radiology in Therapeutic Radiological Physics, Radiological Physics, Roentgen-Ray and Gamma-Ray Physics, or x-ray and Radium Physics; or~~

~~2. — has the following minimum training and experience:~~

~~(i) — a Master's or Doctor's degree in physics, biophysics, radiological physics or health physics;~~

~~(ii) — one year of full-time training in therapeutic radiological physics; and~~

~~(iii) — one year of full-time experience in a radiotherapy facility including personal calibration and spot check of at least one therapy machine.~~

~~(f) Operating Procedures.~~

~~1. — No individual other than the patient shall be in the treatment room during treatment of a patient.~~

- ~~2.— If a patient must be held in position during treatment, mechanical supporting or restraining devices shall be used.~~
- ~~3.— The machine shall not be used in the administration of radiation therapy unless the requirements of .04(18)(d) have been met.~~

~~Rule 290-5-22-.05 Radiation Safety Requirements for Particle Accelerators~~

~~(1) Scope. This section establishes procedures for the registration and use of particle accelerators for medical and non-medical applications. Additional requirements for medical accelerators are found in Section 290-5-22-.04(18) entitled "Radiation and Electron Therapy Machines with Energies of one MeV and Above."~~

~~(2) Registration Requirements. No person shall receive, possess, use, own, or acquire a particle accelerator except as authorized in the accelerator registration issued pursuant to these regulations. The procedures for registration of particle accelerator facilities are included in these regulations.~~

~~(3) General Requirements for the Issuance of a Certificate of Registration for Particle Accelerators. In addition to the requirements of .02(1), (2), (6), (7) and (8) of these regulations, the applicant shall submit a supplementary registration application for use of a particle accelerator. Registration will be approved only after the Department determines that:~~

- ~~(a) — the applicant is responsible for the use of the accelerator;~~
- ~~(b) — the applicant's proposed or existing equipment, facilities, operating and emergency procedures are adequate to protect health and minimize risk to public health and safety or property; and~~
- ~~(c) the issuance of the registration will not be inimical to the health and safety of the public, and the applicant satisfies any applicable special requirement in this section; and~~
- ~~(d) — the applicant has appointed, for medical applications, a physician who is designated on the application as the radiation therapist and other such professional staff necessary to the safe operation and use of the accelerator.~~
- ~~(e) — The applicant and/or the applicant's staff has experience in the use of particle accelerators and training sufficient for application to its intended uses; and~~
- ~~(f) The applicant has established a radiation safety committee (composed of one or more persons trained or experienced in the safe use of accelerators) to approve, in advance, proposals for uses of particle accelerators; and~~
- ~~(g) — The applicant conducts training programs to assure continued competency for operators of particle accelerators; the protocol shall be in writing.~~

~~(4) Human Use of Particle Accelerators. In addition to the requirements of .02 of these regulations, a registration for use of a particle accelerator in the healing arts will be issued only if:~~

~~(a) — The applicant has appointed a medical committee of at least three members to evaluate all proposals for research, diagnostic, and therapeutic use of particle accelerator. Membership of the committee shall include physicians expert in internal medicine, hematology, therapeutic radiology, and the radiological physicist.~~

~~(b) — The individuals designated on the application as the users are radiation therapists who have substantial training and experience in deep therapy techniques or in the use of particle accelerators to treat humans.~~

~~(5) Limitations.~~

~~(a) — No registrant shall permit any person to act as an operator of a particle accelerator until such person:~~

~~1. — has been instructed in radiation safety and in operating and emergency procedures; and~~

~~2. — has received copies of, and instruction in, the applicable requirements of these regulations; and~~

~~3. — has demonstrated competence to use the particle accelerator, related equipment, and survey instruments which will be employed in their assignment, and be able to demonstrate such knowledge to the Department upon request.~~

~~(b) — The radiation safety committee, radiological health physicist or the radiation safety officer shall have the authority to terminate the operations at a particle accelerator facility if any one of them deems such action is necessary to protect health and minimize danger to public health and safety or property.~~

~~(6) Shielding and Safety Design Requirements. Each particle accelerator installation shall be provided with such primary and/or secondary barriers as are necessary to assure compliance with .03(2)(a) and .03(2)(c) of these regulations. This requirement will be deemed to be met if the barriers are constructed in accordance with NCRP Report No.51.~~

~~(7) Particle Accelerator Controls and Interlock Systems.~~

~~(a) — Instrumentation, readouts, and controls on the particle accelerator control console shall be clearly identified and easily discernible.~~

~~(b) — Except for portable accelerator, all entrances into a target room or other high radiation area shall be provided with interlocks. When access is gained through any entrance the accelerator shall shut down automatically.~~

~~(c) When an interlock system has been tripped, it shall only be possible to resume operation of the accelerator by manually resetting the tripped interlock and initiating starting up procedures at the main control console.~~

~~(d) — An emergency power cutoff switch shall be located and easily identifiable in all high radiation areas. Such a cutoff switch shall include a manual reset so that the accelerator cannot be restarted from the accelerator control console without resetting the cutoff switch.~~

~~(e) — Portable accelerators shall be exempt from .06(7)(b) provided that they are not used in one location in excess of 30 days.~~

~~(8) Warning Devices.~~

~~(a) — All locations designated as high radiation areas, and all entrances to such locations, shall be equipped with easily observable red warning lights that operate when, and only when, radiation is being produced.~~

~~(b) — Except in facilities designed for human exposure, each high radiation area shall have an audible warning device which shall be activated for 15 seconds prior to the possible creation of such high radiation area. Such a warning device shall be clearly discernible in all high radiation areas and all radiation areas.~~

~~(c) Barriers, temporary or otherwise, and pathways leading to high radiation areas, shall be identified with caution signs, labels and signals in accordance with .03(4) of these regulations.~~

~~(9) Operating Procedures.~~

~~(a) — Particle accelerators, when not in operation, shall be secured to prevent unauthorized use;~~

~~(b) — The safety interlock system shall not be used to turn off the accelerator beam except in an emergency;~~

~~(c) All safety and warning devices, including interlocks, shall be checked for proper operability at intervals not to exceed one month. Results of such tests shall be maintained at the accelerator facility for inspection by the Department;~~

~~(d) — Electrical circuit diagrams of the accelerator and the associated interlock systems shall be kept current and available at each accelerator facility;~~

~~(e) — If, for any reason, it is necessary to intentionally by-pass a safety interlock or interlocks, such action shall be:~~

~~1. — authorized in writing by the radiation safety committee and/or radiation safety officer; and~~

~~2. — recorded in a permanent log and a notice posted at the accelerator control console; and~~

~~3.—terminated as soon as possible.~~

~~(f) A copy of the current operating and the emergency procedures shall be maintained at the accelerator control panel and shall include instructions in at least the following:~~

~~1.—the use of the accelerator in such a manner that no person is likely to be exposed to radiation doses in excess of the limits established in these regulations; and~~

~~2.—methods and occasions for conducting radiation surveys; and~~

~~3.—methods for controlling access to high radiation areas; and~~

~~4.—methods and occasions for locking the control panel of the accelerator;
and~~

~~5.—personnel monitoring and the use of personnel monitoring equipment; and~~

~~6.—methods for minimizing exposure of individuals in the event of an accident;
and~~

~~7.—the procedures for notifying appropriate persons in the event of an accident; and~~

~~8.—the maintenance of records.~~

~~(10) Radiation Monitoring Requirements.~~

~~(a) —There shall be available at each particle accelerator facility, appropriate portable monitoring equipment which is operable and has been calibrated for the appropriate radiations being produced at the facility. Such equipment shall be tested for proper operation daily and calibrated at intervals not to exceed one year and after each servicing and/or repair.~~

~~(b) —Whenever applicable, periodic smear surveys shall be made to determine the degree of contamination in target and other pertinent areas.~~

~~(c) Facility shall have a written procedure concerning the conducting of area surveys and radiation protection surveys of the machine and facility shielding.~~

~~(d) —Records of all radiation protection surveys, calibration results, instrumentation tests, and smear results shall be kept current and on file at each accelerator facility and made available for Departmental inspection.~~

~~(11) Ventilation Systems.~~

~~(a) —Means shall be provided to ensure that personnel entering any area where airborne radioactivity may be produced will not be exposed to airborne radioactive~~

~~material in excess of those limits specified in Chapter 290-5-23 (Rules and Regulations for Radioactive Materials).~~

~~(b) — A registrant shall not vent, release or otherwise discharge airborne radioactive material to an uncontrolled area except as authorized pursuant to Chapter 290-5-23.~~

~~Rule 290-5-22-.06 Radiation Safety Requirements for the Use of Non-Medical X-Ray~~

~~(1) Purpose. This section establishes the requirements for the non-healing arts use of x-rays.~~

~~(2) Scope. This section applies to all non-healing arts radiographic, fluoroscopic, and analytical x-ray installations and any apparatus capable of emitting x-rays as either a useful product or an unwanted by-product. The provisions of this section are in addition to and not in substitution for other applicable provisions of these regulations.~~

~~(3) General Provisions.~~

~~(a) — Each registrant shall provide personnel monitoring devices which are calibrated for the appropriate radiations and energies of radiation produced, and these devices shall be used by:~~

~~1. — Each individual who receives, or is likely to receive, a whole body dose in excess of 25 millirems per week; and~~

~~2. — Each individual who enters a high radiation area.~~

~~(b) — Each installation shall be provided with such primary protective barriers and/or secondary protective barriers as are necessary to assure compliance with section .01(8) and .03(2).~~

~~(c) All areas in which radiation hazards may arise shall be identified by an appropriate and easily recognizable warning sign as described in .03(4).~~

~~(d) — Audible or visible signals shall be provided in the vicinity of installations to provide warning during irradiation and shall be activated prior to any exposure.~~

~~(e) — X-ray tubes shall be provided with protective housing(s) appropriate to the nature of the work to afford adequate protection to personnel. The housing(s) shall be at least equivalent to a therapeutic tube housing.~~

~~(f) The operator or radiographer shall be provided with and shall have available for inspection a copy of normal operating and emergency procedures.~~

~~(g) — A key-operated primary control switch shall be provided such that x-ray production shall not be possible with the key removed.~~

~~(h) — Manufacturers of radiation machines shall provide for purchasers, and to the Department upon request, manuals and instructions which shall include at least the following technical and safety information:~~

- ~~1. — potential, current, and duty cycle ratings of the x-ray generation equipment; and~~
- ~~2. — adequate instructions concerning any radiological safety procedures and precautions which may be necessary because of unique features of the machine; and~~
- ~~3. — a schedule of maintenance necessary to keep the machine in compliance with these regulations.~~

~~(i) A suitable and functioning survey instrument, calibrated for the energy used, shall be at each installation.~~

~~(j) Each entrance or access point to a high radiation area shall be:~~

- ~~1. — equipped with a control device which shall cause the radiation generator to turn off automatically upon entry into the area; or~~
- ~~2. — maintained locked except during periods when access to the area is controlled.~~

~~(k) Each high radiation area shall be arranged in such a way that an individual can quickly leave that area.~~

~~(l) Tests of all devices such as interlocks, shutters, and warning lights shall be conducted at intervals not to exceed 3 months for all operable analytical x-ray equipment. Records of such tests shall be maintained for inspection by the Department.~~

~~(4) Industrial Radiography.~~

~~(a) — Cabinet X-ray Installations.~~

- ~~1. — The x-ray source and all objects exposed thereto must be contained within a permanent enclosure.~~
- ~~2. — All protective enclosures and equipment shall be kept in good repair.~~
- ~~3. — Radiation exposure shall not exceed 0.5 mR in any one hour at a distance of five centimeters (2 inches) from any point on the external surface of the cabinet or of any component outside the cabinet when operated under any conditions for which the machine is designed.~~
- ~~4. — A control shall be provided that will enable the operator to initiate and terminate the production of x-rays by means other than the safety interlock system or main power control.~~

~~5. — It shall not be possible to extend any part of the human body through a port into the primary beam.~~

~~6. — Each door of a cabinet x-ray system shall have a minimum of two operative safety interlocks. One but not both of the required interlocks shall be such that a door opening results in physical disconnection of the energy supply circuit to the high voltage generator, and such disconnection shall not be dependent upon any moving part other than the door. The registrant shall:~~

~~(i) — maintain records that verify the existence of dual interlocks.~~

~~(ii) — maintain records of any repairs made on the dual interlocks; and.~~

~~(iii) — certify to the Department that modifications have not been made to the dual interlocks that are not consistent with manufacturer's design specifications. Such certification shall be made to the Department with the application for registration, application for renewal of registration, and as a part of any inspection or investigation conducted by the Department. For purposes of inspection, the Department shall review these records and only that the cabinet x-ray system ceases x-ray production when the door is opened.~~

~~7. — For cabinet x-ray systems designed for entry by an individual during the normal course of use of the machine, there shall also be provided:~~

~~(i) — Audible and visible warning signals within the cabinet which must be activated for at least 10 seconds immediately prior to the first initiation of x-radiation production; and~~

~~(ii) — A visible signal within the cabinet which shall remain operative for the duration of x-ray production. It shall be automatically initiated prior to x-ray production and terminated with the exposure; and~~

~~(iii) — Suitable means of egress, so that any person may escape the interior of the cabinet without delay, or an effective means within the cabinet for preventing or terminating production of the x-radiation, and which cannot be reset from the outside of the cabinet.~~

~~8. — Following interruption of x-ray generation by operating any interlock, the resumption of x-ray generation shall be possible only from the control panel.~~

~~(b) — Shielded Room Radiographic Installations.~~

~~1. — Facilities utilizing shielded room radiography shall assure that:~~

~~(i) — Radiation levels at any point on the exterior of the room do not exceed those specified in .03(2)(c); and~~

~~(ii) — All the requirements specified in .06(4)(a)7. shall apply.~~

~~(iii) — Each door of a shielded room shall have a minimum of two operative safety interlocks. One but not both of the required interlocks shall be such that a door opening results in physical disconnection of the energy supply circuit to the high voltage generator.~~

~~(c) Open X-ray Installations.~~

~~1. — Radiation areas in excess of 5 mR/hr shall be identified. A fence, rope or other suitable personnel barrier shall be erected along a 5 mR/hr, or less, contour line.~~

~~2. — The area described by the temporary barricade shall be suitably posted with caution signs.~~

~~3. — Suitable personnel monitoring devices for the energy used shall be provided and shall be used by persons in the area. One device shall be a cumulative direct reading device, the other a film badge, or equivalent.~~

~~4. — During each radiographic operation, either the radiographer or an assistant shall maintain direct vigilance of the operation to insure against unauthorized entry into the radiation area.~~

~~5. — All persons shall be removed from the radiation area before irradiation is begun.~~

~~6. — The radiation machine itself, or the place in which the machine is stored, shall be locked in order to prevent unauthorized use.~~

~~7. — Written records of personnel exposure, safety procedures and scaled drawing of the 5 mR/hr contour line shall be at the work site.~~

~~8. — Each facility shall have a suitable and functioning survey instrument.~~

~~(5) Analytical X-Ray:~~

~~(a) — Equipment.~~

~~1. — The leakage radiation from the tube housing shall not exceed a radiation level of 25 milliroentgens in 1 hour at 5 centimeters (2 inches) from the surface of the tube housing at any specified tube rating.~~

~~2. — Radiation originating within the high voltage power supply (i.e., transformer and rectifiers) shall not exceed a radiation level of 0.5 milliroentgen in one hour at every specified rating at a distance of 5 centimeters (2 inches) from the housing of the power supply.~~

~~3. — For open beam x-ray equipment:~~

~~(i) — Sufficient warning lights or other equally conspicuous signals that operate only when the primary x-ray beam is released from the beam~~

~~ports shall be provided in such a manner as to alert individuals to the potential radiation hazard. These signals shall be labeled so that their purpose is easily identified.~~

~~(ii) — The operator shall be in immediate attendance at all times when the equipment is in operation except when the area is locked to protect against unauthorized or accidental entry.~~

~~(iii) — When not in use, equipment shall be secured in such a manner as to be inoperable by unauthorized persons.~~

~~(iv) — Each port on the radiation source housing shall be equipped with a shutter that cannot be opened unless a collimator, or a coupling and recording device with beam absorber, has been connected to the port.~~

~~4. — The radiation level for analytical x-ray equipment in which the primary x-ray beam is completely enclosed shall be less than 2 milliroentgens in one hour at 25 centimeters (10 inches) from the apparatus at every specified tube rating.~~

~~5. — Each analytical system shall be so arranged as to restrict the entry of parts of the body into the primary beam. This may be accomplished by using such arrangements as adequate barriers or interlocks.~~

~~6. — The analytical x-ray device shall be provided with a protective barrier which absorbs the useful beam behind the specimen under examination.~~

~~7. — In addition to any other signs or labels required, a sign or label shall be placed on or adjacent to each x-ray tube housing and shall be located as to be clearly visible to any individual who may be working in close proximity to the primary beam path. The sign or label shall read: "CAUTION - HIGH INTENSITY X-RAY BEAM."~~

~~8. — A warning light with the notation "X-RAY ON," shall be located on the control panel and:~~

~~(i) — shall light only when the x-ray tube is activated; and~~

~~(ii) — shall be wired in series with the primary electrical circuit so that if the warning light is inactivated x-ray generation is not possible.~~

~~9. — The coupling between the x-ray tube and the collimator of the diffractometer, camera, or other accessory shall prevent radiation from escaping the coupling.~~

~~10. — All tube head ports which are not in use shall be secured in the closed position in a manner which will prevent casual opening. Port covers shall offer the same degree of protection as is required of the tube housing.~~

~~(b) — Operation of Equipment.~~

1. ~~1. The registrant shall not permit the routine operation of any equipment that would require an individual to expose any part of his body to the primary beam.~~
2. ~~2. Written operating and emergency procedures pertaining to radiation safety shall be established for each facility and shall be posted in a conspicuous location near each unit of analytical x-ray equipment.~~
3. ~~3. Only qualified personnel shall be permitted to install, repair or make modifications to the x-ray generating apparatus and the tube housing apparatus complex.~~
4. ~~4. Any temporary alteration to safety devices, such as bypassing interlocks or removing shielding shall be:~~
 - (i) ~~(i) prohibited during normal operation of the equipment;~~
 - (ii) ~~(ii) specified in writing and posted near the x-ray tube housing so that other individuals will know the existing status of the x-ray apparatus; and~~
 - (iii) ~~(iii) terminated as soon as possible; and~~
 - (iv) ~~(iv) recorded and the record maintained for inspection by the Department. This record should contain such information as date alteration was made, type of alteration, length of time unit remained in the altered condition, and signed by the individual who restored the unit to original condition.~~
5. ~~5. Interlocks shall not be used to deactivate the x-ray tube except in an emergency or during testing of the interlock system; it shall be possible to restore the machine to full operation only from the control panel.~~
6. ~~6. Safety glasses shall be provided and required for use by operators, assistants, and maintenance personnel. Personnel monitoring in the form of ring badges or the equivalent should be utilized.~~

~~(c) Surveys. Radiation surveys of all analytical radiation machines shall be performed:~~

1. ~~1. following any change in the initial arrangement, number, or type of components in the machine; or~~
2. ~~2. following any maintenance requiring the disassembly or removal of a component in the machine; or~~
3. ~~3. during the performance of maintenance and alignment procedures, if the procedures require the presence of a primary x-ray beam when any component in the machine is disassembled or removed; or~~
4. ~~4. any time a visual inspection of the local components in the machine reveals an abnormal condition; and~~

~~5. — It shall be the responsibility of the registrant to ensure that such radiation surveys are performed by an individual competent to perform such surveys.~~

~~(d) — Medical Examination. Operators and personnel routinely assisting in analytical x-ray operation or maintenance shall be instructed regarding the potential physical hazards of such an x-ray beam. They shall be required to report any evidence of accidental physical injury or accidental exposure to radiation to the individual in charge of radiation protection. That person shall require immediate medical examination of the suspected injury and, if such injury has occurred, shall notify the Department by telephone and in writing within 24 hours.~~

~~(6) Non-Medical Fluoroscopy.~~

~~(a) — Industrial Use:~~

~~1. — In addition to the applicable provisions of this section .06, provisions shall be made to maintain adequate protection when manipulating or marking objects under examination.~~

~~2. — "Hand-held" fluoroscopes shall not be used.~~

~~3. — The exposure rate due to transmission through the image receptor shall not exceed 2 mR/hr at a distance of 10 centimeters (4 inches) from any point on the receptor.~~

~~4. — The maximum x-ray dose shall not exceed 0.5 mR in any one hour measured at 5 centimeters (2 inches) from any readily accessible machine surface.~~

~~5. — A method of dosimetry for these systems shall be employed which shall quantitatively define, with an accuracy of ± 20 percent, the x-ray dose within the energy range of 30-150 kVp. Any method of film dosimetry, thermoluminescent dosimetry, or electronic instrumentation which shall be capable of this measurement will be acceptable.~~

~~6. — Any installation for baggage surveillance shall be enclosed and so designed as to prohibit ready access to x-ray generating equipment.~~

~~7. — It shall not be possible to insert any part of the body into the primary beam.~~

~~8. — The control panel shall be equipped with a key lock. It shall not be possible to remove the key in the "on" position.~~

~~9. — A positive pressure switch shall be provided to control the exposure and shall be located such that the operator has a clear view of the radiation machine.~~

~~(b) — Non-Controlled Areas. Personnel dose limits shall not exceed 10 mR in any one week or 500 mR in any one year.~~

~~(7) X-Rays As Unwanted By-Product.~~

~~(a) — All equipment in which electrons are accelerated to an energy in excess of 5 keV shall be regarded as a potential source of ionizing radiation, such as: electron microscopes, cathode-ray tubes, television and imaging tubes.~~

~~(b) — All such equipment shall be constructed, installed and operated in such a manner as to provide adequate protection according to these regulations.~~

~~(c) Such items of equipment shall be shielded and provided with interlocks so as to insure that the places where they are used can be regarded as being outside "controlled areas."~~

~~(d) — The dose rate at any readily accessible point 5 centimeters (2 inches) from the surface of such equipment shall not exceed 0.5 mR/hr.~~

~~(8) Instruction of Personnel.~~

~~(a) — The registrant shall assure that all radiation machines and associated equipment under his control is operated only by individuals instructed in safe operating procedures and competent in the safe use of the equipment. The registrant shall also assure that persons operating his radiation machine and associated equipment have received, at a minimum, two hours of instruction in the following six (6) subject categories:~~

~~1. — Fundamentals of Radiation Safety:~~

- ~~(i) — Characteristics of radiation~~
- ~~(ii) — Units of radiation measurement~~
- ~~(iii) — Significance of radiation dose and exposure~~
- ~~(I) — Radiation protection standards~~
- ~~(II) — Biological effects of radiation~~
- ~~(iv) — Sources and levels of radiation~~
- ~~(v) — Methods of controlling radiation dose~~
- ~~(I) — Working time~~
- ~~(II) — Working distances~~
- ~~(III) — Shielding~~

~~2. — Radiation Detection Instrumentation to be Used:~~

- ~~(i) — Use of radiation survey instruments~~
- ~~(I) — Operation~~

- (II) — Calibration
 - (III) — Limitations
 - (ii) — Survey techniques
 - (iii) — Use of personnel monitoring equipment
 - (I) — Film badges
 - (II) — Thermoluminescent dosimeters
 - (III) — Pocket dosimeters
3. — Radiographic Equipment to be Used:
- (i) — Remote handling equipment
 - (ii) — Radiographic exposure devices and sealed sources
 - (iii) — Operation and control of x-ray equipment
4. — The Requirements of Pertinent Federal and State Regulations.
5. — The Registrant's Written Operating and Emergency Procedures.
6. — Case Histories of Radiography Accidents.

(b) — Training shall begin within 30 days after employment and shall be completed no later than 90 days after date of employment. The registrant shall maintain a record of all training for each operator. Such record shall be made available for Departmental inspection.

Rule 290-5-22-.07 Records, Reports and Notification

(1) Records and Reports.

(a) — Each registrant shall maintain records, in the same units used in this chapter, showing the radiation exposures of all individuals for whom personnel monitoring is required under these regulations. Such records shall be kept on Department forms, in accordance with the instructions contained in that form or in a clear and legible manner containing all the information required on the Department forms. The doses entered on the forms or records shall be for periods of time not exceeding one calendar quarter.

(b) — Each registrant shall maintain records, in the same units used in this chapter, showing the results of surveys, safety checks and calibrations required under these regulations.

(c) Records of individual radiation exposure which must be maintained pursuant to the provisions of .07(1)(a) of this Chapter shall be preserved until a date five (5)

~~years after termination of the individual's employment or association with the registrant, or such other time as the Department may determine.~~

~~(d) — The discontinuance or curtailment of activities does not relieve the registrant of responsibility for retaining all records required by this section.~~

~~(e) — The Department may require further preservation of records which it determines shall not be destroyed. Records which must be maintained pursuant to this section may be maintained in the form of microfilm.~~

~~(f) Each person who possesses a radiation machine shall keep records showing the receipt, transfer, or disposal of such radiation machine and shall make such records available for inspection by the Department upon request.~~

~~(g) — The registrant shall keep a record of all major maintenance and/or modifications performed on each radiation machine during the period it is under his control. Such record shall be transferred to any subsequent owner of the equipment. Records shall include, but not be limited to, tube housing or x-ray tube insert replacement, any re-orientation of the machine, repair or change of the console or high-voltage supply, or collimator repair.~~

~~(2) Notification of Incidents.~~

~~(a) — Immediate Notification. Each registrant shall immediately notify the Georgia Department of Human Resources, Radiological Health Section, Atlanta, Georgia, by telephone and confirming letter of any incident involving any source of radiation possessed by him which may have caused exposure of the whole body of an individual to 25 rems or more of radiation; exposure of the skin of the whole body of any individual to 150 rems or more of radiation; or exposure of the feet, ankles, hands, or forearms of any individual to 375 rems or more of radiation.~~

~~(b) — Twenty-four Hour Notice. Each registrant shall within 24 hours notify the Georgia Department of Human Resources, Radiological Health Section, by telephone and confirming letter of any incident involving any source of radiation possessed by him which may have caused exposure of the whole body of any individual to 5 rems or more of radiation; exposure of the skin of the whole body of any individual to 30 rems or more of radiation; or exposure of the feet, ankles, hands, or forearms to 75 rems or more of radiation.~~

~~(c) Special Requirements for Reporting. Any report filed with the Department pursuant to .07(2) shall be prepared in such a manner that names of individuals who have received exposure to radiation will be stated in a separate part of the report.~~

~~(3) Report To Former Employees and Others of Exposure to Radiation. A registrant, at the request of any individual formerly employed or associated with such registrant (e.g., student, craftsman, etc.), shall furnish to such individual a report of his exposure to~~

~~radiation as shown in records maintained pursuant to .07(1)(a). Such report shall be furnished within 30 days from the time the request is made and shall cover each calendar quarter of the individual's employment or association involving exposure to radiation, or such lesser period as may reasonably be requested by the individual. The report shall be in writing.~~

~~(4) Reports of Overexposures and Excessive Levels.~~

~~(a) — In addition to any notification required by .07(2), each registrant shall make a report in writing within 30 days to the Georgia Department of Human Resources, Radiological Health Section, of:~~

~~1. — Each exposure of an individual to radiation in excess of any applicable limit set forth in these regulations.~~

~~2. — Levels of radiation (whether or not involving excessive exposure of any individual) in an uncontrolled area in excess of 10 times any applicable limit set forth in these regulations.~~

~~(b) — Each report required under .07(4)(a) shall describe the extent of exposure of individuals to radiation, levels of radiation involved, the cause of the exposures, and corrective steps taken or planned to assure against a recurrence.~~

~~(c) In any case where a registrant is required to report to the Department any exposure of an individual to radiation, the registrant shall, no later than the making of such report to the Department, also notify the individual of the nature and extent of exposure.~~

~~(d) — Any report filed with the Department pursuant to this paragraph shall be prepared in such a manner that names of individuals who have received exposure to radiation will be stated in a separate part of the report.~~

~~(5) Notice to Employees. Each registrant shall annually advise any individual employed or associated with such registrant of the individual's exposure to radiation as shown in records maintained by the registrant pursuant to .07(1)(a), if requested by the individual.~~

~~(6) Instruction of Personnel, Posting of Notices to Employees.~~

~~(a) — Each registrant shall advise individuals working in a restricted area of reports of radiation exposures which individuals may request in accordance with these regulations.~~

~~(b) — Any Department documents or instructions sent to the registrant shall be maintained with a current copy of these regulations or posted as required.~~

Rule 290-5-22-.08 Penalties

~~(1) Any registrant who violates the provisions of O.C.G.A. Section 31-13-14, or who hinders, obstructs, or otherwise interferes with any representative of the Department in the discharge of official duties in making inspections as provided in O.C.G.A. Section 31-13-5, or in impounding materials as provided in O.C.G.A. Section 31-13-11, shall be guilty of a misdemeanor.~~

~~(2) Any registrant who:~~

~~(a) — Violates any registration provision of Chapter 13 of Title 31 of the Official Code of Georgia Annotated; or any rule, regulation, or order issued thereunder; or any term, condition, or limitation of any registration certificate thereunder; or commits any violation for which a registration certificate may be revoked under this Chapter may be subject to a civil penalty to be imposed by the Department. If the violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.~~

~~(3) Imposition of such civil penalties shall relate to the severity of the violations.~~

~~(a) — Users are subject to civil penalties not to exceed \$1,000 for violations that cause or contribute to the exposure of any persons or the environment to radiation levels in excess of those levels set forth in these rules. Violations which cause or contribute to such exposure are:~~

~~1. — Failure of registrant to take action in a timely manner to correct unsafe conditions or equipment of which it was aware or should have been aware;~~

~~2. — Use of untrained, unskilled, or unauthorized operators/users;~~

~~3. — Lack of, or failure to follow safety procedures;~~

~~4. — Unauthorized or improper modifications to machines or other radiation sources or equipment containing such sources; and~~

~~5. — Lack of sufficient radiation shielding to prevent excessive radiation exposure.~~

~~(i) — For purposes of computing the penalty, each day of such violation is a separate violation.~~

~~(b) — Users are subject to civil penalties not to exceed \$500 for other violations, to wit violations that do not cause or contribute to excessive exposure.~~

~~1. — For purposes of computing the penalty, each day of such violation is a separate violation.~~

~~(c) Users that fail to register in accordance with rule .02(1) of this Chapter are subject to civil penalties not to exceed \$1000.00.~~

~~1. — For purposes of computing the penalty, each day of such violation is a separate violation.~~

~~(d) — In proposing the imposition of civil penalties, the Department shall consider such mitigating circumstances as it deems appropriate. These may include factors such as elapsed time of the violation, the registrant's prior compliance history, or voluntary reporting of the violation by the registrant.~~

~~(4) Whenever the Department proposes to subject a registrant to the imposition of a civil penalty, it shall notify such registrant in writing:~~

~~(a) — Setting forth the date, facts, and nature of each act or omission with which the person is charged;~~

~~(b) — Specifically identifying the particular provision or provisions of the Code section, rule, regulation, order, or registration involved in the violation; and~~

~~(c) Advising of each penalty which the Department proposes to impose and its amount.~~

~~(d) — Such written notice shall be sent by registered or certified mail by the Department to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within ten days from receipt of such notice, why such penalty should not be imposed. The notice shall also advise such registrant that, upon failure to pay the civil penalty subsequently determined by the Department, if any, the penalty may be collected by civil action.~~

~~(e) — Upon receipt of a written response from the registrant alleging that a penalty should not be imposed, the Department shall consider the response and make a final decision on the appropriateness and amount of the penalty. The Department may at its discretion conduct an onsite inspection in order to make a final decision. In making this decision, the Department may, as deemed appropriate by the Department, consider such factors as: errors concerning the amount or nature of the penalty, corrective action taken by the registrant, or disposal of machines or equipment by the registrant.~~

~~(f) The Department shall inform the registrant of its final decision by registered or certified mail to the last known address of the registrant. Within 10 days of receipt of the Department's final determination concerning the civil penalty, the registrant may request an appeal pursuant to the Georgia Administrative Procedures Act, O.C.G.A. 50-13-1, et seq.~~

Rule 290-5-22-.09 Enforcement

~~(1) The administration and enforcement of these rules shall be as prescribed in Chapter 5 of Title 31 of the Official Code of Georgia Annotated, Chapter 13 of Title 31 of the Official Code of Georgia Annotated, and Chapter 13 of Title 50 of the Official Code of Georgia Annotated. The Department's action revoking or denying a registration applied for under this Chapter or the imposition of civil penalties imposed pursuant to~~

~~this Chapter shall be preceded by notice and opportunity for a hearing and shall constitute a contested case within the meaning of Chapter 13 of Title 50 of the Official Code of Georgia Annotated.~~

~~(2) The Department may, without regard to the availability of other remedies, including administrative remedies, seek an injunction against the continued operation of an unregistered radiation machine or the continued operation of a radiation machine in violation of this Chapter or of any regulation of the Department.~~

~~Rule Chapter 290-5-27. LASER RADIATION.~~

~~Rule 290-5-27-.01 Definitions~~

~~For the purpose of these rules, the term:~~

- ~~(a) "Department" means the Department of Public Health of the State of Georgia;~~
- ~~(b) "Injury" means any discernible, unintentional damage to tissue (such as eye or skin), resulting from exposure to laser radiation; or untoward biologic effects due to air contamination produced as a result of laser radiation; or electrical shock or burns sustained as a result of operation of a laser;~~
- ~~(c) "Laser radiation" means any electromagnetic radiation emitted from a laser system and includes all reflected radiation and any secondary radiation, or other forms of energy resulting from the primary laser beam;~~
- ~~(d) "Laser System" means any device, machine, apparatus, or other facility, that applies a source of energy to a gas, liquid, crystal, or other solid substances or combination thereof in a manner that electromagnetic radiations of a relatively uniform wave length are amplified and emitted in a coherent beam, including but not limited to electromagnetic waves in the range of visible, infrared or ultraviolet light, capable of transmitting the energy thus generated in a manner that may be harmful to living tissues;~~
- ~~(e) "Person" means the State or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision or public or private corporation.~~

~~Rule 290-5-27-.02 Registration~~

~~(1) No person may possess or operate a laser system without first registering, in writing, with the Department within thirty (30) days after the effective date of these regulations, the laser system, except as provided in paragraph (2) of this rule.~~

~~(2) Any person acquiring a laser system after the effective date of these rules and regulations shall register, in writing, with the Department the laser system within thirty (30) days after the date of acquisition.~~

~~(3) Any person possessing or operating a registered laser system may be required by the Department to re-register the system at intervals considered necessary by the Department to maintain a current inventory of the laser system.~~

~~(4) If any person possessing or operating a laser system considers the registration of each source of laser radiation by type or strength to be impractical, he may apply, in writing, to the Department for blanket registration of the laser system. The Department may approve blanket registration of the laser system after considering the information submitted in the application and determining that registration of each source of laser radiation by type or strength is impractical.~~

~~(5) All applications for any registration shall be in writing, on forms provided by the Department. Applications for any registration shall provide the following information:~~

- ~~(a) — name and address of person possessing or operating the laser system;~~
- ~~(b) — identification and type of the laser system;~~
- ~~(c) location of the laser system;~~
- ~~(d) — for continuous-wave lasers, the maximum power level at which the laser can be operated;~~
- ~~(e) — for pulse lasers, the maximum energy per pulse, pulse duration, and the maximum pulse repetition rate at which the laser can be operated;~~
- ~~(f) the wave length at which laser can be operated; and~~
- ~~(g) — other pertinent information that may be required by the Department to ascertain the identification, type, location, and operational characteristics of the laser system.~~

Rule 290-5-27-.03 Injury Reporting

~~Any person possessing or operating a laser system shall report, in writing, to the Department within fifteen (15) days of detection of any injury to an individual, regardless of severity or extent, in the course of operating, handling, servicing, or manufacturing a laser system. Information as the Department might require concerning the injury shall be made available to the Department.~~

Rule 290-5-27-.04 Report of Discontinuance

~~Every person who has registered a laser system and who permanently discontinues the operation of, or permanently disposes of, his laser system shall notify the Department, in writing, within thirty (30) days of such action.~~

~~Rule 290-5-27-.05 Laser System Exempt from Registration~~

~~No person may be required to register a laser system which cannot be energized or which is in transit.~~

~~Rule 290-5-27-.06 Enforcement~~

~~The administration and enforcement of these rules and regulations shall be in accordance with Chapter 88-3 of the Georgia Health Code.~~

~~Rule Chapter 290-5-32. PERFORMANCE OF ABORTIONS AFTER THE FIRST TRIMESTER OF PREGNANCY AND REPORTING REQUIREMENTS FOR ALL ABORTIONS.~~

~~Rule 290-5-32-.01 Definitions~~

~~Unless a different meaning is required by the context or pertinent statutes, the following terms as used in these Rules and Regulations shall have the meaning hereinafter respectively ascribed to them; except, these Rules and Regulations do not apply to hospitals owned or operated by the United States Federal Government.~~

~~(a) "Induced Abortion" means the procedure by which pregnancy is purposely terminated with the intent to result in other than a live birth.~~

~~(b) "First Trimester" means the first thirteen completed weeks after the first day of the last normal menstrual cycle.~~

~~(c) "Second Trimester" means the second thirteen weeks or gestation.~~

~~(e) "Hospital" means a facility which is subject to regulation and control under Section 31-7-1 of the Official Code of Georgia Annotated (Regulation of Hospitals and Related Institutions) as well as the Rules and Regulations duly promulgated thereunder and in particular the Rules and Regulations embodied in Chapter 290-5-6 entitled "Hospitals" duly promulgated by the Georgia Department of Human Resources, as such law and regulations now exist or may subsequently be amended.~~

~~(f) "Ambulatory Surgical Treatment Centers" means any institution, building, or facility, or part thereof, devoted primarily to the provision of surgical treatment to patients not requiring hospitalization, as provided under provisions of Code Section 31-7-1 of the Official Code of Georgia Annotated. Such facilities do not admit patients for treatment~~

~~which normally requires overnight stay, nor provide accommodations for treatment of patients for periods of twenty-four (24) hours or longer.~~

~~(g) "Abortion Facility" means a facility licensed by the Department as a hospital or ambulatory surgical treatment center.~~

~~(h) "Department" means the Department of Human Resources of the State of Georgia.~~

~~(i) "Commissioner" means the Commissioner of the Department of Human Resources of the State of Georgia.~~

~~(j) "Board" means the Board of Human Resources of the State of Georgia.~~

~~Rule 290-5-32-.02 Regulation of Abortion Procedures Subsequent to the First Trimester~~

~~(1) No abortion is authorized nor shall be performed after the first trimester unless the abortion is performed in an abortion facility; provided, however, that abortion procedures performed in an ambulatory surgical treatment center shall be limited to dilatation and evacuation procedures (D & E).~~

~~(2) No abortion is authorized nor shall be performed after the second trimester unless the attending physician and two consulting physicians certify in writing and make such statement a part of the medical records of the patient that said abortion is necessary in their best clinical judgment to preserve the life or health of the woman. If the product of such abortion is capable of meaningful or sustained life, medical aid then available must be rendered in order to achieve this result.~~

~~(3) Nothing in these Rules and Regulations shall require an abortion facility or physician to admit any patient for the purpose of performing an abortion. In addition, any person who shall state in writing an objection to any abortion or all abortions on moral or religious grounds shall not be required to participate in procedures which will result in such abortion, and refusal of such person to participate therein, shall not form the basis for any claim for damage or account of such refusal or for any disciplinary or recriminatory action against such person. The written objection shall remain in effect until such person shall revoke it or terminate his association with the facility with which it is filed.~~

~~Rule 290-5-32-.04 Severability~~

~~In the event that any rule, sentence, clause or phrase of any of these rules are in conflict with any superior law or, should be declared or adjudged invalid or unconstitutional, such determination or adjudication shall in no manner affect the remaining rules or portions thereof and such remaining rules or portions thereof shall remain in full force and effect as if such rule or portions thereof so determined, declared or adjudged invalid or unconstitutional were not originally a part hereof.~~

~~Rule 290-5-32-.05 Enforcement~~

~~In addition to the penal provisions of Section 16-12-143 of the Official Code of Georgia Annotated, which states that any person who fails to file or maintain, in complete form, any of the written reports required in that Chapter (as further reflected in these rules relating to abortions) within the time set forth shall commit a misdemeanor, and Section 16-12-140(b) of the aforesaid Code which states that a person convicted of criminal abortion shall be punished by imprisonment for not less than one (1) nor more than ten (10) years, except that a person convicted of failure to file the forms and records required by this Chapter shall be punished under Section 16-12-143, the administration and enforcement of these Rules and Regulations shall be as prescribed in Section 31-5-1 entitled "Administration and Enforcement" of the Official Code of Georgia Annotated and in conformity with the Administrative Procedure Act (Section 50-13-1 of the Official Code of Georgia Annotated), as amended.~~

~~Rule Chapter 290-5-37. HEALTH MAINTENANCE ORGANIZATIONS.~~

~~Rule 290-5-37-.01 Introduction and Purpose~~

~~(1) The Department of Human Resources is authorized by the Georgia Health Maintenance Organization Act of 1979, Ga. Laws of 1979, p. 1148, et seq., (Ga. Insurance Code Chapter 56-36) to promulgate rules and regulations necessary to establish and control the standards of health care which any Health Maintenance Organization (HMO) created under that Act shall be required to maintain. Before the Insurance Commissioner may issue a Certificate of Authority to operate an HMO, the Commissioner of the Department of Human Resources must certify to the Insurance Commissioner that the standards of health care are met by the applicant HMO.~~

~~(2) The purpose of these rules and regulations is to establish the standards of health care which will be required by the Department of Human Resources of HMOs. Minimum parameters of operation for the clinical staff and management of HMOs and components thereof will also be set. In recognition that HMOs are intended to be a cost effective alternative for the delivery of health care services, the Department is supportive of efforts to assure their availability to all citizens. It is the intent of the Department to assist the growth and development of HMO programs in Georgia and to aid in providing technical assistance needed for their efficient and effective utilization.~~

~~(3) HMOs are subject to review by the State Health Planning and Development Agency, pursuant to the Georgia Certificate of Need Law and 1122 of the Social Security amendment (where applicable). Evidence of completion of this review shall be Submitted to the Department of Human Resources as a documentation requirement during the Certificate of Authority process.~~

~~(4) Copies of these rules and regulations shall be available within the HMO, and employees shall be fully informed and instructed with reference to their requirements.~~

~~Rule 290-5-37-.02 Definitions~~

~~Unless a different meaning is required or given in the context, the following terms as used in these rules and regulations shall have the meaning hereinafter respectively ascribed to them:~~

~~(a) "Basic Health Care Services" means health care services which an enrolled population might reasonably require in order to be maintained in good health, including as a minimum but not restricted to, preventive care, emergency care, inpatient hospital and physician care, and outpatient medical services;~~

~~(b) "Commissioner" means the Commissioner of the Georgia Department of Human Resources or his designee;~~

~~(c) "Complaint" means a written expression of concern by an enrollee or provider regarding the provision of health care services by the HMO or a condition in the operation of an HMO which affects an enrollee or provider to such an extent as to be viewed by such as deserving of formal redress;~~

~~(d) "Department" means the Georgia Department of Human Resources (DHR);~~

~~(e) "Enrollee" means an individual person who is enrolled in a health benefits plan;~~

~~(f) "Governing Body" means the person or persons, natural or corporate, in which the ultimate responsibility, authority and accountability for the conduct of the HMO is vested;~~

~~(g) "Health Benefits Plan" means any arrangement whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services and at least part of such arrangement consists of arranging for or the provision of health care services, as distinguished from an arrangement which provides only for indemnification against the cost of such services, on a prepaid basis through insurance or otherwise;~~

~~(h) "Health Care Services" means any services included in the furnishing to any individual of medical or dental care, or hospitalization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing, or healing human illness or injury;~~

~~(i) "Health Education" means the provision of health information and the use of educational techniques to modify an individual's or family's knowledge and/or behavior to achieve and maintain optimum physical and mental health and to prevent illness, injury, chronicity, or unnecessary disability;~~

- ~~(j) "Health Maintenance Organization" or "HMO" means any legal entity subject to the provisions of the Georgia Health Maintenance Organization Act;~~
- ~~(k) "Health Professional" means those professionals engaged in the delivery of health services who are currently licensed to practice in the State of Georgia, or provide services authorized under an institutional license, or are certified, or practice under authority consistent with Georgia laws;~~
- ~~(l) "In-Area" means the geographical area defined by the health maintenance organization as its service area in which it provides health services to its enrollees directly through its own resources or through arrangements with other providers in the area;~~
- ~~(m) "Insurance Commissioner" means the Insurance Commissioner of the State of Georgia or his designee;~~
- ~~(n) "Medical Audit" means the retrospective examination and evaluation of the documentation of clinical application of medical knowledge as revealed in patient health records for the purposes of education, accountability, and quality assurance;~~
- ~~(o) "Out-of-Area" means that area outside of the geographical area defined by the health maintenance organization as its service area;~~
- ~~(p) "Physician" means an individual who is currently licensed to practice medicine, surgery, or osteopathy in the State of Georgia, under the Georgia Medical Practice Act, Chapter 84-9, Georgia Laws Ann.;~~
- ~~(q) "Primary Care Physician" means the physician responsible for the management of medical care and coordination of health care services of an enrollee;~~
- ~~(r) "Provider" means any physician, hospital, or other person or facility which is licensed or otherwise authorized in this State to furnish health care services;~~
- ~~(s) "Peer Review" means professional evaluation by currently licensed professional persons in the same category as those being reviewed, of the performance of individuals in the medical and related health care fields for the purpose of achieving and maintaining high standards of care and professional practice;~~
- ~~(t) "Person" means any individual, institution, partnership, association, corporation, the State, or any municipalities or subdivision thereof, or any other entity whether organized for profit or not;~~
- ~~(u) "Quality Assurance Program" means the planned systematic medical and/or management actions which assure consistent rendering of high-quality health care services through the use of monitoring and evaluation techniques;~~
- ~~(v) "Service Area" means the defined geographical area (i.e., boundaries of political subdivisions, census tracts, Area Planning and Development Commissions or Health~~

System's Agencies, etc.) in which HMO services are available and readily accessible to enrollees;

(w) "Subscriber" means an enrollee who has entered into a contractual relationship for the provision of/or arrangement of health care services from an HMO for himself and/or his dependents;

(x) "Supplemental Health Services" means those health services offered in addition to "Basic Health Care Services."

Rule 290-5-37-.03 Basic Health Care Services

An HMO shall provide or arrange for the provision of basic health care services to its enrollees as needed and without limitations as to time, cost, type of service, or waiting period, e.g. maternity benefits, except as otherwise provided for in these rules and regulations. Provided, however, that such persons or institutions shall not be required to provide or receive services which conflict with their religious belief or moral objection. Exemptions claimed under this provision must be fully disclosed in the health benefits plan. Upon the determination of necessity, the HMO shall be responsible for medically necessary emergency care 24 hours per day, seven days per week, during the time of an existing contract. The HMO is responsible to provide or arrange for the provision of nonemergency care during reasonable and customary working hours and days. An HMO must provide the basic health care services listed herein and may not provide less service, nor may the HMO withhold a basic health care service because of an enrollee's known or unknown health condition. An HMO may provide one or more health benefits plans which exceed the basic health care services by including one or more supplemental health services. The basic health care services are:

(a) Preventive Care Services (including family planning services and services for the detection of asymptomatic diseases). The following services will be provided on a periodic basis, as specified in the plan:

1. The full range of family planning services;
2. Services for infertility;
3. Preventive eye/ear examinations by a physician, optometrist, or other qualified health professional to determine the need for correction, for children through age seventeen (17). The cost of corrective appliances and/or artificial aids shall not be included as a basic service unless otherwise specified in the health benefits plan;
4. Pediatric and adult immunizations in accordance with the Immunization Program of the Georgia Department of Human Resources;
5. Periodic health examinations with appropriate protocols for specific age and sex groups, which may include pelvic and breast examinations and pap smears for women and other special diagnostic and screening procedures for enrollees

~~considered to be at risk for specific disease states (e.g., obesity, hypertension, diabetes, glaucoma, cardiovascular disorders, lung diseases, cancer, sickle cell disease, etc.);~~

~~6. Well-child care services aimed at preventing problems and promoting the well-being of the child according to an established schedule of examinations and services planned for early detection and treatment of disorders for the promotion of healthy growth and development (e.g., health assessments, nutrition counseling, immunizations, screening, health education, etc.); and~~

~~7. Health education activities (including nutritional education and counseling). Health education activities shall state in writing the targeted population, purposes and techniques to be utilized in the program and the evaluation of results.~~

~~(b) Emergency Care.~~

~~1. Medically necessary emergency care service is medical care rendered by affiliated or non-affiliated providers, whether in or out of the service area, under unforeseen conditions requiring services necessary for the repair of accidental injury, relief of acute pain and/or infection, protection of the person's health, or the amelioration of illness which, if not immediately diagnosed and treated, would result in physical or mental impairment or loss of life. Outpatient and inpatient in-area medically necessary emergency health services shall be available 24-hours a day, seven days a week. Emergency health services shall include in-area ambulance services to the nearest facility designated by the HMO plan. The HMO shall have a plan for coverage of out-of-area emergencies; the plan shall cover ambulance service. An HMO associated physician or other delegated health professional shall authorize the use of nonemergency ambulance services.~~

~~2. Medically necessary emergency services shall include psychiatric emergency care provided in an emergency room. Such care shall not be considered among the limited short-term outpatient mental health visits.~~

~~3. Emergency care related to alcohol use and abuse shall include:~~

~~(i) — immediate medical evaluation and care;~~

~~(ii) — medical management of intoxicated persons until they are no longer incapacitated by the effects of alcohol; and/or~~

~~(iii) — initiation of other appropriate health services needed for continuity of care.~~

~~4. Emergency care related to drug abuse and addiction shall include treatment for overdose and adverse reactions to psychotropic substances such as barbiturates, amphetamines, hallucinogens (including marijuana), tranquilizers and narcotics.~~

~~(c) Outpatient Medical Services and Inpatient Hospital Services.~~

- ~~1. Outpatient medical services shall include diagnostic or treatment services or both for patients who are ambulatory and may be provided in a non-hospital-based health care facility or in a hospital.~~
- ~~2. Inpatient hospital services shall include, but not be limited to room (private, if determined medically necessary by the physician) and board, general nursing care, meals and special diets when medically necessary, use of operating room and related facilities, intensive care unit and services, x-ray, laboratory and other diagnostic tests, drugs, medications, biologicals, anesthesia and oxygen services, special duty nursing when medically necessary, physical therapy, respiratory therapy, radiation therapy, administration of whole blood and blood products (or components) and derivatives, other diagnostic therapeutic and rehabilitative services as needed, and coordinated discharge planning including the planning of such continuing care as may be necessary both medically and as a means of preventing possible early rehospitalization.~~
- ~~3. Outpatient medical services and inpatient hospital services shall include appropriate short-term rehabilitative services. The HMO must clearly define and make known its policy to enrollees.~~
- ~~4. Prenatal, intrapartum and postnatal maternity care shall be covered. This shall include complications of pregnancy of the mother and care with respect to the newborn child from the moment of birth; and necessary care and treatment of illness, injury, and congenital defects of the infant.~~
- ~~5. Medically necessary plastic surgery shall be provided as needed for the purpose of improving function by anatomic alterations. The HMO has flexibility to determine a policy for elective plastic surgery and must clearly define and make known its policy to enrollees.~~
- ~~6. Prescribed drug(s) and/or injection(s) may be provided to an enrollee at the time of outpatient care as a basic health care service. The HMO must clearly define and make known its policy to enrollees.~~
- ~~7. Experimental procedures or biomedical clinical research investigations undertaken by the HMO or by health professionals associated with the HMO which involve HMO enrollees must comply with all current Federal and State regulations, especially with regard to informed patient consent, peer review, and the rights of human subjects.~~
- ~~8. The HMO shall provide outpatient evaluative and crisis intervention mental health services. These basic mental health services may be provided through lesser or longer time periods if enrollees are equitably assured the equivalency of twenty full 50-55 minute session visits per enrollee per year. Modifications of the standard therapeutic full session shall be fully and fairly disclosed to enrollees of the HMO.~~

~~9. Diagnosis and medical treatment for the abuse of or addiction to alcohol and drugs includes detoxification on either an outpatient or inpatient basis, whichever is medically determined to be appropriate, in addition to treatment for other medical conditions.~~

~~10. — Alcohol and drug referral services may be for either medical or for nonmedical ancillary services. Medical services shall be a part of basic health services; nonmedical ancillary services need not be a part of basic health services.~~

~~11. — Diagnostic laboratory and diagnostic and therapeutic radiology services shall include, but are not to be limited to clinical and anatomic pathology, and diagnostic radiology, including special procedures, therapeutic radiology, nuclear medicine, electrocardiography, electroencephalography, and other generally accepted diagnostic and therapeutic technology. Laboratory and diagnostic radiology services necessary for the care and management of a condition of an enrollee shall be readily accessible.~~

~~12. — Home health services are services which are provided at an enrollee's home by health care personnel, as prescribed or directed by the primary care physician. Home health services may include such rehabilitative therapy as medical social services and home health aide services. Homemaker services are not a required basic health service.~~

~~(d) Physician Care. Physician services (including consultant and referral services by a physician) shall be provided by or at the direction of a currently licensed physician.~~

~~1. Consultant services are defined as those services requiring the skills of a physician or other licensed health professional who by training and experience has acquired or demonstrated proficiency in specialized clinical areas. Coordination of patient care shall continue to be the responsibility of the primary care physician associated with the HMO.~~

~~2. Referral services are defined as those health and medical services provided directly to an enrollee by another health professional or health agency. Referrals shall be authorized and coordinated through the enrollee's primary care physician.~~

Rule 290-5-37-.04 Supplemental Health Services

~~(1) An HMO may provide or arrange for the provision of supplemental health services for which the enrollee has contracted and for which the required health manpower is available.~~

~~(2) An HMO must define the level and scope of each supplemental benefit to be offered, i.e., covered days of care, number of visits, or other specific units of service to be offered. Health service facilities, type of health professionals and range of specific~~

~~services, and the capabilities made available under each benefit, shall be fully disclosed to enrollees and kept current and updated.~~

~~Rule 290-5-37-.05 Health Services Information System~~

~~(1) The HMO and/or its providers shall establish and maintain an organized health services information system for the collection, processing, maintenance, storage and retrieval of information concerning health services received by HMO enrollees.~~

~~(2) An individual record shall be maintained within the system for each enrollee to include the following minimum data:~~

~~(a) Identification name; address; identifying number; enrollment date; age and birthdate; sex; marital status; occupation; and telephone number;~~

~~(b) An initial health evaluation including a chronological record of past medical history, drug use profile, personal and social history, family history and results of physical examinations, including laboratory and x-ray reports;~~

~~(c) A health care plan which identifies enrollee problem(s) and need(s) and the service(s) that will be provided for the enrollee's health maintenance, including revisions as indicated;~~

~~(d) The chief complaint and purpose of each visit; clinical diagnosis or impression; studies ordered; treatment given; disposition, recommendations, and instruction to patient; and a progress note for each follow-up visit;~~

~~(e) Copies of all consultation and/or referral requests and responses from other health care providers within and without of the organization, which shall be entered into the health record within 14 calendar days following the completion of services by the provider; and~~

~~(f) Other records, such as laboratory, x-ray and other test reports, vision/hearing records, immunization records, prenatal/postnatal records, copies of discharge summaries from inpatient health facilities, etc.~~

~~(3) The system shall be kept current and available to staff or agencies authorized to use the system.~~

~~(4) Health services information shall be retained for a period of six years after the last patient encounter for adults, and for six years after a minor reaches the age of majority. This information may be retained as originals, microfilms, or other usable forms and shall afford a basis for complete audit of professional information. If the HMO dissolves or changes ownership, the plan for retention shall be placed into effect and the Department shall be advised of the disposition and/or location of said records.~~

~~(5) Sufficient space and equipment for record processing, storage and retrieval shall be provided.~~

~~(6) Policies and procedures shall be written and implemented to assure organization and continuous maintenance of the health services information system.~~

~~Rule 290-5-37-.06 Confidentiality of Medical Information~~

~~Any data or information pertaining to the diagnosis, treatment, or health of any enrollee obtained from such person or from any provider by any HMO shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of these regulations; or upon the express consent of the enrollee; or pursuant to statute or court order for the production of evidence or the discovery thereof or in the event of claim or litigation between such person and the HMO wherein such data or information is pertinent. An HMO shall be entitled to claim any statutory privileges against such disclosure which the provider who furnished such information to the HMO is entitled to claim.~~

~~Rule 290-5-37-.07 Quality Assurance~~

~~(1) Program Planning and Evaluation. The HMO shall have a formal organized plan for an ongoing quality assurance program. The purpose of the quality assurance plan is to assure that the quality of health care services is continually monitored, reviewed and evaluated for appropriate resource utilization, cost containment, and improvement of health care delivery. The written plan shall be approved by the governing body and implemented under the direction of the medical director of the HMO or the medical group. At a minimum, the plan shall include:~~

- ~~(a) — The role and responsibilities of the medical director;~~
- ~~(b) — An organizational structure created for the purpose of monitoring, reviewing, and evaluating the quality of health care services provided and appropriate resource utilization and cost containment;~~
- ~~(c) Mechanisms to collect data; identify problem areas and make recommendations for changes or improvements; develop plans for correction of identified problems; and follow-up;~~
- ~~(d) — Arrangements for routine reporting of results of quality assurance program activities to the governing body and administration;~~
- ~~(e) — Provision for maintenance of minutes and records of quality assurance program activities; and~~
- ~~(f) A peer review process which will evaluate and document the internal quality assurance program and the professional standards and practices of the providers, and services provided.~~

~~(2) Accessibility and Availability of Services.~~

~~(a) — Basic health care services and supplemental health services for which enrollees have contracted shall be accessible (capable of being reached) to each enrollee and shall be readily available (present or ready for immediate use), within the defined service area of the HMO.~~

~~(b) — An HMO shall provide or arrange for regular and reasonable hours during which an enrollee may receive services. An orderly system for scheduling services to enrollees is required and shall take into account the immediacy of the need for service.~~

~~(c) The HMO shall have a physician available or arrange for physician services to be available at all times to provide diagnostic and treatment services. The HMO shall assure that every enrollee seen for a medical complaint is evaluated by a physician or other qualified health professional pursuant to Georgia law. Each enrollee shall have the opportunity to select his primary care physician from among those available at the HMO.~~

~~(d) — Medically necessary emergency services shall be available and accessible within the service area 24 hours a day, seven days a week.~~

~~(e) — The ratio of enrollees to staff, including health professionals, administrative and other supporting staff, directly or through referrals, shall be such as to reasonably assure that all services offered by the HMO will be accessible without delays detrimental to the health of the enrollees. The HMO shall demonstrate an adequate ratio of primary care physicians to enrollees.~~

~~(f) The HMO shall provide for the availability and accessibility to services of medical specialists as determined to be medically necessary for the enrollee.~~

~~(g) — Each HMO shall have a procedure for monitoring and evaluating availability and accessibility of its services, including a system for addressing problems that develop.~~

~~(3) Continuity of Care.~~

~~(a) — Each provider shall establish and maintain an individual health record on each enrollee served, which shall contain information relating to the health care of that enrollee. These records shall be available to accommodate the flow of pertinent information to and from primary care physicians, as needed to assure continuity of care.~~

~~(b) — The HMO shall offer counseling in dealing with the physical, emotional, and economic impact of illness and disability through services such as pre- and post-hospitalization planning, referral to services provided through community health, social and welfare agencies for family counseling, home health services, mental health services, health education, etc.~~

~~(4) Personnel.~~

~~(a) — All HMO personnel and providers of services shall be currently licensed to perform the services they provide, when such services require licensure or registration under applicable State laws.~~

~~(b) — The HMO shall assure that there is a sufficient number of health professionals to meet the needs of its enrollees. The specialty mix of licensed physicians shall be consistent with the projected health needs of the enrolled population. Emphasis shall be placed on having an adequate number of primary health care physicians.~~

~~(c) The HMO shall arrange for programs of continuing education for its staff and providers, either internally or by external organizations or agencies, to maintain and update skills and to assure quality of health care services.~~

~~(d) — The HMO shall maintain an individual personnel folder on each employee and/or provider. This file shall include all personal information concerning the employee and/or provider, including applications and qualifications for employment. The employee's and/or provider's current license or registration number shall be included, if applicable.~~

~~(5) Facilities and Equipment.~~

~~(a) — All facilities and equipment used for and in the delivery of services which are required to be licensed and/or certified by law, shall be so licensed and/or certified. This includes but is not necessarily limited to hospitals, nursing and intermediate care homes, clinical laboratories, pharmacies, psychiatric hospitals, and state-operated facilities.~~

~~(b) — Providers shall have a functional, sanitary, and comfortable environment for patients, personnel, and the public. At all times the privacy and dignity of patients will be upheld.~~

~~(c) There shall be an adequate amount of space for services provided and disabilities treated, including waiting and reception areas, staff space, examining rooms, treatment areas, and storage.~~

~~**Rule 290-5-37-.08 Policies and Procedures of the HMO**~~

~~The HMO shall have written policies and procedures governing the provision of services which are based on the stated objectives of the HMO. Policies and procedures shall be approved by the governing body and reviewed and updated at least annually. All policies/procedures shall be available for review by staff, enrollees, and providers. Policies and procedures shall include the following subjects:~~

~~(a) Administrative Policies:~~

- ~~1. Advisory Panels. Enrollees shall be afforded an opportunity to participate in health care matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decision, or through the use of other mechanisms;~~
- ~~2. Complaint System. The HMO shall establish and maintain a complaint system approved by the Insurance Commissioner after consultation with the Commissioner;~~
- ~~3. Annual Report. The HMO shall annually, on/or before the first day of March, file with the Insurance Commissioner's Office an annual statement as of December 31st of the preceding year which has been certified by at least two principal officers of said HMO. This report shall include summary information and statistics relating to the quality of health care, cost of operations, the pattern of utilization of services, availability and accessibility to services, use of the complaint system, and such other matters as may be required by the Commissioner;~~
- ~~4. Separation of Medical Decisions. The HMO plan shall be able to demonstrate through its quality assurance program and utilization review process that medical decisions are not hindered by fiscal and administrative management;~~
- ~~5. Service Area. The HMO shall maintain a current, explicit, definition of its service area and a statement of any restrictions or limitations on out-of-area health care.~~

~~(b) Policies Related to Professional Services:~~

- ~~1. Physician Services. The enrollee shall have a choice of any of the primary care physicians under contract to the HMO subject to availability;~~
- ~~2. Other Services. A system shall be established for referral, consultant, and other services not directly provided by the HMO to ensure continuity and availability of care;~~
- ~~3. Inpatient Admission and Discharge Policies. The HMO shall have policies and procedures for inpatient health facility utilization and utilization review.~~

~~Rule 290-5-37-.09 Statistical Information~~

- ~~(1) The HMO shall develop, compile, evaluate, and report statistics to the Department as requested relating to the cost of its operations, the pattern of utilization of its services, and the availability and accessibility of its services. The HMO shall provide the Department with full access to all operational and statistical data to enable the Department to verify the HMO's compliance.~~
- ~~(2) The annual statistical report shall contain the following information and shall be made on forms to be provided by the Commissioner. (Federally qualified HMO's may substitute for this annual statistical report, a copy of their four (4) most recent quarterly reports under the National Data Reporting Requirements).~~

~~(a) Enrollee statistics:~~

- ~~1. Number of employer contracts and total number of enrollees served by the contracts;~~
- ~~2. Number of subscriber contracts and total number of enrollees served by the contracts;~~
- ~~3. Number of enrollees at the beginning of the reporting year, and number of enrollees at the end of the reporting year, additions during the reporting year, losses during the reporting year;~~
- ~~4. Number of Medicaid and Medicare enrollees.~~

~~(b) Provider contracts:~~

- ~~1. Number by type of provider (i.e. physician, dentist, hospital, etc.);~~
- ~~2. Additions during the year;~~
- ~~3. Number of terminations during the year.~~

~~(c) Utilization, availability, accessibility, and cost data on the following:~~

- ~~1. Inpatient services;~~
- ~~2. Ambulatory care;~~
- ~~3. Preventive health care services.~~

~~(d) Other relevant information as determined by the Commissioner.~~

~~Rule 290-5-37-10 Examinations~~

~~(1) The HMO shall be available at all reasonable and/or scheduled operating hours for observation and examination by properly identified representatives of the Department. These examinations shall pertain to all matters relating to the quality of health care services of the HMO and all providers with whom such HMO has contracts, agreements, or other arrangements pursuant to its health benefits plan, as often as the Commissioner shall deem it necessary for the protection of the interests of the people of the State, but not less than once every five years. Such examinations may include any accounts, records, documents and files in the possession or control of the HMO, its officers, employees, representatives and providers, which relate to the subject of the examination. An HMO shall be entitled to claim any statutory privileges against such disclosure which the provider who furnished such information to the HMO is entitled to claim.~~

~~(2) The administrator or his representative shall accompany the Department representative on all tours of inspection and shall sign the completed checklist.~~

~~(3) Each HMO shall be periodically inspected to determine whether it is continuing to meet these requirements or is making satisfactory progress on approved plans of correction.~~

~~Rule 290-5-37-.11 Regulatory Process~~

~~Upon certification to the Insurance Commissioner's Office that the HMO does not meet the requirements of Section 56-3603(1) (b) of the HMO Act of Georgia; or the HMO is unable to fulfill its obligations to furnish health care services as required under its health benefits plan(s); or the HMO has violated any provision of the rules and regulations of the Department, the HMO shall be subject to the regulatory process as prescribed by the HMO Act of Georgia.~~

~~Rule 290-5-37-.12 Enforcement~~

~~(1) Informal Procedure. If the Commissioner shall for any reason have cause to believe that any violation of these rules and regulations or of the Georgia Laws governing HMO's has occurred or is threatened, the Commissioner may give notice to the HMO and to its representatives, or to other persons who appear to be involved in the suspected violation, to arrange a conference with the alleged violators or their authorized representatives for the purpose of ascertaining the facts relating to each suspected violation. In the event it appears that any violation has occurred or is threatened, the conferees may determine an adequate and effective means of correcting or preventing such violation. The proceedings under this subsection may be conducted in the manner deemed appropriate by the Commissioner under the particular circumstances.~~

~~(2) Formal Regulatory Process. In the event the Department does not choose to use the informal procedure set out above, or if an HMO does not correct or prevent the alleged violations as required by the Commissioner when the Department finds an HMO does not meet the requirements of these regulations or an HMO is unable to fulfill its obligations to furnish health care services as required under its health benefits plan, the Department shall so certify to the Insurance Commissioner for enforcement proceeding by that Department.~~

~~Rule 290-5-37-.13 Applicability of Regulations~~

~~These regulations are applicable only to HMO's and the services provided therein, and do not modify or revoke any of the provisions of other published rules of DHR.~~

~~Rule 290-5-37-.14 Severability~~

~~In the event that any rule, sentence, clause or phrase of any of these rules and regulations may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof and such remaining rules or portions thereof shall remain of full force and effect, as if such rule or portions thereof so determined, declared or adjudged invalid or unconstitutional were not originally a part hereof. It is the intent of the Board of Human Resources to establish rules and regulations that are constitutional and enforceable so as to safeguard the health and well-being of the people of the State.~~

~~Rule Chapter 290-5-41. BIRTH CENTERS.~~

~~Rule 290-5-41-.01 Definitions~~

~~Unless a different meaning is required by the context, the following terms as used in these rules and regulations shall have the meaning hereinafter respectively ascribed to them:~~

- ~~(a) "Administrator" means the individual who is responsible for the day to day management of the center.~~
- ~~(b) "Birth Center", "Birthing Center" or "Center" means a facility, other than the laboring woman's legal residence, which admits persons for the purpose of childbearing and which facility has not been classified and licensed by the Department as a hospital.~~
- ~~(c) "Birth Room" means any room within a center which is provided as an area where births take place.~~
- ~~(d) "Certified Nurse Midwife" means an individual who is a Registered Nurse currently licensed in the State of Georgia and who is also certified by the American College of Nurse Midwives.~~
- ~~(e) "Department" means the Georgia Department of Human Resources.~~
- ~~(f) "General Anesthesia" means any drug, element or other material which is administered to eliminate all sensation and which, when administered, is accompanied by a state of unconsciousness.~~
- ~~(g) "Governing Body" or "Management" means the board of directors, trustees, partnership, corporation, association, or person or group of persons who maintain and control the operation of the center and who are legally responsible for its operation.~~
- ~~(h) "Hospital" means any facility which meets the requirements of and is currently licensed as a hospital under the provisions of OCGA Chapter 31-7, Article 1, and is in~~

~~compliance with all rules and regulation of the Department pertaining to Maternity, Obstetrics and Newborn services.~~

~~(i) "Local Anesthesia" means any drug which, when administered, provides localized temporary loss of sensation, but not accompanied by a state of unconsciousness.~~

~~(j) "Low Risk Patient" means an individual who:~~

- ~~1. is in general good health with uncomplicated prenatal course;~~
- ~~2. is participating in an ongoing prenatal care and education program;~~
- ~~3. has no major medical problems;~~
- ~~4. has no significant signs or symptoms of hypertension, toxemia, hydramnios, abruptio placenta, chorioamnionitis, malformed fetus, multiple gestation, intrauterine growth retardation, fetal meconium, fetal distress, alcoholism, or drug addiction, Rh or other blood group antigen sensitization;~~
- ~~5. has no history of fetal wastage or premature delivery;~~
- ~~6. has no previous significant obstetrical complications likely to recur, nor previous uterine wall surgery or Caesarean section;~~
- ~~7. has parity under six unless a justification for a variation is documented by clinical staff;~~
- ~~8. is not a nullipara of greater than thirty six years of age;~~
- ~~9. is not less than sixteen years of age at onset of pregnancy;~~
- ~~10. is appropriate for a setting where anesthesia is limited to local infiltration of the perineum, or a pudendal block, and analgesia is limited;~~
- ~~11. while in active labor:
 - ~~(i) demonstrates no significant signs, or symptoms, or evidence of anemia, significant hypertension, placenta previa, malpositioned fetus or breech;~~
 - ~~(ii) is progressing normally;~~
 - ~~(iii) is without prolonged ruptured membranes; and~~
 - ~~(iv) is not in premature labor.~~~~
- ~~12. is not postmature.~~

~~(k) "Patient" means any woman who receives antepartum, intrapartum and postpartum care, or any newborn who receives medical care, in facilities governed by these regulations.~~

- ~~(l) "Permit" or "License" means an authorization granted by the Department to the Governing Board to operate a birth center.~~
- ~~(m) "Physician" means an individual who is currently licensed to practice medicine in the State of Georgia and is board certified or board eligible in obstetrics, family practice or pediatrics.~~
- ~~(n) "Plan of Correction" means an acceptable written plan submitted to the Department by the person or persons responsible for the center and which states proposed procedures and methods to correct the areas of non-compliance within an acceptable time frame.~~
- ~~(o) "Practitioner" means a physician or a certified nurse midwife.~~
- ~~(p) "Professional Staff" means the group of physicians, certified nurse midwives, other registered nurses, licensed practical nurses and other health professionals who require special licensure, certification or registration, who provide patient services at the center.~~
- ~~(q) "Provisional Permit" means an authorization granted by the Department to operate a birth center on a conditional basis in order to allow a newly established center a reasonable but limited period of time, as determined by the Department, to demonstrate that operational procedures are in satisfactory compliance with these rules and regulations, or to allow an established and operating center a specific length of time to comply with these regulations, provided said center shall first present an acceptable plan of correction.~~
- ~~(r) "Regional Anesthesia" means any drug, element or other material which, when administered, is accompanied by temporary sectional loss of sensation.~~
- ~~(s) "Special Care Capability" means availability of on-site equipment for use in providing emergency care to adult and newborn patients.~~

~~Rule 290-5-41-.02 Application for Permits~~

- ~~(1) The governing body shall submit an application to the Department for a permit using forms provided by the Department. No center shall be operated in Georgia without a valid permit which shall be displayed in a conspicuous place within the center. Failure or refusal by the governing body of any facility existing at the time these rules become effective to file an application for a permit within ninety (90) days shall constitute a violation of law and shall be dealt with as provided by law.~~
- ~~(2) The applicant for a permit to operate a birth center shall submit a completed application and a certification that the applicant is able and willing to comply with the minimum standards for a birth center and with the rules and regulations lawfully promulgated. Each applicant shall be responsible for complying with applicable fire safety laws and shall present evidence of such compliance, prior to receiving a permit.~~

~~(3) The application shall include complete information concerning the name and address of the applicant and the services to be provided; the ownership of the property and operation; if organized as a corporation, the names and addresses of each officer and members of the board of directors of the corporation; if organized as a partnership, the names and addresses of each partner; the identity of the medical director of the facility; and any other information which the Department may require.~~

~~(4) The applicant shall submit evidence of approval from the State Health Planning and Development Agency, as a part of the application to the Department for a permit.~~

~~(5) Plans for birth centers shall be submitted to the Department for review and approval in two stages of development:~~

~~(a) ——— schematic drawings; and~~

~~(b) ——— final working drawings and specifications.~~

~~(6) A permit shall be issued to the person or persons named only for the premises listed on the application for licensure.~~

~~(7) Permits are not transferable or assignable.~~

~~(8) Changes in ownership shall be subject to prior review and approval as required by the State Health Planning and Development Agency. Each planned change of ownership or lease shall be reported to the Department and to the State Health Planning and Development Agency at least sixty (60) days prior to such change along with an application from the proposed new owners for a new permit.~~

~~(9) The Center shall file a new application, prior to change in ownership or location. A written amendment to the current application shall be filed when there is a change in management or operational objectives.~~

~~(10) Separate applications and permits are required for centers maintained in separate premises, even though they are owned or operated by the same person(s), business or corporation, and may be doing business under the same title.~~

Rule 290-5-41-.03 Permits

~~(1) Following inspection and evidence of compliance with these regulations, the Department may issue a permit. Each permit shall indicate the classifications of services to be provided and patient capacity of the center.~~

~~(2) Permits issued shall remain in force and effect until revoked or suspended for failure to comply with these rules and regulations.~~

Rule 290-5-41-.04 Provisional Permits

~~Provisional permits may be issued by the Department for a time specific period based on an acceptable written plan for correcting deficiencies (plan of correction) found during an inspection. Provisional permits may be revoked by the Department due to prevailing circumstances which are not acceptable to the Department. Centers which are established and operating prior to adoption of these rules and regulations may be issued provisional permits when additional time is needed to meet physical plant standards.~~

~~Rule 290-5-41-.05 Inspections~~

~~(1) The center shall be open at all reasonable hours for observation and examination by properly identified representatives of the Department.~~

~~(2) The governing body shall notify the Department of the anticipated opening date of a newly constructed center in order that a pre-opening licensure inspection of the center may be conducted to determine compliance with these rules and regulations.~~

~~(3) The administrator (or a designated representative) shall accompany the Department representative on all tours of inspection and shall sign the completed inspection report.~~

~~(4) The center may be inspected at the discretion of the Department to determine whether it is continuing to meet these requirements or is making satisfactory progress in accordance with approved plans of correction.~~

~~Rule 290-5-41-.06 Organization and Administration~~

~~(1) The birth center shall be organized with an identifiable governing body which is responsible for establishing objectives and policies and which assumes full legal responsibilities for the overall conduct of the center, including compliance with laws and regulations pertaining to the center. The governing body and its membership shall be identified in the application for licensure.~~

~~(2) The ownership of the center shall be fully disclosed in the application. This disclosure shall include the names and addresses of all corporate officers and any person(s) having a five percent (5.0%) or more financial interest in the center.~~

~~(3) The governing body shall be responsible for professional staff appointments, shall establish effective mechanisms for quality assurance, and shall ensure the accountability of the professional staff.~~

~~(4) The organizational objectives of the center shall be clearly stated in the policies and procedures of the center.~~

~~(5) The governing body shall appoint an administrator and shall notify the Department of such person's name.~~

~~(6) The center shall be at all times under the personal and daily supervision and control of the administrator (or a designated representative) whose authority, duties and responsibilities shall be defined in writing. This information shall be available to the Department on request.~~

~~(7) The center shall be available for occupancy 24 hours per day, with professional staff on call at all times.~~

~~(8) Criteria for admission to the center shall be clearly identified in the center's policies. The admission policy shall be submitted with the application for licensure. At a minimum, admission criteria shall include a provision that only low-risk patients will be admitted and that there will be no discrimination according to race.~~

~~(9) Each patient shall be provided with a copy of the fee schedule and policy regarding payment.~~

~~(10) Admissions to the center shall be restricted to low-risk patients who have received antepartum care in accordance with the facility's policies. The center's policies and procedures regarding management of complications shall be explained by a staff physician or certified nurse-midwife.~~

~~(11) The center shall have written policies and procedures for antepartum, intrapartum, postpartum and newborn care including physician consultation, referral, transfer and transport to the hospital and registration of vital records. A written procedure shall be established to maintain these policies.~~

~~(12) The center shall have a written policy regarding visitation or attendance during the birth process.~~

~~(13) The mother and newborn shall be discharged within twenty-four (24) hours after delivery, in a condition which will not endanger the well-being of either the mother or newborn, or shall be transferred to a licensed hospital. The mother and newborn will be discharged in the care of another responsible adult who will assist in their transport from the birth center.~~

~~(14) The center shall have an organized professional staff which is responsible for the development of patient care policies and procedures and for maintaining the level of professional performance through a continuing program of staff education, and review and evaluation of care. Records of staff attendance at educational programs shall be maintained.~~

~~(15) The center shall have a medical director who is a physician, designated by the governing body, who shall be responsible for the direction and coordination of all professional aspects of the center's program.~~

~~(16) Practitioners applying for center privileges shall sign an agreement to abide by the center's policies and procedures.~~

~~(17) The center shall have specific policies and procedures for infection control, which include a mechanism for reporting to the Department those infections which develop within 6 weeks after discharge of the patient from the center, using forms provided by the Department.~~

~~(18) The center shall submit annually to the Department a statistical summary of morbidity and mortality data on forms supplied by the Department.~~

~~(19) Nothing in these rules and regulations shall prevent a licensed hospital from organizing and providing a birth center as an integral part of its facility, so long as the provided services are included in the application under which the hospital license is granted.~~

~~Rule 290-5-41-.07 Transfer and Transport Capability~~

~~(1) Each birth center shall have a written agreement with a hospital(s) which is licensed to provide obstetrical services, for emergency care. Each physician practicing in the birth center shall have admitting privileges at the back-up hospital.~~

~~(2) Each birth center shall have a written agreement with the emergency back-up hospital for acceptance and examination of laboratory specimens to expedite treatment, prior to formal admission procedures.~~

~~(3) The center shall have the capability to transfer and transport the adult and/or newborn patients to the contract hospital within thirty (30) minutes of initiation of transfer procedure to the arrival on the obstetric/newborn service of the hospital. Documentation of each transfer shall be maintained by the center to substantiate to the Department that it has met this requirement.~~

~~(4) The center shall have a written contract with a licensed ambulance service which will assure timely response.~~

~~Rule 290-5-41-.08 Professional Services~~

~~(1) All services provided by or in the center shall be performed by persons who are appropriately licensed or certified to perform such services in accordance with the laws of the State of Georgia. There shall be qualified staff members to provide for patient needs. At least one physician, certified nurse midwife or registered nurse shall be present at all times that the facility is open whenever a patient (mother or new born) is in the facility.~~

~~(2) All services shall occur within a health care system which provides for medical consultation, collaborative management or referral.~~

- ~~(3) All intrapartal services shall be under the direct supervision of a physician or a certified nurse midwife. At least one other member of the professional staff shall also be present at each delivery.~~
- ~~(4) The center shall establish written policies and procedures for emergency services to patients and shall require each professional staff member to receive instruction in emergency treatment of adult and infant patients, upon employment and at least annually thereafter.~~
- ~~(5) Each medical staff member shall have admitting privileges or a written agreement with a staff physician to provide services at the contract hospital. Documentation to show compliance with this requirement shall be maintained in the center.~~
- ~~(6) Definite means of identification shall be applied to every infant immediately after birth. Such identification shall remain on the infant until discharged. The permanent records of each newborn shall include footprints.~~
- ~~(7) The center shall have written policies and procedures to ensure (a) metabolic screening of all newborns within one week of age, (b) assessment of newborn status, including Apgar score at one and five minutes, (c) prevention of eye infection, (d) umbilical cord care, and (e) periodic observation and assessment after birth until the infant's condition is stable. These policies shall be developed in consultation with a pediatrician.~~
- ~~(8) Policies, procedures and facilities shall be provided for proper collection, storage and laboratory testing of cord blood for necessary studies on Rh Negative and O Positive mothers and a supply of Rhogam or other appropriate treatment material shall be readily available for use when needed.~~
- ~~(9) Prior to discharge, each newborn shall be examined by a physician.~~
- ~~(10) Verbal and written instructions shall be provided for observation and care of both the mother and newborn after discharge.~~
- ~~(11) A joint conference involving physicians, nurses, representatives of administration and other health personnel responsible for obstetric and newborn care shall be conducted at least quarterly to discuss morbidity and mortality. All fetal and newborn deaths and transfers occurring within the interval since the previous conference shall be reviewed. Minutes shall be kept of the meetings and shall be available to the Department.~~

Rule 290-5-41-.09 Personnel

- ~~(1) The center shall require that each employee receives a health examination upon employment. The examination shall be in sufficient detail, including pertinent laboratory and tuberculosis screening, to assure that the employee is able to perform assigned tasks. The center shall have a policy for monitoring the health status of employees.~~

~~(2) There shall be a separate personnel folder maintained for each employee. This personnel file shall contain all pertinent information concerning the employee, including the application for employment and qualifications for employment, verifications of physical examinations, job description and a copy of current Georgia license for those required to be licensed.~~

~~(3) There shall be an on-going program of continuing education for all personnel. This shall include aspects of fire safety and the disaster plan for moving personnel and patients to safety and for handling patient emergencies.~~

~~Rule 290-5-41-.10 Health Services Information System~~

~~(1) The birth center shall establish and maintain an organized health services information system for the collection, processing, maintenance, storage and retrieval of information concerning health services received by the patient.~~

~~(2) An individual medical record shall be maintained within the system for each patient, and shall include the following data:~~

~~(a) Identification name, address, identifying number, date of first visit, age or birth date, sex, marital status, occupation, telephone number, and name and telephone number of person to contact in event of an emergency;~~

~~(b) An initial health evaluation including a chronological record of past medical history, drug use profile, personal and family history and results of physical examinations, including laboratory and x-ray reports;~~

~~(c) A health care plan which includes information regarding each visit;~~

~~(d) Clinical diagnosis or impression, studies ordered, treatment given, disposition, recommendations, and instructions to patient, complete with a progress note for each follow-up visit.~~

~~(3) The system shall be kept current and available to staff or agencies authorized to use the system.~~

~~(4) Medical records shall be preserved as original records, microfilms or other usable forms and shall be such as to afford a basis for complete audit of professional information. Centers shall retain all medical records or shall assure that they are maintained in a manner acceptable to the Department at least until the sixth anniversary of the patient's discharge. In the case of patients who have not attained majority at the time of the discharge, centers shall retain such records for at least six (6) years after the patient reaches age of majority. In the event a center shall cease operation, the Department shall be advised of the location of said records.~~

~~(5) Sufficient space and equipment for record processing, storage and retrieval shall be provided.~~

~~(6) Policies and procedures shall be written and implemented to assure organization and continuous maintenance of the health information system.~~

~~Rule 290-5-41-.11 Clinical Laboratory Services~~

~~If laboratory services are provided on site, the laboratory shall be licensed under the provisions of the Georgia Laboratory Licensure Law of 1970, O.C.G.A. Chapter 31-22, and applicable rules and regulations.~~

~~Rule 290-5-41-.12 Drug Storage and Administration~~

~~(1) Each center shall provide adequate space and equipment and staff to assure that drugs are stored and administered in compliance with State and Federal laws and regulations.~~

~~(2) No drugs shall be dispensed at the facility unless pharmacy regulations are met.~~

~~Rule 290-5-41-.13 Food Service~~

~~If food services are provided, the facility must comply with Georgia Laws and Food Services Rules and Regulations of the Department.~~

~~Rule 290-5-41-.14 Anesthesia~~

~~General or regional anesthesia shall not be utilized in a birth center. Local or pudendal anesthesia is permitted.~~

~~Rule 290-5-41-.15 Physical Plant and Operational Standards~~

~~The following minimum physical plant and operational standards shall be met:~~

~~(a) The center shall provide sufficient space and equipment for patient and visitor waiting area, examination and treatment rooms, birth rooms, special care capability, and for staff and administrative areas. Birthrooms shall each have at least 100 square feet of area, exclusive of bathroom, toilet or entry way, and be designed and located to prevent traffic through them to any other part of the center.~~

~~(b) The Department may deny the center a permit if it does not comply with Federal, State and local laws, codes, ordinances, and regulations which apply to its location, construction, maintenance and operation.~~

~~(c) It shall be the responsibility of the governing body to assure that the center is in a safe condition at all times, and that a fire inspection record is maintained on equipment, systems, and areas that may present a hazard to occupants.~~

~~(d) Fire and internal disaster drills shall be conducted at least quarterly and the time of the drill and results documented.~~

~~(e) In addition to requirements specified herein, and those required by local ordinances or regulations, the construction of a birth center shall meet the requirements of the Georgia Safety Fire Commissioner, Chapter 120-3-3,* March 1, 1979, and subsequent revisions thereto. Applications for licensure shall be accompanied by written evidence that these requirements have been met.~~

~~(f) Entrances for patients shall be connected to the public right-of-way by a hard-surfaced, unobstructed walkway in good repair. Access for handicapped individuals shall be provided at a minimum of one entrance. A hard-surfaced, unobstructed road or driveway for use by ambulances or other emergency vehicles shall run from at least one entrance of the building to the public right-of-way. The doorway of such entrance shall be immediately adjacent to the road or driveway. If such doorway is not on the same level as the road, a ramp shall provide a continuous, unobstructed plane to the entrance.~~

~~(g) Services provided in multi-story buildings shall be accessible by an elevator of adequate size to accommodate a standard wheeled litter patient and two attendants. Multi-story buildings will be considered to have met this requirement when patients are located only on ground level floors with outside exits. A stairway or ramp of adequate dimensions shall be available for transfer of patients in case of power failure.~~

~~*EDITORIAL NOTE: A copy of said Chapter 120-3-3, Rules and Regulations of the Safety Fire Commissioner, was filed with this Chapter 290-5-41 and is on file with same in the Office of Secretary of State.~~

~~(h) The birth center shall be constructed, equipped, and maintained to assure the safety of patients and personnel. The following requirements shall apply within the center:~~

~~1. Birth rooms shall be designed and located to prevent traffic through them to any other part of the center.~~

~~2. The walls and floors of birth rooms, examination rooms and staff dressing and scrub areas shall be of material that will permit frequent washing and cleaning.~~

~~3. Staff dressing rooms and scrub facilities shall be convenient to the birth rooms, and shall include a knee, elbow, wrist or foot operated sink soap dispenser and brushes.~~

~~4. Toilet and handwashing facilities shall be accessible to patients from the birth room. Convenient handwashing facilities shall be provided for both staff and patient and shall be provided with soap dispenser and individual or disposable towels. The use of common towels is prohibited~~

- ~~5. The center shall be arranged and organized in such a manner as to ensure the comfort, safety, hygiene, privacy and dignity of patients treated therein.~~
 - ~~6. A clean up room for equipment shall be provided.~~
 - ~~7. The center shall have an audible alarm system with control switches in all birth rooms which can be activated during an emergency.~~
 - ~~8. The center shall have special care capability which includes but is not necessarily limited to the following, for both adults and infants: resuscitation equipment, intravenous solutions, drugs, oxygen, suction, infant stethoscope and transfer isolette. Such emergency equipment shall be provided on each floor on which patients are served.~~
 - ~~9. Each birthroom shall have an infant resuscitation tray with a laryngoscope, positive pressure bag and mask and endotracheal tubes.~~
- ~~(i) The center shall provide space and facilities for administrative activities, including offices, medical records and other files and storage of supplies.~~
 - ~~(j) A waiting room and patient admissions area(s) shall be provided. There shall also be space for storage of personal belongings of staff, patients and visitors.~~
 - ~~(k) The center shall have adequate and conveniently located toilets and handwashing facilities for its staff, employees, patients and visitors.~~

~~Rule 290-5-41-.16 Housekeeping, Laundry, Maintenance and Sterile Supplies~~

- ~~(1) The center shall ensure that housekeeping and maintenance is adequate to maintain the center and equipment in a clean condition and state of good repair. An equipment clean-up area with adequate plumbing, including a sink with counter, shall be provided within the center.~~
- ~~(2) Laundry service shall be provided either in house or by contractual arrangement. Separate space and facilities shall be provided for receiving, sorting and storing soiled laundry and for the sorting, storing and issuing of clean laundry, if reusable items are utilized.~~
- ~~(3) There shall be adequate space and facilities for receiving, packaging and proper sterilization and storage of supplies and equipment consistent with the services to be provided.~~
- ~~(4) Special precaution shall be taken to ensure that sterile instruments and supplies are kept separate from nonsterile instruments and supplies. Equipment for sterilization of instruments and supplies shall be conveniently located and of adequate capacity for the work load. Records shall be maintained to assure quality control, including, date, time and temperature of each batch of sterilized supplies and equipment. Sterilization~~

~~performance shall be checked and records shall be kept. Sterile items shall be dated and utilized, based on established procedures.~~

~~Rule 290-5-41-.17 Electrical Power~~

~~(1) All electrical work and equipment shall be designed and installed in accordance with State and local laws and ordinances.~~

~~(2) All areas of the center shall have sufficient artificial lighting, for designated purposes.~~

~~(3) All centers shall have an alternative lighting source for emergency use in the event of a power failure.~~

~~Rule 290-5-41-.18 Sanitation and Waste Disposal~~

~~(1) The center shall maintain sanitary conditions throughout the premises. This shall include the water supply, sewerage, and solid waste disposal systems. Such facilities shall meet local and State regulations.~~

~~(2) All garbage, trash and waste shall be stored and disposed of in a manner that will not permit the transmission of disease, create a nuisance, or provide a breeding place for insects or rodents.~~

~~(3) Obstetrical wastes and contaminated materials shall be disposed of by incineration or other means acceptable to the Department.~~

~~(4) Effective means shall be provided at all outside doors, windows and other openings to the center to prevent the entrance and harborage of flies, other insects and rodents.~~

~~Rule 290-5-41-.19 Advertising~~

~~Any advertising of the services provided in or by a birth center shall be truthful and shall include the full name of the center and its Georgia license number, as shown on the face of the permit.~~

~~Rule 290-5-41-.20 Waivers and Variances~~

~~(1) The Department upon application may grant variances or waivers of specific rules and regulations as provided for in O.C.G.A. Section 31-2-4, when it has been shown that the rule or regulation is not applicable or to allow experimentation and demonstration of new and innovative approaches to delivery of services.~~

~~(2) The Department may exempt classes of facilities from regulation as provided for in O.C.G.A. Section 31-2-4, when regulation would not permit the purpose intended or the class of facilities is subject to similar requirements under other rules and regulations.~~

~~Rule 290-5-41-.21 Enforcement~~

~~A birth center which fails to comply with these rules and regulations shall be subject to denial of a permit, revocation of its permit or provisional permit and other sanctions provided by law. The enforcement and administration of the rules and regulations shall be as prescribed in O.C.G.A. Chapter 31-5, Enforcement and Administrative Procedure, which includes provision for:~~

- ~~(a) the misdemeanor penalty for violation of rules and regulations promulgated under this Title;~~
- ~~(b) injunctive relief under appropriate circumstances;~~
- ~~(c) the Inspection Warrant; and~~
- ~~(d) the due process requirements of notice, hearing and appeals.~~

~~Rule 290-5-41-.22 Applicability of Regulations~~

~~These regulations are applicable to any building or facility which is or shall be classified by the Department of Human Resources as a birth center and the services provided there in, and expressly do not modify or revoke any of the provisions of the published rules of the Department of Human Resources, Chapter 290-5-6 (Rules and Regulations for Hospitals), or of Chapter 290-5-32 (Rules and Regulations for Performance of Abortions After the First Trimester of Pregnancy and Reporting Requirements for all Abortions), or of revisions which may be made to said regulations.~~

~~Rule 290-5-41-.23 Severability~~

~~In the event that any rule, sentence, clause or phrase of any of these rules and regulations may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof and such remaining rules or portions thereof shall remain of full force and effect, as if such rule or portions thereof so determined, declared or adjudged invalid or unconstitutional were not originally a part here of. It is the intent of the Board of Human Resources to establish rules and regulations that are constitutional and enforceable so as to safeguard the health and well-being of the people of the State.~~

~~Rule Chapter 290-5-44. MONITORING, SUSPENSION OF ADMISSIONS, OR TRANSFER OF PATIENTS OR RESIDENTS OF HOSPITALS AND RELATED INSTITUTIONS.~~

~~Rule 290-5-44-.01 Definitions~~

~~Unless a different meaning is required or given in the context, the following terms as used in these rules and regulations shall have the meaning hereafter respectively ascribed to them:~~

~~(a) "Commissioner" means the Commissioner of the Georgia Department of Human Resources or his designee;~~

~~(b) "Department" means the Department of Human Resources of the State of Georgia;~~

~~(c) "Emergency Order" or "Order" means a written directive by the Commissioner prohibiting additional admissions to an institution, placing a monitor in an institution, or requiring emergency relocation of patients or residents;~~

~~(d) "Guardian" means a patient's or resident's legal guardian or conservator or the parent of a minor who does not have a duly appointed guardian;~~

~~(e) "Health Care Facility" or "Institution" means a facility subject to licensure under the provisions of O.C.G.A. Chapter 31-7, Article 1, unless specifically exempted by these rules and regulations;~~

~~(f) "Monitor" means a person, designated by the Department, to remain on-site in an institution, as an agent of the Department, observing conditions;~~

~~(g) "Patient" or "Resident" means any person who has been admitted to and resides in an institution;~~

~~(h) "Patient's or Resident's Physician" means a physician duly licensed to practice in Georgia and who has most recently been the physician primarily responsible for the patient's or resident's medical care;~~

~~(i) "Preliminary Hearing" means a pre-administrative hearing held by the Department at the request of an institution which has been affected by an emergency order. Note: An administrative hearing is provided for in O.C.G.A. 50-13-13.~~

~~Rule 290-5-44-.02 Emergency Orders~~

~~(1) Emergency orders are issued by the Commissioner pursuant to findings by the Department, during surveys or inspections which are required or permitted by law, that Departmental rules and regulations are being violated.~~

~~(2) Emergency orders may direct prohibition of admissions to an institution; placement of monitors in an institution; or direct relocation of patients or residents from an institution.~~

~~(3) An emergency order shall contain the following:~~

- ~~(a) — scope of the order;~~
- ~~(b) — reasons for the issuance of the order;~~
- ~~(c) effective date of the order if other than the date order issued;~~
- ~~(d) — person to whom questions regarding the order are to be addressed, and~~
- ~~(e) — notice of the right to a preliminary hearing.~~

~~(4) Unless otherwise provided in the order, an emergency order shall become effective immediately.~~

~~(5) Prior to issuing an emergency order to require the removal, transfer of patients or placement of a monitor in a medical facility which has been classified by the Department as a general hospital, the Commissioner may consult with persons knowledgeable in the field of medical care and a representative of the facility to determine if there is a potential for greater adverse effects on patient care as a result of the emergency order.~~

Rule 290-5-44-.03 Prohibition of Admissions

~~(1) The Commissioner may order the prohibition of admissions to an institution when the institution has failed to correct a violation of Departmental rules and regulations and the violation:~~

- ~~(a) — Could jeopardize the health and safety of residents or patients in the institution if the violations were allowed to remain uncorrected; or~~
- ~~(b) — is a repeat of the same violation within a twelve-month period, which the Department determines is a result of intentional acts or lack of action or due to gross negligence.~~

~~(2) Admission to an institution may be suspended until the violation has been corrected as certified by the Department or until the Department has determined that the institution has undertaken action necessary to substantially correct the violation, so that the health and safety of residents or potential residents would not be jeopardized.~~

Rule 290-5-44-.04 Placement of Monitors

~~(1) The Commissioner may order the emergency placement of a monitor or monitors in an institution when one or more of the following conditions are present:~~

- ~~(a) — The institution is operating without a permit;~~
- ~~(b) — The Department has denied application for a permit or has initiated action to revoke the existing permit of the institution;~~
- ~~(c) The institution is closing or plans to close and adequate arrangements for relocation of the patients or residents have not been made at least 30 calendar days before the date of closure; or~~
- ~~(d) — The health, safety, security, rights, or welfare of the patients or residents cannot be adequately assured by the institution.~~

~~(2) A monitor may be placed in an institution for no more than ten calendar days, during which time the monitor shall observe conditions and institutional compliance with any recommended remedial action of the Department. The monitor shall report to the Department. The monitor shall not assume any administrative responsibility within the institution, nor shall the monitor be liable for any actions of the institution. The salary and related costs and travel and subsistence as defined by Departmental policy of placing a monitor in an institution shall be reimbursed to the Department by the Institution, unless the order placing the monitor is determined to be invalid in a contested case in which event the cost shall be paid by the Department.~~

~~Rule 290-5-44-.05 Emergency Relocation of Patients or Residents~~

- ~~(1) The Commissioner may order the emergency relocation of patients or residents from an institution when the Commissioner has determined that the patients or residents are subject to an imminent and substantial danger.~~
- ~~(2) When an emergency relocation order is issued, the Commissioner shall act to or cause the institution to act to:
 - ~~(a) — notify the patients or residents, their next of kin or guardian, and their physicians of the emergency relocation and the reasons therefor;~~
 - ~~(b) — relocate patients or residents to the nearest appropriate institution; and~~
 - ~~(c) provide other protections designed to ensure the welfare and, when possible, the desires of the patients or residents.~~~~

~~Rule 290-5-44-.06 Preliminary Hearings~~

~~(1) A request for a preliminary hearing shall be made in writing to the representative of the Department designated in the emergency order. Unless a request is made to appear in person, the preliminary hearing shall consist of an administrative review of the record, written evidence submitted by the institution affected, and a preliminary written argument in support of its contentions.~~

~~(2) If a request is made to appear in person at the preliminary hearing, the following information shall be included in the request, or provided prior to the hearing:~~

- ~~(a) — the name and address of person or persons, if any, who will be representing the institution in the preliminary hearing;~~
- ~~(b) — the names and titles of all other persons who will attend the preliminary hearing; and~~
- ~~(c) any additional evidence the institution wishes to submit for consideration at the hearing.~~

~~(3) Upon receipt of a request for a preliminary hearing, the Department shall set and give notice of the date, time, and location of the preliminary hearing. The preliminary hearing shall be held within ten calendar days of a request therefor.~~

~~(4) If a personal appearance is requested, the preliminary hearing shall consist of a review of the evidence in the record; any additional evidence introduced at the hearing; and any arguments made. A sound recording shall be made of the hearing.~~

~~(5) Within seven calendar days of the close of the hearing, the Department shall render a written decision. The decision shall be divided as follows:~~

- ~~(a) — description of additional evidence submitted by the affected institution;~~
- ~~(b) — summary of the arguments and/or brief submitted by the institution in support of its contention that the emergency order is invalid;~~
- ~~(c) a statement as to whether the emergency order issued by the Department is found valid and the reasons therefor; and~~
- ~~(d) — notice of the right to an administrative hearing pursuant to O.C.G.A. 50-13-13, if the emergency order is found valid.~~

~~(6) Pending final appeal of the validity of any emergency order issued as provided herein, such emergency order shall remain in full effect until vacated or rescinded by the Commissioner.~~

~~(7) The Department is not limited to a single emergency action under these rules, nor is the Department precluded from other actions permitted by other law or regulations during the time an emergency order is in force.~~

Rule 290-5-44-.07 Severability

~~In the event that any rule, sentence, clause or phrase of any of these rules and regulations may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof and such remaining rules or~~

~~portions thereof shall remain in full force and effect, as if such rule or portions so determined, declared or adjudged invalid or unconstitutional were not originally a part hereof. It is the intent of the Board of Human Resources to establish rules and regulations that are constitutional and enforceable so as to safeguard the health and wellbeing of the people of the State.~~

~~Rule Chapter 290-5-46. FAMILY VIOLENCE SHELTERS.~~

~~Rule 290-5-46-.01 Definitions~~

- ~~(1) "Certification" means the process by which a family violence shelter or family violence program is determined to meet criteria established by the Department, which will enable the family violence shelter or family violence program to receive monies allocated for their use.~~
- ~~(2) "Commissioner" means the Commissioner of Human Resources.~~
- ~~(3) "Department" means the Department of Human Resources of the State of Georgia or its duly authorized representatives.~~
- ~~(4) "Director" means the adult person designated by the governing body as responsible for the day-to-day management, administration and/or supervision of the Family Violence Shelter. The Director shall be capable of operating the shelter in accordance with these rules and regulations.~~
- ~~(5) "Family" of "household members" means spouses, parents and children, or other persons related by consanguinity or affinity and occupying a common domicile.~~
- ~~(6) "Family violence" means the occurrence of one of the following acts between family or household members who reside together.
 - ~~(a) — Attempting to cause or causing bodily injury or serious bodily injury with or without a deadly weapon; or~~
 - ~~(b) — By physical menace, placing another in fear of imminent serious bodily injury.~~~~
- ~~(7) "Family violence program" means any program certified by the Department which provides services to victims of family violence. A family violence program may be but is not required to be associated with a family violence shelter.~~
- ~~(8) "Family violence shelter" means a facility certified by the Department for the purpose of receiving on a temporary basis persons who are subject to family violence. Family violence shelters are distinguished from shelters operated for detention or placement of children only, as provided in subsection (a) of Code Section 15-11-20 (Ga. Law 1981, p. 663 1; Ga. Law 1983, p. 521 1.).~~

~~(9) "Governing Body" means the Board of Trustees, the partnership, the corporation, the association, or the group of persons who maintain and control the shelter and who are legally responsible for the operation of the shelter.~~

~~(10) "Permit" means authorization granted by the Department to any person or persons to operate a Family Violence Shelter. Such a permit signifies satisfactory compliance with these rules and regulations.~~

~~(11) "Plan of Improvement" means a written plan submitted by the persons responsible for a family violence shelter. The plan shall identify the existing areas of non-compliance of the facility, the proposed procedures, methods, means and period of time to correct the areas of non-compliance.~~

~~(12) "Provisional permit" means authorization granted by the Department to a person or persons to operate a Family Violence Shelter on a conditional basis to allow a newly established shelter a reasonable but limited period of time to demonstrate operational procedures in satisfactory compliance with these rules and regulations, or to allow a shelter a specified length of time to comply with these rules and regulations, provided said family violence shelter shall first present an acceptable plan of improvement.~~

~~(13) "Resident" means a person who has been subjected to family violence, and who has sought and obtained admission to a family violence shelter. To qualify for admission, a resident must be at least 18 years of age, or an emancipated female. Dependent children of residents may accompany their parent into the shelter.~~

Rule 290-5-46-.02 Governing Body

~~(1) Each family violence shelter shall have a governing body which assumes full legal responsibility for the overall conduct of the shelter.~~

~~(2) The governing body shall be composed of at least three citizens, one of whom shall be a member of a local, municipal or county law enforcement agency.~~

~~(3) The ownership of the shelter shall be fully disclosed in its application for a permit. In the case of corporate partnerships and other bodies created by statute, the corporation officers and all others owning 10% or more of the corporate stock or ownership shall be disclosed in the application for a permit.~~

~~(4) The governing body shall be responsible for compliance with all applicable laws and regulations pertaining to the shelter.~~

~~(5) The governing body shall certify in its application the name of the person to whom the responsibility for the management of the shelter is delegated, including the carrying out of rules and policies adopted by the governing body. This persons shall be known as the director and their legal authority shall be defined in writing.~~

~~(6) The Department shall be notified with a new application when there are changes in ownership, management and operational objectives.~~

~~Rule 290-5-46-.03 Administration~~

~~(1) Each shelter shall develop a written statement of policies and procedures outlining the responsibilities of the management and the residents.~~

~~(2) Each shelter shall have a written statement regarding fees and services provided.~~

~~(3) Each shelter shall designate, in writing, a responsible person who can carry out the duties of the director, in that person's absence.~~

~~(4) There shall be written procedures for handling emergencies, available to all staff and volunteers.~~

~~(5) No family violence shelter shall deny service or admission to an applicant or resident on the basis of race, religion, color, non-medical handicap, national origin or ability to pay.~~

~~(6) Each family violence shelter shall provide a residential area which offers a safe refuge for victims of family violence and their dependent children, on a 24-hour a day, 7-day a week basis.~~

~~(7) Each family violence shelter shall provide or utilize a phone service which allows 24-hour accessibility to services. The shelter shall publicize the phone number of this service in the community.~~

~~(8) Each family violence shelter shall have a written plan detailing their access to the following services:~~

~~(a) ——— Emergency medical care;~~

~~(b) ——— Emergency transportation;~~

~~(c) Counseling or psychological services for victims, their dependent children and violent family members;~~

~~(d) ——— Legal service.~~

~~(9) Additional services available through linkages with existing community agencies, shall be accessible to residents. These services may include assistance with housing, employment, and the educational and vocational needs of the victims.~~

~~(10) Shelters shall make referrals to other appropriate services if:~~

~~(a) ——— the shelter is occupied to capacity; or~~

~~(b) ——— the request for service is inappropriate; or~~

~~(c) the multiplicity of the victim's problems require the services of another agency.~~

~~Rule 290-5-46-.04 Admissions~~

~~(1) An admission agreement in writing shall be entered into between the shelter and the resident. This agreement shall include the daily, weekly, or monthly charges and the responsibilities of both management and resident. A copy of this agreement shall be maintained in the shelter's files.~~

~~(2) A copy of the shelter's policies shall be made available to each resident upon admission.~~

~~(3) As part of the admission agreement, the shelter shall obtain from each resident a signed acknowledgement of understanding the shelter's policies.~~

~~Rule 290-5-46-.05 Resident Files~~

~~(1) An individual resident file shall be maintained by the director for each resident in the shelter. Personal information shall be treated as confidential and shall not be disclosed except to the resident, the management, the Department's licensing agency and others for whom written authorization is given by the resident.~~

~~(2) The resident files shall include the following information:~~

~~(a) Identifying information including name, marital status, age, sex, and previous address;~~

~~(b) Name and address of person to contact in case of an emergency;~~

~~(c) Date of admission;~~

~~(d) Date of termination of residence;~~

~~(e) Any pertinent medical information, including name of preferred physician, pharmacist, and hospital;~~

~~(f) Record of all monies and other valuables entrusted to the shelter for safekeeping;~~

~~(g) If dependent children accompany a resident into the shelter, the following information shall be obtained on each child: name, birthdate, sex, and any pertinent medical information including name of physician;~~

~~(h) With written consent, or if offered as information, the forwarding address of the resident.~~

~~Rule 290-5-46-.06 Resident's Rights~~

- ~~(1) No individual shall be deprived of any civil right solely because of being in the shelter.~~
- ~~(2) Each resident has the right to be fully informed of the shelter's policies, fees, and services.~~
- ~~(3) Each resident has the right to be notified in writing of a shelter's decision to terminate his/her stay.~~
- ~~(4) Each resident shall be notified verbally and by copy of the shelter's policies, of his/her rights and the process of appeal for any termination decision.~~
- ~~(5) Each resident shall have the right to voice grievances and register complaints. Policies of the shelter shall define procedures for residents to exercise their rights.~~

~~Rule 290-5-46-.07 Personnel~~

- ~~(1) The director and all designated responsible persons shall be at least 18 years of age.~~
- ~~(2) All staff members and any volunteers offering direct services to the residents or children of the shelter, shall have received training in basic first aid within the past two years. All staff and such volunteers shall be in good health and by training and experience, be capable of meeting the demands of the position.~~
- ~~(3) All staff members, including the director and any volunteers offering direct services to the residents or children of the shelter, shall have received a physical examination within 12 months prior to employment or initial application for licensure of the shelter, which shall be in sufficient detail to insure that the staff member is physically and mentally qualified to perform the job to which he/she is assigned.~~
- ~~(4) There shall be an on-going planned program of in-service education for staff and volunteers.~~
- ~~(5) There shall be written personnel policies addressing job descriptions, qualifications for each job, and conditions of employment.~~

~~Rule 290-5-46-.08 Bedding, Linen and Miscellaneous~~

- ~~(1) Each shelter shall provide an individual bed for each resident at least 36 inches wide and 72 inches long with comfortable springs, a protected mattress and a pillow.~~
- ~~(2) Cribs shall be provided for infants.~~
- ~~(3) Shelters shall provide bedding, towels, wash cloths, soap, light bulbs, and toilet tissue.~~

~~(4) An emergency supply of clean clothing and toiletries shall be kept available for use by residents and their children, if needed.~~

~~Rule 290-5-46-.09 Physical Plant~~

~~(1) A shelter shall be so constructed, arranged, and maintained as to provide adequately for the health, safety, and well-being of its occupants.~~

~~(2) Rooms used by residents during periods requiring artificial heat shall be provided with a safe and adequate source of heat, and shall be maintained at a temperature of not less than 68° F. during occupancy.~~

~~(3) A shelter shall provide access to laundering facilities.~~

~~(4) A shelter shall be equipped to provide an adequate amount of hot water for resident use.~~

~~(5) At least one functional toilet, lavatory, and bathing or showering facility shall be provided for each six residents residing in the shelter.~~

~~(6) Bathrooms and toilet facilities without windows shall have forced ventilation to the outside. Bathroom windows used for ventilation shall open easily.~~

~~(7) A shelter shall provide separate and distinct living and sleeping areas. All areas shall be well-lighted, heated and ventilated.~~

~~(8) A room shall not be used as a bedroom where more than one-half the room height is below grade, except when the ceiling of such room is located five feet or more above grade for more than 25% of the perimeter measurement of the room. Such below grade bedrooms shall have adequate natural light and ventilation and be provided with two useful means of egress. Control of dampness shall be assured.~~

~~(9) Bedrooms for residents shall be separated from halls, corridors and other rooms by floor to ceiling walls which contain no openings except doorways.~~

~~(10) Doorways of bedrooms occupied by residents shall be equipped with side-hinged, permanently mounted doors equipped with positively latching hardware which will insure opening of the door by a single motion such as turning a knob or by pressing with normal strength on a latch.~~

~~(11) There shall be provision for a locked, safe place for residents to store valuable belongings.~~

~~(12) Residents with impaired mobility shall not sleep in or be assigned bedrooms on floors which do not have a grade level exit to the outside; provided, however, that above-grade exits with easily negotiable ramps may be used.~~

~~(13)Bedrooms shall have at least one window opening to the outside. Bedrooms shall be well ventilated.~~

~~(14)There shall be no more than four adults in each bedroom.~~

~~(15)Each bedroom shall be of sufficient size to provide ample space for necessary furniture and freedom of movement.~~

~~Rule 290-5-46-.10 Safety~~

~~(1) Interior stairways shall have sturdy and securely fastened handrails, on at least one side. Exterior stairways and porches shall have handrails on the open sides.~~

~~(2) Scatter or throw rugs on hard finished floors shall have a non-skid backing. If used, floor wax shall not present a hazard to residents.~~

~~(3) Grab bars and non-skid strips or surfacing shall be installed in tub and shower areas.~~

~~(4) Sidewalks, fire escape routes and entrances shall be kept free of any hazards such as ice, snow and debris.~~

~~(5) Cooking appliances shall be suitably installed in accordance with approved safety practices. Where metal hoods or canopies are provided, they shall be equipped with filters which shall be maintained in an efficient condition and kept clean at all times.~~

~~(6) A yard area shall be kept free from all hazards, nuisances, refuse and litter.~~

~~(7) Fire screens shall be provided for open flames. Protection devices shall be used for space heaters, floor furnaces, stoves, and fireplaces. All combustible heaters must be vented to the outside.~~

~~(8) Water provided for resident's use shall not exceed 120° F.~~

~~(9) Hazards that cause tripping shall be removed.~~

~~(10)Electrical service shall be maintained in a safe condition and shall be inspected by the local fire marshal or a qualified electrician. A copy of a report of such an inspection done within one year or less of the filing of the application shall be included with the application for a permit. This inspection must indicate approval of the electrical services by the fire marshal or electrician.~~

~~(11)Smoke detectors shall be installed and maintained as required by local fire safety enforcement personnel.~~

~~(12)Fire extinguishers shall be provided for use in the shelter in the size and quantity required by the local fire safety enforcement personnel.~~

~~(13) There shall be an established procedure and mechanism for alerting residents in case of fire and evacuating them to safety. This shall include emergency instructions and evacuation plans posted on each floor of multiple story dwellings.~~

~~(14) All staff shall be familiar with evacuation plans, and be able to use the fire extinguishers.~~

~~(15) All shelters prior to issuance of a permit and annually thereafter, must show evidence of an approved fire safety inspection, indicating compliance with all applicable ordinances regarding fire safety.~~

~~(16) Locked storage shall be provided for all medicines.~~

~~Rule 290-5-46-.11 Water and Sanitation~~

~~(1) Private water systems shall meet applicable State and local standards and/or regulations.~~

~~(2) Sewage disposal systems shall meet the requirements of the Georgia Department of Human Resources and/or the Georgia Department of Natural Resources and applicable local regulations.~~

~~(3) Kitchen and bathroom areas shall be cleaned at least daily and maintained to insure cleanliness and sanitation.~~

~~(4) Handwashing facilities provided in both kitchen and bathroom areas shall include hot and cold running water, soap and towels.~~

~~(5) When a resident leaves the shelter, the room and its contents shall be thoroughly cleaned.~~

~~Rule 290-5-46-.12 Food Service~~

~~(1) Shelters shall establish a plan that assures that all shelter residents and their dependent children receive sufficient food and nourishment during their stay.~~

~~(2) All perishable foods shall be stored at such temperatures as will protect against spoilage.~~

~~(3) All foods while being stored, prepared, or served shall be protected against contamination and be safe for human consumption.~~

~~(4) A shelter shall be equipped properly to prepare and serve adequate meals.~~

~~(5) Emergency food shall be available on a 24-hour basis. Residents shall not be obligated to pay for food the first 24 hours of their stay.~~

~~(6) Shelters serving 16 or more persons shall possess a valid food service permit issued under the provisions of the Georgia Health Code, Chapter 290-5-14 Food Service Establishments, and Rules and Regulations applicable thereto.~~

~~Rule 290-5-46-.13 Services for Children~~

~~(1) Shelters must make arrangements to ensure continued education for children.~~

~~(2) Shelters must offer children recreational activities during their stay.~~

~~(3) Shelters shall make referrals to community resources that attempt to minimize the trauma of family violence to children.~~

~~(4) Shelters shall have a policy advocating non-violent behavior between parents and children, siblings, and peers.~~

~~(5) Evidence of suspected child abuse shall be reported to appropriate authorities.~~

~~Rule 290-5-46-.14 Application for a Permit~~

~~(1) The management of each shelter shall submit to the Department an application for a permit to operate under these rules and regulations.~~

~~(2) The application for a permit shall be made on forms provided by the Department.~~

~~(3) Each application shall be accompanied by the following items:~~

~~(a) ——— Copies of the policies of the shelter;~~

~~(b) ——— Description of the services offered and the fee schedule for such services;~~

~~(c) A floor sketch of the shelter showing placement of doors, windows, and beds;~~

~~(d) ——— Evidence of approved fire safety inspection;~~

~~(e) ——— Evidence of approved electrical service inspection;~~

~~(f) Food service permit number and date of issue, if applicable.~~

~~(4) Non-profit associations shall submit legal proof of the organization and the name and address of each trustee. A copy of the statement with tax exempt number, substantiating approval by the U.S. Internal Revenue Service of non-profit status shall be included.~~

~~(5) All others shall submit a statement attesting to the name(s) and address(es) of each person owning any part of the facility.~~

~~(6) No permit will be issued to any applicant who has been convicted of any crime involving moral turpitude. A conviction shall include a plea of guilty or nolo contendere and shall also include first offender status which is still pending.~~

Rule 290-5-46-.15 Permits

~~(1) The management of each shelter shall apply for and obtain a valid permit or provisional permit from the Department. To be eligible for a permit, the shelter must be in substantial compliance with these rules and regulations and the provisions at law which apply to the locations, construction and maintenance of the shelters and the services and safety provided to residents therein.~~

~~(2) Prior to the issuance of a permit and at the request of the Department, the governing body shall furnish to the Department evidence of satisfactory compliance with all applicable State and federal laws or regulations. Such would include evidence of compliance with safety requirements, as outlined in Chapter 290-5-46-.10 and for food service as outlined in Rule 290-5-46-.12(6) where applicable.~~

~~(3) The permit shall be readily available for inspection upon request of interested persons.~~

~~(4) Permits are not transferable from one shelter to another, nor valid when the shelter is moved from one location to another.~~

~~(5) A permit shall be returned to the Department when the shelter ceases to operate; moves to another location; changes ownership or the governing body is significantly changed; or the permit is suspended or revoked.~~

~~(6) A permit shall be required for each shelter located on different premises where more than one shelter is operated under the same governing body.~~

~~(7) The permit shall state the maximum number of persons to receive shelter at that location.~~

~~(8) A shelter which is found to have deficiencies relating to one or more of these rules and regulations shall be given notice of the deficiencies and shall be required to correct the deficiencies within a reasonable time - not to exceed 10 working days of the date of notice, or shall be required to submit an acceptable plan of improvement within 10 working days of the date of notice. The plan of improvement shall list each deficiency, the method by which corrective action will be taken and the time required to correct the deficiency.~~

~~(9) The governing body of a shelter operating under a permit or provisional permit with an approved plan of improvement may petition the Department for an extension of time to correct a deficiency, when failure to correct such deficiency within the time allotted is due to an extenuating circumstance beyond the control of the governing body. Such petition shall be submitted to the Department at least 30 days prior to the expiration date of the plan of improvement. The Department shall use its discretion in approving such petition.~~

~~(10) The permit or provisional permit of a shelter which fails to comply with these rules and regulations or to fulfill its plan of improvement shall be subject to revocation.~~

~~Rule 290-5-46-.16 Provisional Permits~~

- ~~(1) A provisional permit may be granted to the governing body of a shelter to provide time in which to demonstrate satisfactory compliance with these rules and regulations.~~
- ~~(2) Provisional permits granted to allow a reasonable time to demonstrate satisfactory compliance of operational procedures shall be limited to six months.~~
- ~~(3) Provisional permits granted to allow reasonable time to correct violations of regulations and standards which relate to the structural or physical condition of the shelter shall not exceed 12 months.~~
- ~~(4) A provisional permit shall not be granted to the governing body of a newly established shelter which is in substantial non-compliance with rules, regulations and standards relating to the structural or physical condition of the shelter.~~
- ~~(5) A provisional permit shall not be issued to a family violence shelter in which there are conditions which present an immediate hazard to the life, health or safety of residents or staff.~~
- ~~(6) A provisional permit shall not be granted to a shelter unless the governing body shall first present to the Department an acceptable plan of improvement which shall list each non-compliance to be corrected, the time required to demonstrate acceptable operational procedures or to correct non-compliance which relates to the structural or physical condition of the shelter, and the means, methods and procedures to be used in the correction of the non-compliance.~~

~~Rule 290-5-46-.17 Inspections~~

- ~~(1) The shelter and its records shall be available at reasonable hours for observation and examination by properly identified representatives of the Department, and for annual inspections both on an announced and unannounced basis. Inspections may be made on a more frequent basis, if needed.~~
- ~~(2) Upon request, the Department shall provide technical advice and consultation to any interested resident or shelter director, with respect to requirements for compliance with these regulations.~~
- ~~(3) The director or authorized staff member shall accompany the Department representative on tours of inspection.~~

~~Rule 290-5-46-.18 Variances, Waivers and Exemptions~~

- ~~(1) The Department, upon application or petition, may grant variances and waivers to specific rules and regulations which establish standards for licensure of facilities when it~~

~~has been shown that the rule or regulation is not applicable or to allow experimentation and demonstration of new and innovative approaches to delivery of services.~~

~~(2) The granting of variances, waivers, and exemptions by the Department shall be in accordance with the Official Code of Georgia Annotated Chapter 31-2-4 and the procedures set forth therein.~~

~~Rule 290-5-46-.19 Enforcement~~

~~A family violence shelter which fails to comply with these rules and regulations shall be subject to revocation of its permit or provisional permit and/or other sanctions provided by law. The enforcement and administration of these rules and regulations shall be as prescribed in Chapter 31-5 of the Official Code of Georgia Annotated which includes provision for:~~

- ~~(a) The misdemeanor penalty for violation of rules and regulations promulgated under this Title;~~
- ~~(b) Injunctive relief under appropriate circumstances; and~~
- ~~(c) The due process requirements of notice, hearing and appeals.~~

~~Rule Chapter 290-9-37. RULES AND REGULATIONS FOR COMMUNITY LIVING ARRANGEMENTS.~~

~~Rule 290-9-37-.01 Authority~~

~~The Legal authority for this Chapter is O.C.G.A. §§ 31-7-1 et seq. and 37-1-22.~~

~~Rule 290-9-37-.02 Purpose~~

~~The purpose of these rules is to establish the minimum operating requirements for Community Living Arrangements that provide residential services to the citizens of this state whose services are financially supported, in whole or in part, by funds designated through the Department of Human Resources, Division of Mental Health, Development Disabilities, and Addictive Diseases.~~

~~Rule 290-9-37-.03 Applicability~~

~~These rules apply to all Community Living Arrangements that serve exclusively two or more adult persons who are receiving services authorized or financed, in whole or in part, by the Division of mental Health, Developmental Disabilities, and Addictive Diseases. Residents regulated under these rules provide services specified by the individual service plan of each resident, including daily personal services.~~

~~Rule 290-9-37-.04 Exemptions~~

~~These rules do not apply to the following facilities;~~

- ~~(a) Boarding homes or rooming houses that provide no personal services other than lodging and meals;~~
- ~~(b) Facilities offering temporary or emergency shelter, such as those for the homeless or victims of family violence, respite homes serving persons for 30 days or less, or homes serving one person;~~
- ~~(c) Emergency receiving, evaluation, and treatment facilities that provide medical and nursing services and that are approved by the state and regulated under the more specific authorities;~~
- ~~(d) Facilities providing residential services for federal, state, or local correctional institutions under the jurisdiction for the criminal justice system;~~
- ~~(e) Hospices that serve terminally ill persons as defined in O.C.G.A. § 31-7-172(3);~~
- ~~(f) Therapeutic substance abuse treatment facilities and residences that are not intended to be an individual's permanent residence;~~
- ~~(g) Group residences organized by or for persons who choose to live independently and manage their own care and who share the cost of service including but not limited to attendant care, transportation, rent utilities, and food preparation;~~
- ~~(h) Charitable organizations providing shelter and other services without charging any fee to the resident and without billing other agencies for services provided.~~
- ~~(i) Residences in which a person lives with his or her family;~~
- ~~(j) Residences in which a person lives under his or her own lease or warranty deed, in which the agency providing services do not manage the person's residence and the resident is not required to move when the agency providing services is changed;~~
- ~~(k) Apartments or other clustered residential arrangements where staff is available that are developed as permanent housing for adults with mental illness, in which each person lives within his or her residential arrangement with immediate support of staff; or~~
- ~~(l) Personal care homes as defined in Chapter 290-5-35.~~

~~Rule 290-9-37-.05 Definitions~~

~~In these rules, unless the context otherwise requires, the words, phrases and symbols set forth herein shall mean the following:~~

- ~~(a) "Administrator" means the manager designated by the governing body as responsible for overall operations of the Community Living Arrangement;~~

(b) ~~"Applicant" means:~~

- ~~1. When the Community Living Arrangement is owned by a sole proprietorship, the individual proprietor shall be the applicant for the license, complete the statement of responsibility and serve as the licensee;~~
- ~~2. When the Community Living Arrangement is owned by a partnership, the general partners shall be the applicant for the license, complete the statement of responsibility and serve as the licensee;~~
- ~~3. When the Community Living Arrangement is owned by an association or limited liability company (LLC), the governing body of the association or LLC shall authorize the application for the license and complete the statement of responsibility and the association shall serve as the licensee; and~~
- ~~4. When the Community Living Arrangement is owned by a corporation, the governing body of the corporation shall authorize the application for the license and complete the statement of responsibility and the corporation shall serve as the licensee.~~

(c) ~~"Biomedical waste" as defined in O.C.G.A. § 12-8-22(1.1) means, in relevant part, pathological waste, sharps, chemotherapy waste, discarded medical equipment and parts, not including expendable supplies and materials that have been contaminated and have not been decontaminated, as further defined in Rule 391-3-4-.15, and other such waste materials;~~

(d) ~~"Capacity" means the physical and mental capability of an individual as determined by health care professionals through clinical evaluation, observation, interview, or other assessments;~~

(e) ~~"Chemical restraint" means drugs that are administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others; that have the temporary effect of restricting the resident's freedom of movement; and that are not a standard treatment for the resident's medical or psychiatric condition;~~

(f) ~~"Choice" means following the preferences of residents served concerning decisions about the residential environment and daily activities to the extent possible;~~

(g) ~~"Community Living Arrangement" means any residence, whether operated for profit or not, that undertakes through its ownership or management to provide or arrange for the provision of daily personal services, supports, care, or treatment exclusively for two or more adults who are not related to the owner or administrator by blood or marriage and whose residential services are financially supported, in whole or in part, by funds designated through the Department of Human Resources, Division of Mental Health, Developmental Disabilities, and Addictive Diseases. A Community Living Arrangement is also referred to as a "residence";~~

(h) ~~"Criminal record" means:~~

~~1. Conviction of a crime; or~~

~~2. Arrest, charge, and sentencing for a crime where:~~

~~(i) — A plea of nolo contendere was entered to the charge; or~~

~~(ii) — First offender treatment without adjudication of guilt pursuant to the charge was granted; or~~

~~(iii) — Adjudication or sentence was otherwise withheld or not entered on the charge; or~~

~~(iv) — Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to O.C.G.A. Sec. 17-3-1 et seq.~~

~~(i) — "Criminal history background check" means a search of appropriate records to obtain criminal background information on an owner of a business or agency licensed as a community living arrangement or seeking licensure as a community living arrangement.~~

~~(j) — "Department" means the Department of Human Resources of the State of Georgia;~~

~~(k) — "Director" means the chief administrator, executive officer or manager.~~

~~(l) — "Disaster preparedness plan" means a written document that identifies potential hazards or events that, should they occur, would cause an emergency situation at the Community Living Arrangement and that proposes, for each identified emergency situation, a course of action so as to minimize the threat to the health and safety of the residents within the Community Living Arrangement;~~

~~(m) — "Fingerprint criminal history record check" means the satisfactory or unsatisfactory determination by the Management Actions and Appeals Section of the Office of Human Resources Management of the Department of Human Resources based upon a criminal history record check comparison of Georgia Crime Information Center data with fingerprints and other information, as specified in O.C.G.A. § 49-2-14(b);~~

~~(n) — "Governing body" means the board of trustees, partnership, corporation, association, agency, entity, or person or group of persons who maintain and control the residence and who are legally responsible for the operation of the residence;~~

~~(o) — "Health care professional" means a physician, physician's assistant, registered nurse, psychologist, social worker, physical therapist, audiologist, or speech pathologist providing professional services, within the scope of his or her practice as authorized by Georgia law, and participating in the care of the resident;~~

~~(p) — "License" means the permit issued by the Department to operate a Community Living Arrangement;~~

~~(q) "Individual service plan" or "ISP" means a comprehensive written plan of care which specifies services, supports, care, or treatment required to assist the resident in achieving self-sufficiency and community integration and maintaining a satisfactory quality of life;~~

~~(r) "Legal guardian" means a duly appointed person who is authorized to act, within the scope of the authority granted under the legal guardian's appointment, on behalf of a resident who is adjudicated incapacitated;~~

~~(s) "Mechanical restraint" means a device attached or adjacent to the resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body and that is not used for a therapeutic purpose. Mechanical restraint may also be referred to as "physical restraint";~~

~~(t) "Medical protection device" and "adaptive support device" mean devices that may restrain movement but are applied for protection from injury or to support or correct the body alignment of the person, are required for the treatment of the person's physical condition, and may be used only as treatment interventions;~~

~~(u) "Medical services" means services that may be provided by a person licensed under Chapter 34 of Title 43 of the O.C.G.A.;~~

~~(v) "Non-family adult" means a person 18 years of age or older who is not related by blood within the third degree of consanguinity or by marriage to the person responsible for the management of the Community Living Arrangement or to a member of the governing body;~~

~~(w) "Nursing services" means those services that may be rendered by a person licensed under the Georgia Registered Professional Nurse Practice Act, O.C.G.A. § 43-26-1et seq., or the Georgia Practical Nurses Practice Act, O.C.G.A. § 43-26-30et seq.;~~

~~(x) "Owner" means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in a business or agency providing community living arrangement services and who:~~

- ~~1. Purports to or exercises authority of an owner in the business or agency;~~
- ~~2. Applies to operate or operates the business or agency; or~~
- ~~3. Enters into a contract to acquire ownership of such a business or agency.~~

~~(y) "Personal restraint" means the application of physical force, without the use of any device, for the purpose of restricting the free movement of a resident's body. Personal restraint does not include briefly holding a resident without undue force in order to calm or comfort the resident or holding a resident's hand to safely escort the resident from one area to another;~~

~~(z) "Personal services" means provision of services, on a daily basis, that include, but are not limited to, individual assistance with or supervision of medications, ambulation~~

~~and transfer, and essential activities of daily living such as eating, bathing, grooming, dressing, and toileting;~~

~~(aa) "Plan of correction" means a written plan in response to a report of deficiencies in meeting rules and regulations of the Department of Human Resources, which states what the residence will do, and when, to correct each of the violations identified;~~

~~(bb) "Quiet time" means the restriction of a resident for a period of time to a designated area, from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control;~~

~~(cc) "Records check application" means two sets of classifiable fingerprints, a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check, and an affidavit by the applicant disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law; except for motor vehicle parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.~~

~~(dd) "Representative" means an individual, selected by a resident to receive notices of admission, discharge, transfer, or significant change in condition of the resident and to otherwise advocate for the well-being of the resident. In the event that the resident is unable because of capacity to select a representative, a representative shall be selected from the following persons in the order of listing: legal guardian; spouse; adult child; parent; attorney; adult next of kin; or adult friend. The representative's power to act on behalf of the resident under these rules shall be completely consistent with the definition of representative under Georgia law as it may be amended from time to time;~~

~~(ee) "Resident" means any non-family adult living in a Community Living Arrangement and receiving services, supports, care, or treatment;~~

~~(ff) "Responsible staff person" means the employee designated by the administrator or site manager as responsible for supervising the operation of the residence during periods of temporary absence of the site manager;~~

~~(gg) "Satisfactory criminal history background check determination" means a written determination that a person for whom a records check was performed was found to have no criminal record which indicates an arrest, charge or conviction of a covered crime as outlined in the current or amended Department of Human Resources Policy #504, if applicable, or as outlined in O.C.G.A. Sec. 49-2-14.1 et seq., if applicable.~~

~~(hh) "Seclusion" means the involuntary confinement of a resident alone in a room or an area from which the resident is physically prevented from leaving;~~

~~(ii) "Site manager" means the person directly responsible for the operations of a particular residence;~~

~~(jj) "Standard precautions" means activities designed to reduce the risk of transmission of microorganisms from both recognized and unrecognized sources of infection. Standard precautions apply to: blood; all body fluids, secretions, and excretions, except sweat, regardless of whether they contain visible blood; skin that is not intact; and mucous membranes; and~~

~~(kk) "Supports, care, or treatment" means specific services that are provided to the resident in the Community Living Arrangement, coordinated by the administrator as necessary, or reasonably requested by the resident and that include but are not limited to: mental health services, habilitation, rehabilitation, social services, medical, dental, and other health care services, education, financial management, legal services, vocational services, transportation, recreational and leisure activities, and other services required to meet a resident's needs.~~

~~(ll) "Unsatisfactory criminal history background check determination" means a written determination that a person for whom a records check was performed has a criminal record which indicates an arrest, charge or conviction of one of the covered crimes as outlined in the current or amended Department of Human Resources Policy #504, if applicable, or as outlined in O.C.G.A. Sec. 49-2-14.1 et seq., if applicable.~~

~~Rule 290-9-37-.06 Governing Body~~

~~(1) The governing body shall be responsible for compliance with the requirements of the Official Code of Georgia Annotated and with applicable standards, regulations, and administrative rules of the Department of Human Resources.~~

~~(2) The governing body shall identify in its application the name of the administrator who has been designated as responsible for the overall management of its Community Living Arrangements and for carrying out the rules and policies adopted by the governing body.~~

~~(3) The governing body shall ensure that no member of the governing body, administration, staff associated with the Community Living Arrangement or affiliated Community Living Arrangements, or family member of staff serves as the representative or legal guardian for a resident.~~

~~(4) The governing body shall ensure that no member of the governing body, administration, staff associated with or affiliated with the Community Living Arrangement, or family member of staff causes, encourages, or persuades any resident to name any person affiliated with the Community Living Arrangement as outlined herein as a beneficiary under a will, trust, or life insurance policy. The governing body shall investigate the circumstances associated with any such gift to verify that such gift is knowingly and voluntarily made and not the result of any coercion. Where such gift is not voluntarily made, the governing body shall notify appropriate law enforcement authorities and any legal representative of the resident.~~

~~(5) The governing body shall ensure that no member of the governing body, administration, staff associated with or affiliated with the Community Living Arrangement, or family member of staff takes out or otherwise secures a life insurance policy on any resident or former resident.~~

~~**Rule 290-9-37-.07 Administration, Criminal History Background Checks**~~

~~(1) Prior to being issued a license, each residence shall develop written policies and procedures outlining the responsibilities of the governing body of the Community Living Arrangement and of the residents that ensure compliance with these rules.~~

~~(2) The governing body of the Community Living Arrangement shall ensure that the policies and procedures are developed and followed in accordance with these rules.~~

~~(3) The policies and procedures of the governing body shall include, but may not be limited to, the following:~~

- ~~(a) — A description of the services the residence intends to provide;~~
- ~~(b) — How the residence ensures that it does not admit or retain persons who require more care than the residence can provide;~~
- ~~(c) How the residence guarantees the rights of residents;~~
- ~~(d) — How the residence supervises medications;~~
- ~~(e) — Procedures for reporting and investigating abuse, neglect, exploitation, incidents, accidents, injuries, and changes in a resident's condition, including death;~~
- ~~(f) How the residence handles admissions;~~
- ~~(g) — Procedures for discharge and immediate transfers;~~
- ~~(h) — How refunds are handled when a resident is transferred, is discharged, or dies;~~
- ~~(i) Expectations regarding cooperative living;~~
- ~~(j) The quality assurance procedures that shall be used to maintain or improve the quality of care and services provided to the residents, including indicators of performance that shall be routinely measured and evaluated. At a minimum, the residence shall include as an indicator to be measured and improved, as necessary, any injury to a resident;~~
- ~~(k) How the residence will ensure that staff are trained; and~~
- ~~(l) How the residence handles acts committed by staff or residents that are inconsistent with policies of the residence.~~

~~(4) The Community Living Arrangement administrator shall designate a qualified staff member as the responsible staff person to act on his or her behalf and to carry out his or her duties in the administrator's absence. Residents of the Community Living Arrangement may not serve as the responsible staff person.~~

~~(5) Personnel shall be assigned duties consistent with their position, training, and experience and with the requirements of Section .15 of these rules.~~

~~(6) Each residence shall have a written plan that effectively addresses the Community Living Arrangement's strategy for responding to the following emergency situations:~~

~~(a) Local and widespread weather emergencies or natural disasters, such as tornadoes, hurricanes, earthquakes, ice or snow storms, or floods;~~

~~(b) Manmade disasters such as acts of terrorism and hazardous materials spills;~~

~~(c) Unanticipated interruption of service of utilities, including water, gas, or electricity, either within the facility or within a local or widespread area;~~

~~(d) Fire, explosion, or other physical damage to the residence; and~~

~~(e) Reporting the elopement of any disabled person from a Community Living Arrangement to local law enforcement within 30 minutes of the Community Living Arrangement staff receiving actual knowledge that such person is missing.~~

~~(7) Evacuation plan drills shall be held at each residence at least semiannually. The residence shall provide evidence that residents have participated in drills in anticipation of what might be expected to occur in Community Living Arrangements.~~

~~(8) Each resident shall have a telephone available for incoming and outgoing calls that is maintained in working order. The telephone must be accessible at all times for emergency use by staff and accessible to residents in a private location to make and receive personal calls.~~

~~(9) Criminal History Background Checks for Owners Required. Prior to the issuance of any new license, the owner of the business or agency applying for the license shall submit a records check application so as to permit the department to obtain a criminal history background check. An owner holding a valid license as a Community Living Arrangement provider prior to June 30, 2007 shall be required to submit a records check application at the request of the department.~~

~~(a) An owner may not be required to submit a records check application if it is determined that the owner neither:~~

~~1. Maintains an office at the location where services are provided to residents;~~

~~2. Resides at a location where services are provided to residents;~~

~~3. Has direct access to residents receiving care; nor~~

~~4. Provides direct personal supervision of personnel by being immediately available to provide assistance and direction during the time services are being provided.~~

~~(b) In lieu of a records check application, the owner may submit evidence, satisfactory to the department, that within the immediately preceding 12 months the owner has received a satisfactory criminal history background check determination.~~

~~(c) A community living arrangement provider license shall not be issued, and any license issued shall be revoked where it has been determined that the owner has a criminal record which includes an arrest, charge or conviction for any of the following covered crimes, as outlined in O.C.G.A. Sec. 49-2-14.1 et seq.:~~

~~1. A violation of Code Section 16-5-1, relating to murder and felony murder;~~

~~2. A violation of Code Section 16-5-21, relating to aggravated assault;~~

~~3. A violation of Code Section 16-5-24, relating to aggravated battery;~~

~~4. A violation of Code Section 16-5-70, relating to cruelty to children;~~

~~5. A violation of Code Section 16-5-100, relating to cruelty to a person 65 years of age or older;~~

~~6. A violation of Code Section 16-6-1, relating to rape;~~

~~7. A violation of Code Section 16-6-2, relating to aggravated sodomy;~~

~~8. A violation of Code Section 16-6-4, relating to child molestation;~~

~~9. A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;~~

~~10. A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions;~~

~~11. A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;~~

~~12. A violation of Code Section 16-8-41, relating to armed robbery;~~

~~13. A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder person; or~~

~~14. Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere.~~

~~(d) — An owner with a valid community living arrangement license issued on or before June 30, 2007 who has received an unsatisfactory criminal records check determination which includes one of the listed crimes above, shall not have the license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."~~

~~(e) — If at any time the department has reason to believe an owner holding a valid license has been arrested, charged or convicted of any of the crimes listed above, the department shall require the owner to submit a records check application immediately for determination of whether a revocation action is necessary.~~

~~(10) Criminal History Background Checks for Directors and Employees Required. Prior to working in a Community Living Arrangement, a potential employee is required to obtain a Georgia Crime Information Center state criminal history record check comparison of data with information other than fingerprints done through local law enforcement authorities. At the time of hiring, the Community Living Arrangement shall submit two sets of fingerprints for the staff member and the director to the Georgia Bureau of Investigations for a fingerprint criminal history record check.~~

~~(a) — A person with an unsatisfactory criminal history background check determination may not serve as a director of a licensed Community Living Arrangement if it is determined that such person has a criminal record which indicates an arrest, charge or conviction of any of the covered crimes outlined in the current or amended Department of Human Resources Policy #504.~~

~~(b) — If the determination of a fingerprint criminal history background check is unsatisfactory, the Community Living Arrangement shall take the necessary steps to ensure that such staff member is no longer an employee.~~

~~Rule 290-9-37-.08 Minimum Floor Plan Requirements~~

~~(1) A residence shall be constructed, arranged, and maintained so as to provide adequately for the health, safety, access, and well-being of the resident.~~

~~(2) A Community Living Arrangement shall provide for common living space and private sleeping areas.~~

~~(a) — The living and sleeping areas for a given resident shall be within the same building.~~

~~(b) — Windows used for ventilation to the outside and exterior doors used for ventilation shall be screened and in good repair.~~

~~(c) Supportive devices shall be installed as necessary to enable residents to achieve a greater degree of mobility and safety from falling.~~

~~(3) All residences shall provide an area for use by residents and visitors that affords privacy.~~

~~(4) There must be common space, such as living and dining rooms, for use by the residents without restriction.~~

~~(5) Common areas of the residence must be large enough to accommodate all residents without crowding. The areas must be comfortably furnished.~~

~~(6) The residence shall provide a means of locked storage for the valuables or personal belongings of any resident, upon request.~~

~~(7) A residence shall provide laundering facilities on the premises for resident's personal laundry.~~

~~(8) The following minimum standards for bedrooms must be met:~~

~~(a) ——— Bedrooms shall have sufficient space to accommodate without crowding the resident, the resident's belongings, and the minimum furniture of bed, dresser, and closet;~~

~~(b) ——— There shall be no more than one resident per bedroom unless adequate bedroom space is available for two residents to accommodate without crowding the residents, their belongings, and their beds, dressers, and closets;~~

~~(c) Each bedroom shall have at least one window;~~

~~(d) ——— Bedrooms for residents shall be separated from halls, corridors and other rooms by floor to ceiling walls. Hallways shall not be used for sleeping;~~

~~(e) ——— The floor plan shall be such that no person other than the occupant of that bedroom shall pass through a bedroom in order to reach another room;~~

~~(f) Bedrooms occupied by residents shall have doors that can be closed. For bedrooms that have locks on doors, both the occupant and staff must be provided with keys to ensure easy entry. Double-cylinder locks (locks requiring a key on both sides) may not be used on the bedroom of a resident;~~

~~(g) ——— A room shall not be used as a bedroom where more than one-half the room height is below ground level. Bedrooms which are partially below ground level shall have adequate natural light and ventilation and be provided with two useful means of egress; and~~

~~(h) ——— When a resident is discharged, the room and its contents shall be thoroughly cleaned.~~

~~(9) The following minimum standards apply to bathroom facilities:~~

- ~~(a) — At least one functional toilet, lavatory, and bathing or showering facility shall be provided for each four persons residing in a Community Living Arrangement;~~
- ~~(b) — At least one fully handicap accessible bathroom must be available if any resident requires handicap access;~~
- ~~(c) Grab bars and non-skid surfacing or strips shall be installed in all showers and bath areas, as required by the needs of the residents;~~
- ~~(d) — Bathrooms and toilet facilities shall have a window that can be opened or shall have forced ventilation;~~
- ~~(e) — Toilets, bathtubs, and showers shall provide for individual privacy; and~~
- ~~(f) All plumbing and bathroom fixtures shall be maintained in good working order at all times and shall present a clean and sanitary appearance.~~

~~(10) All stairways and ramps shall have sturdy handrails, securely fastened not less than 30 inches nor more than 34 inches above the center of the tread. Exterior stairways, decks, and porches shall have handrails on the open sides unless the surface of the deck or porch is so close to ground level that it does not pose a significant risk of injury to the resident to fall from the deck or porch.~~

~~(11) Floor coverings shall be intact, safely secured, and free of any hazard that may cause tripping.~~

~~(12) All areas including hallways and stairs shall be lighted sufficiently.~~

~~(13) The following exterior conditions must be maintained:~~

- ~~(a) — Entrances and exits, sidewalks, and escape routes shall be maintained free of any obstructions that would impede leaving the residence quickly in the case of fire or other emergency. All such entrances and exits, sidewalks, and escape routes shall be kept free of any hazards such as ice, snow, or debris;~~
- ~~(b) — The yard area, if applicable, shall be kept free of all hazards, nuisances, refuse, and litter; and~~
- ~~(c) The residence must have its house number displayed so as to be easily visible from the street.~~

~~Rule 290-9-37-.09 Furnishings and Fixtures~~

~~(1) Furnishings of the residents in the living room, bedroom, and dining room, including furnishings provided by the resident, shall be maintained in good condition, intact, and functional.~~

~~(2) Furnishings and housekeeping standards shall be such that a residence presents a clean and orderly appearance.~~

~~(3) Where a resident does not choose to provide furnishings for his or her own use, the Community Living Arrangement shall provide the following bedroom furnishings based on safety and personal choice:~~

~~(a) — An adequate closet or wardrobe;~~

~~(b) — Lighting fixtures sufficient for reading and other activities;~~

~~(c) A bureau, dresser, or the equivalent;~~

~~(d) — A mirror appropriate for grooming;~~

~~(e) — A standard, non-portable bed measuring at least 36 inches wide and 72 inches long with comfortable springs and a clean mattress. The mattress shall be not less than five inches thick, or four inches if of a synthetic construction. Couples may request a double bed when available; and~~

~~(f) Bedding for each resident, including two sheets, a pillow, a pillowcase, a minimum of one blanket and bedspread. A residence shall maintain a linen supply for not less than twice the bed capacity.~~

~~(4) A residence shall provide to each resident clean towels and washcloths at least twice weekly and more often if soiled. The residence shall provide sufficient bed linen so that all beds may be changed at least weekly and more often if soiled.~~

~~(5) Provision shall be made for assisting a resident to personalize the bedroom by allowing the use of his or her own furniture if so desired and by mounting or hanging pictures on bedroom walls.~~

~~Rule 290-9-37-.10 Temperature Conditions~~

~~(1) The temperature throughout the residence shall be maintained by a central heating system or its equivalent at ranges that are consistent with individual health needs of residents. No resident shall be in any area of the residence that falls below 65 degrees Fahrenheit or that exceeds 85 degrees Fahrenheit.~~

~~(2) Mechanical cooling devices shall be made available for use in those areas of the building used by residents when inside temperatures exceed 80 degrees Fahrenheit.~~

~~Rule 290-9-37-.11 Physical Plant Health and Safety Standards~~

~~(1) Each Community Living Arrangement shall provide a safe and healthy home for its residents, and where subject to fire and safety standards promulgated by the Office of~~

~~the Safety Fire Commissioner, such Community Living Arrangement shall be in compliance with those standards.~~

~~(2) Each Community Living Arrangement shall comply and remain in compliance with any and all local ordinances for fire safety in residences of that size and function. Private quarters shall be maintained in such a manner as to comply with fire safety codes and not threaten the health or safety of residents. In the absence of or in addition to any such local ordinances, the following requirements shall be met:~~

- ~~(a) ——— Wall-mounted electric outlets and lamps or light fixtures shall be maintained in a safe and operational condition;~~
- ~~(b) ——— Cooking appliances shall be suitably installed in accordance with approved safety practices;~~
- ~~(c) Space heaters shall not be used;~~
- ~~(d) ——— Fire screens and protective devices shall be used with fireplaces, stoves, and heaters;~~
- ~~(e) ——— Sufficient AC powered smoke detectors, with battery backup, shall be in place and, when activated, shall initiate an alarm that is audible in the sleeping rooms. Strobe alarms shall be used when required by the needs of the resident, e.g., for hearing impaired persons;~~
- ~~(f) If natural gas or heating oil is used to heat the residence, or if a wood-burning fireplace is in the residence, the residence shall be protected with carbon monoxide detectors;~~
- ~~(g) ——— Each residence must have at least one charged, 5-lb. multipurpose ABC fire extinguisher on each occupied floor and in the basement that shall be readily accessible. These extinguishers shall be checked annually by a fire safety technician and monthly by the staff of the Community Living Arrangement to ensure they are charged and in operable condition; and~~
- ~~(h) ——— Exterior doors shall be equipped with locks that do not require keys to open the door from the inside.~~

~~(3) Fire drills shall be conducted every month at alternating times and shifts. At least two drills per calendar year shall be during sleeping hours. All fire drills shall be documented with staffing involved. The Department maintains the right to require an immediate demonstration of a fire drill during any on-site visit.~~

~~(4) The Department may require an appropriate fire safety inspection of any Community Living Arrangement at any time, including, but not limited to, when the physical plant undergoes a substantial change, such as repairs, renovations, or additions, or the Department has reason to believe that residents are at risk. Further, if the Department determines that a substantial increase in the amount of personal~~

~~assistance is being offered to residents, a repeat fire safety inspection may be required. The residence shall correct all fire safety violations identified in the inspection.~~

~~(5) Water and sewage systems shall meet applicable federal, state, and local standards and regulations.~~

~~(6) Floors, walls, and ceilings shall be kept clean and in good repair.~~

~~(7) Kitchen and bathroom areas shall be cleaned with disinfectant and maintained to ensure cleanliness and sanitation.~~

~~(8) The storage and disposal of biomedical wastes and hazardous wastes shall comply with applicable federal and state rules and standards.~~

~~(9) The storage and disposal of garbage, trash, and waste shall be accomplished in a manner that will not permit the transmission of disease, create a nuisance, or provide a breeding place for insects or rodents. Waste shall be removed from the kitchen as necessary and from the premises at least weekly.~~

~~(10) Procedures for the prevention of infestation by insects, rodents, or other vermin or vectors shall be maintained and conducted in a manner that continually protects the health of residents.~~

~~(11) Pets living at the residence shall meet the following requirements:~~

~~(a) No vicious animals shall be kept at the residence;~~

~~(b) All pets shall have a current inoculation for rabies as required by law;~~

~~(c) Exotic animals shall be obtained from federally approved sources; and~~

~~(d) Parrots, cockatoos, macaws, and other psittacine birds shall be domestic birds or USDA inspected and banded and must be free of disease.~~

~~(12) Poisons, caustics, and other dangerous materials shall be stored in clearly labeled and appropriate containers, safeguarded in an area away from medication storage areas and from food preparation and storage areas and secured as required by the capacity of the residents.~~

~~(13) A residence shall be equipped and maintained so as to provide a sufficient amount of hot water for the use of residents. Heated water provided for use of residents shall not exceed 120 degrees Fahrenheit at the hot water fixture, unless a cooler temperature is required by the needs of the individual. A water temperature monitor or a scald valve shall be installed where necessary to ensure the safety of the residents.~~

~~(14) The following evacuation requirements must be met:~~

~~(a) Residents who need assistance with ambulation shall be provided bedrooms that have access to a ground-level exit to the outside or provided~~

~~bedrooms above ground level that have access to exits with easily negotiable ramps or easily accessible lifts;~~

~~(b) — There shall be established procedures and mechanisms for alerting and caring for residents in case of emergencies and for evacuating them to safety. An evacuation plan with clear instructions shall be available within each residence. Each sleeping room shall have a secondary exit, which may be a door or a window usable for escape;~~

~~(c) A Community Living Arrangement serving a resident dependent upon a wheelchair or other mechanical device for mobility shall provide at least two (2) exits from the Community Living Arrangement, remote from each other, that are accessible to the residents; and~~

~~(d) — There shall be clearly accessible route(s) for emergencies throughout the residence.~~

~~Rule 290-9-37-.12 Supplies~~

~~(1) The residence shall have a supply of first-aid materials available for use. This supply shall include, at a minimum, band-aids, antiseptic, gauze, tape, and a thermometer.~~

~~(2) A residence shall ensure that toilet tissue is available for use at each commode.~~

~~(3) Hand-washing facilities provided in both kitchen and bathroom areas shall include hot and cold running water, soap, and clean towels.~~

~~Rule 290-9-37-.13 Services~~

~~(1) Each Community Living Arrangement shall provide room, meals, and services that are commensurate with the needs of the residents. Services shall be provided by appropriately qualified staff members designated by the Community Living Arrangement administrator. Intensity of services required by each resident shall be noted in the individual services plan for each resident.~~

~~(2) The Community Living Arrangement shall ensure that each resident has either an individual service plan or a course of action written by an appropriate licensed health care professional that specifies the medical, physical, behavioral, and social needs of the resident and the services, supports, care, or treatment that the resident will receive from the Community Living Arrangement. The individual service plan or course of action shall contain at least the following information:~~

~~(a) — Identified areas of life in which the resident requires services, supports, care, or treatment;~~

- ~~(b) — Goals, outcomes, or what is expected to be achieved through the services, supports, care, or treatment;~~
 - ~~(c) Objectives or what the resident will do to achieve the goal;~~
 - ~~(d) — Interventions or what services, supports, care, or treatment will be carried out by staff to achieve the goal, including the name or title of staff responsible for the intervention and the frequency of the intervention; and~~
 - ~~(e) — Indicators that will signify the need for decrease or increase in intensity of services. The individual service plan shall reflect the preferences of the resident as well as perspectives from those individuals or agencies participating in the services, supports, care, or treatment of the resident. The ISP shall reflect both formal (paid) and informal services, supports, care, or treatment, as appropriate.~~
- ~~(3) Personal hygiene assistance shall be given to those residents who are unable to keep themselves neat and clean.~~
- ~~(4) The Community Living Arrangement administrator or his or her designee shall teach each resident the techniques of "Standard Precautions," as appropriate to the resident's ability, or shall support each resident in the performance of the techniques of "Standard Precautions," including washing his or her hands thoroughly after toileting, sneezing, or any other activity during which the resident's hands may become contaminated.~~
- ~~(5) Each Community Living Arrangement shall offer a range of social, recreational, and educational activities as required to meet the needs and preferences of each resident.~~
- ~~(6) The routine of the residence shall be such that a resident may spend the majority of his or her non-sleeping hours out of the bedroom if he or she so chooses.~~
- ~~(7) A residence shall not restrict a resident's free access to common areas of the residence or to the resident's own bedroom unless the rationale for not meeting this requirement is documented in the individual service plan of the resident, which justifies that exceptions are based on the needs of the resident.~~
- ~~(8) The Community Living Arrangement administrator or his or her designee shall be available to any person within the Community Living Arrangement, including each resident, in the event of an emergency.~~

Rule 290-9-37-.14 Staffing

- ~~(1) The Community Living Arrangement shall have as many qualified and trained employees on duty as shall be needed to safeguard properly the health, safety, and welfare of residents and ensure the provision of services the residents require to be delivered in the Community Living Arrangement. The Community Living Arrangement must maintain a staffing ratio sufficient to ensure that all residents can be evacuated from the residence within three minutes.~~

~~(2) If residents are in the residence and staff are not present within the residence, the individual service plan for each resident must support evidence of assessment regarding capacity to be independent within the residence.~~

~~(3) All Community Living Arrangements must maintain a monthly plan for specific staff coverage in advance of the month, a record of actual staff coverage, and a plan for provision of all required services.~~

~~(4) For purposes of these rules, a resident shall not be considered a staff person in the residence in which they live. The Community Living Arrangement shall not require any resident to perform tasks that are ordinarily considered staff responsibilities, unless there is documentation in the individual service plan of the resident, or elsewhere, that indicates that participation of the resident is voluntary and appropriate.~~

Rule 290-9-37-.15 Personnel

~~(1) The administrator for the Community Living Arrangement shall be at least 21 years of age and shall be qualified by training and experience to operate competently the Community Living Arrangement in accordance with these rules.~~

~~(2) All staff members working in Community Living Arrangements shall be at least 18 years of age and shall be able and qualified by training or experience to carry out all duties and responsibilities of the job competently.~~

~~(3) The administrator for the Community Living Arrangement agency or residence shall ensure that any staff member who interacts with residents, under contract or otherwise, receives work-related training acceptable to the Department. At no time may a staff member be allowed to work alone with residents until all minimum required training has been completed, including documented evidence of that staff member's competence in each topic area.~~

~~(a) ——— Prior to having any contact with residents, each staff member shall be trained and show continuing evidence of competence in:~~

- ~~1. ——— Rights and responsibilities of residents according to these rules; and~~
- ~~2. ——— Requirements that staff recognize and immediately report suspected abuse, neglect, or exploitation of any resident or former resident to the Department and to appropriate law enforcement agencies.~~

~~(b) ——— Before working independently with residents, each staff member shall be trained and show continuing evidence of competence in:~~

- ~~1. ——— The medical, physical, behavioral, and social needs and characteristics of the residents served, including training regarding care required to meet the specific needs of each resident;~~
- ~~2. ——— Ethics and cultural competence and appropriateness;~~

- ~~3. Techniques of de-escalation and techniques to prevent behavioral crises;~~
- ~~4. Fire safety and emergency evacuation procedures;~~
- ~~5. Techniques of Standard Precautions;~~
- ~~6. Policies and procedures for the use of personal restraint, quiet time, and medical protection devices and adaptive support devices; and~~
- ~~7. Medications of residents, including risks and benefits.~~

~~(c) Each staff member shall have current certification in emergency first aid, except where the staff member is a currently licensed physician, physician's assistant, or nurse.~~

~~(d) Each staff member shall have current certification in basic cardiac life support (BCLS) or cardiopulmonary resuscitation.~~

~~(4) All staff members who offer direct care to residents must satisfactorily complete a total of at least 16 hours of continuing education per year in curriculum related to the needs of the residents or to the responsibilities of the position.~~

~~(5) All staff members who offer direct care to any resident shall be responsible for maintaining awareness of each resident's usual appearance and condition and shall take appropriate action if a change in the resident's usual appearance or condition occurs.~~

~~(6) The administrator and each staff member of a Community Living Arrangement shall have received a tuberculosis screening within 12 months prior to employment (or initial application for licensure or being issued a license for the residence) to ensure that those persons are free of tuberculosis.~~

~~(7) An employment history for the five most recent years, including previous places of work, contact names, and contact telephone numbers, for each staff member shall be verified by the Community Living Arrangement administrator and shall be maintained on file at the agency operating the Community Living Arrangement.~~

~~(8) A personnel file shall be maintained for each staff member. These files shall be available for inspection by the appropriate enforcement authorities on the premises but shall otherwise be maintained to protect the confidentiality of the information contained in them, and shall include the following:~~

~~(a) Evidence of a Georgia Crime Information Center state criminal history record check comparison of data with information other than fingerprints done through local law enforcement authorities and a satisfactory fingerprint criminal history background check;~~

~~(b) Evidence of satisfactory screening for tuberculosis;~~

~~(c) Evidence of first aid and BCLS training and recertification as required; and~~

~~(d) — Evidence of required training and competency evaluations, including evidence of 16 hours of continuing education annually.~~

~~(9) No administrator or staff member shall be under the influence of alcohol or other controlled substances while on duty.~~

~~Rule 290-9-37-.16 Admission~~

~~(1) Community Living Arrangements shall not admit or retain a resident whose care requirements are beyond that which the residence is able to support.~~

~~(2) The Community Living Arrangement administrator or his or her designee shall conduct a complete review of all medical, physical, behavioral, and social health documentation as part of the personal interview process. If the individual is not currently enrolled in another Division of MHDDAD funded service, or if documentation is not available, an appropriate health care professional shall conduct an assessment of the individual to assist the administrator or his or her designee in determining whether the Community Living Arrangement can meet the individual's needs.~~

~~(3) The Community Living Arrangement administrator shall conduct an interview with the individual requesting services and, as authorized by the individual, the individual's legally authorized representative or legal guardian, if any, to ascertain that the residence can meet the individual's needs.~~

~~(4) The administrator or site manager shall require the individual to provide the residence with a report of a physical examination from a licensed physician or other health care professional authorized by law dated within 12 months prior to the date of admission. Additionally, the report shall indicate that the individual shall be free of signs or symptoms of any infectious disease that is likely to be transmitted.~~

~~(5) The results of a satisfactory screening for tuberculosis of the individual by a health care professional or licensed practical nurse authorized by law dated within 12 months prior to the date of admission shall be documented in the individual's file prior to admission.~~

~~(6) The Community Living Arrangement shall not provide residential services to individuals whose services are not authorized and reimbursed, in whole or in part, by the Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources.~~

~~Rule 290-9-37-.17 Admission Agreement~~

~~(1) A written admission agreement shall be entered into between the governing body and the resident. Such agreement shall be signed by a representative of the Community Living Arrangement, the resident, and the resident's legally authorized representative or legal guardian, if any, and shall contain the following:~~

~~(a) — A statement of all services to be delivered, all associated fees or charges and how fees or charges shall be assessed.~~

~~(b) — A statement that the resident and his or her representative or legal guardian, if any, shall be informed, in writing, at least 60 days prior to changes in charges or services;~~

~~(c) A statement of the residence's refund policy when a resident is transferred, is discharged, or dies;~~

~~(d) — A statement about the responsibility assumed, if any, by the Community Living Arrangement for the resident's valuables and other personal belongings; and~~

~~(e) — A copy of expectations regarding cooperative living, which must be in writing, with evidence of review by the resident and the resident's representative or legal guardian, if any. Expectations regarding cooperative living may not violate the rights and responsibilities of the resident enumerated in Section .19 of these rules. Expectations shall include, but not be limited to, a statement about sharing of common space and other resources, expectations regarding the use of tobacco and alcohol, and explanation regarding items, if any, prohibited by the Community Living Arrangement.~~

~~(2) Each resident, prior to the execution of the admissions agreement, shall have an opportunity to read the agreement. In the event that a resident is unable to read the agreement, the administrator or site manager shall take special steps to ensure communication of its contents to the resident.~~

~~(3) The resident and his or her representative or legal guardian, if any, shall each be given a photocopy of the signed agreement. A photocopy shall be retained in the file of the resident.~~

~~Rule 290-9-37-.18 Resident Files and Information~~

~~(1) An individual file shall be maintained for each resident. Personal information shall be treated as confidential and shall not be disclosed except to the resident and his or her legally authorized representative or legal guardian, if any. The file shall be disclosed to an authorized agent of the Department or others to whom written authorization is given by the resident or his or her legally authorized representative or legal guardian, if any. The file shall be made available, upon request, for inspection and copy to the Department and to the resident or his or her legally authorized representative or legal guardian, if any.~~

~~(2) If the primary file for the resident is kept at a location other than the Community Living Arrangement, information maintained within the residence shall be sufficient in order to allow staff to respond to residents' emergencies and shall include the following information:~~

- ~~(a) Identifying information including name, social security number, and date of birth;~~
 - ~~(b) Name, address, and telephone number of next of kin, representative or legal guardian, if any, or representative payee and any court order or written document designating the representative or legal guardian, if any, of the resident;~~
 - ~~(c) Name, address, and telephone number and relationship of the person to be contacted in the event of an emergency;~~
 - ~~(d) The name, address, and telephone number of the resident's physician, hospital and pharmacy of choice;~~
 - ~~(e) A record of all monies and other valuables entrusted to the residence for safekeeping. A receipt for same shall be provided to the resident or his or her representative or legal guardian, if any, at the time of admission and at any time thereafter when the resident acquires additional property and wishes to entrust such property to the residence for safekeeping;~~
 - ~~(f) Health information, including all health appraisals, diagnoses, prescribed diets, medications, and physician's instructions;~~
 - ~~(g) An inventory of or system for marking and identifying all personal items brought to the residence by the residents. The inventory may be updated upon request at any time. Such inventory or marking requirement may be waived by the resident or his or her legally authorized representative or legal guardian, if any;~~
 - ~~(h) A copy of resident rights and responsibilities including all rights and responsibilities enumerated in Section .19 of these rules, or a statement asserting that the resident has a copy of such rights and responsibilities signed by the resident or his or her representative or legal guardian, if any;~~
 - ~~(i) A photocopy of the signed admission agreement;~~
 - ~~(j) A copy of a living will and durable power of attorney for health care, if any. Original documents shall remain within possession of the resident or his or her legally authorized representative or legal guardian, if any;~~
 - ~~(k) A copy of the resident's individual service plan, and~~
 - ~~(l) A summary of any incident, accident, or adverse change in the condition of the resident, including follow-up and notifications.~~
- ~~(3) A written record reflecting the services, supports, care, or treatment, as applicable, provided to the resident shall be maintained in chronological order by the Community Living Arrangement.~~

Rule 290-9-37-.19 Residents Rights

~~(1) Rules and Regulations for Clients' Rights, Chapter 290-4-9 shall be followed.~~

~~(2) Residents shall have the following rights concerning the community ombudsman program currently being operated by the State Long-term Care Ombudsman:~~

~~(a) — All residents shall have the right to complain to the state or community ombudsman designated by the Department to receive, investigate, refer, and attempt to resolve such complaints concerning any act, omission to act, practice, policy, or procedure that may adversely affect the health, safety, or welfare of any resident;~~

~~(b) — The resident shall have the right to participate in planning any course of action to be taken on his or her behalf by the designated state or community ombudsman, and the resident shall have the right to approve or disapprove any proposed action to be taken on his or her behalf by such ombudsman;~~

~~(c) The resident shall have the right to report to the designated state or community ombudsman any suspicion that a resident of a Community Living Arrangement is being, or has been, abused, neglected, exploited, or abandoned or is in a condition which is the result of abuse, neglect, exploitation, or abandonment. Where the subject of the investigation involves suspected abuse, neglect, or exploitation of a resident, the resident shall have the right to communicate with the designated state or community ombudsman in a private and confidential setting notwithstanding any objection by the resident's representative or legal guardian, if any;~~

~~(d) — The resident shall have the right to confidentiality of his or her identity with respect to any investigation conducted by the designated state or community ombudsman. The identity of any complainant, resident on whose behalf a complaint is made, or individual providing information on behalf of the resident or complainant relevant to the investigation of a complaint shall be confidential and may be disclosed only with the express permission of such person or his or her legally authorized representative or legal guardian, if any; and~~

~~(e) — The resident shall have the right to be free from discrimination and retaliation due to any complaint or report made to the designated state or community ombudsman. No Community Living Arrangement shall discriminate or retaliate in any manner against any resident, his or her relative, or his or her representative or legal guardian, if any, any staff member of a Community Living Arrangement, or any other person because of the making of a complaint in good faith or providing of information in good faith to the designated state or community ombudsman.~~

~~(3) A Community Living Arrangement shall not infringe upon any resident's rights and shall ensure that residents may communicate privately and confidentially, individually or in groups, with the designated state or community ombudsman. A Community Living Arrangement shall cooperate fully with the designated state or community ombudsman.~~

~~(4) At a minimum, the following rights shall be guaranteed and cannot be waived by the resident or his or her representative or legal guardian, if any:~~

~~(a) Each resident shall receive personal services, supports, care, or treatment, as applicable, which shall be adequate, appropriate, and in compliance with applicable federal and state law and regulations, without discrimination in the quality of service based on age, gender, race, physical or mental disability, religion, sexual orientation, national origin, marital status, or the source of payment for the services.~~

~~(b) No resident shall be punished or harassed by staff of the Community Living Arrangement, its agents, or its employees because of efforts by or on behalf of the resident to enforce his or her rights;~~

~~(c) Each resident shall have the right to:~~

~~1. Exercise the constitutional rights guaranteed to citizens of this state and the United States, including, but not limited to, the right to vote;~~

~~2. Choose activities and schedules consistent with interests and assessments of the resident;~~

~~3. Interact with members of the community both inside and outside the Community Living Arrangement and to participate fully in the life of the community; and~~

~~4. Make choices about aspects of his or her life in the residence that are significant to the resident;~~

~~(d) Each resident shall have the right to enjoy privacy in his or her bedroom. Staff, residents, and others shall respect this right by knocking on the door before entering the room of a resident. Each resident may associate and communicate privately with persons and groups of his or her choice. Persons served shall have the right of freedom from eavesdropping and the right to private and uncensored communication with anyone of the resident's choice;~~

~~(e) If the resident is married and the spouse is also a resident in the Community Living Arrangement, they shall be permitted to share a room unless they request otherwise;~~

~~(f) Each resident shall be treated with respect and given privacy in the provision of personal care. Each resident shall be accorded privacy and freedom for the use of bathrooms at all hours;~~

~~(g) No religious belief or practice shall be imposed upon any resident. Residents shall be free to practice their religious beliefs as they choose. Each resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents;~~

~~(h) — Each resident shall have the right to be free from mental, verbal, sexual, and physical abuse, neglect, and exploitation. Each resident has the right to be free from actual or threatened mechanical or chemical restraint, isolation, seclusion, corporal punishment, or any disciplinary methods not specifically authorized by the ISP, including interference with the daily functions of living such as eating or sleeping;~~

~~(i) Each resident shall have the right to use, keep, and control his or her own personal property and possessions in the immediate living quarters, except to the extent as use of his or her property would interfere with the safety or health of other residents. Each resident shall have the right to reasonable safeguards for the protection and security of his or her personal property and possessions brought into the Community Living Arrangement;~~

~~(j) Each Community Living Arrangement shall permit access to residents by others who are visiting with the consent of the resident during mutually agreed upon times. Residents have the right to have visitors at mutually agreed upon times. Once the times are agreed upon, no prior notice is necessary. Each resident shall have the complete right to terminate any visit by any person who is visiting that resident;~~

~~(k) Each resident shall have access to a telephone to make and receive personal calls, the phone number of which shall be made available to the resident and his or her representative or legal guardian, if any. The resident shall also have the right to have a private telephone, at the expense of the resident. Telephones shall be placed in areas to ensure privacy without denying accessibility;~~

~~(l) Each resident shall have the right to manage his or her own financial affairs, including the right to keep and spend his or her own money unless that resident has been adjudicated incompetent by a court of competent jurisdiction. Each resident shall have the right to be free from coercion to assign or transfer to the residence money, valuables, benefits, property, or anything of value other than payment for services rendered by the residence;~~

~~(m) — Each resident shall have the right to access a personal needs allowance as specified in the admission agreement to be distributed by the administrator, site manager, or staff person in the residence for the free use by the resident. The following conditions shall be met regarding the personal needs allowance:~~

- ~~1. — The personal needs allowance shall be included as a charge for services to the account of each resident. The resident may waive the personal needs allowance by signing a written waiver upon admission or anytime thereafter. If, pursuant to an assessment of capacity by an appropriate health care professional, the resident cannot understand the purpose of money, the resident or his or her authorized representative under the law may waive the personal needs allowance by signing a written waiver upon admission or anytime thereafter. No allowance charge shall be assessed where the resident's legally~~

~~authorized representative or legal guardian, if any, has signed a written waiver of the personal needs allowance. Such a waiver shall be kept in the resident's file;~~

~~2. The personal needs allowance shall not be intended or required to be used for purchasing necessary goods such as toilet paper, light bulbs, and supplies that the residence shall provide and shall in no way relieve the residence of the obligation to ensure that such necessary goods are available to the resident; and~~

~~3. Upon written authorization of a resident or his or her legally authorized representative or legal guardian, if any, the Community Living Arrangement must hold, safeguard, manage, and account for the personal funds of the resident deposited with the residence;~~

~~(n) Each resident shall also have the right to receive or reject medical care, dental care, or other services except as required by law or regulations;~~

~~(o) Each resident shall have the right to choose and retain the services of a personal physician and any other health care professional or licensed practical nurse or service. No administrator or staff of the Community Living Arrangement shall interfere with the right of the resident to receive from his or her attending physician complete and current information concerning his or her diagnosis, treatment, and prognosis. Each resident and his or her legally authorized representative or legal guardian, if any, shall have the right to be fully informed about the care of the resident and of any changes in that care and the right of access to all information in the resident's medical records.~~

~~(p) Each resident shall have the right to fully participate in the planning of his or her care. Case discussion, consultation, and examination shall be confidential and conducted discreetly. A person who is not directly involved in the care of a resident may be present when care is being discussed or rendered only if he or she has the permission of the resident; provided, however, that authorized representatives of the Department shall have full access to the residence and all residents for purposes of ensuring compliance with these rules;~~

~~(q) Each resident who does not have a legal guardian with authority to admit, transfer, or discharge may choose to discharge or transfer himself or herself upon notification to the residence in conformance with the residence's policies and procedures;~~

~~(r) Each resident shall have the right to inspect his or her files and records upon request. Each resident shall have the right to make a copy of all files and records pertaining to the resident. Each resident has the right to confidential treatment of personal information in the resident's file;~~

~~(s) Each resident shall have the right to utilize all applicable complaint and grievance procedures. The telephone numbers for the regional MHDDAD office and for the~~

~~Division of MHDDAD shall be posted and made known to all residents within the Community Living Arrangement; and~~

~~(t) Each resident shall have the right to access the appropriate ombudsman and the Office of Regulatory Services of the Department of Human Resources. The name, address, and telephone number of the ombudsman assigned to the residence and of the Office of Regulatory Services shall be posted in an accessible area of the residence.~~

~~Rule 290-9-37-.20 Medications~~

~~(1) All medications required by a resident in a Community Living Arrangement shall be administered appropriately and only in accordance with a physician's order. Where a resident does not have the capacity to self-administer the medications, a licensed nurse, physician's assistant, or other certified staff as determined by the Division of MHDDAD shall administer the medications.~~

~~(2) Notwithstanding other provisions of these rules to the contrary, a staff member who is not a licensed nurse or physician's assistant may appropriately administer epinephrine for anaphylactic reaction, insulin required for diabetes, suppositories for ameliorating serious seizure activity, and medications through a nebulizer under the following conditions:~~

~~(a) — The Community Living Arrangement shall have written protocol for the administration of the medication as ordered by a physician for a resident;~~

~~(b) — The staff shall have been trained by a licensed nurse or physician's assistant in the written protocol and proper technique for the administration of the medication as ordered by a physician for a resident;~~

~~(c) The written protocol and staff training shall be updated annually; and~~

~~(d) — A licensed nurse or physician's assistant shall verify the training and ability of the unlicensed staff member by signing and dating a copy of the written protocol. The signed and dated copy shall be kept in the file of the staff member.~~

~~(3) Responsibility for initial acquisition and refilling of prescribed medications shall be specifically assigned in the admission agreement to the resident, his or her representative or legal guardian, if any, or the Community Living Arrangement's designee.~~

~~(4) A resident who is not capable of fully independent self-administration of medication may be assisted and supervised in self-administration by staff to the following extent:~~

~~(a) — He or she may be reminded of the time to take medication;~~

~~(b) — The medication regimen as indicated by the physician's order or commercially labeled container may be read to him or her;~~

- ~~(c) The dosage he or she self-administers may be checked according to the physician's order or commercially labeled container; and~~
- ~~(d) — He or she may be physically assisted in pouring medication.~~
- ~~(5) Over the counter drugs or dietary supplements, including vitamins and herbal supplements, shall be used by the resident under the following circumstances:~~
- ~~(a) — Use of the drug is not contraindicated by allergies or sensitivities of the resident;~~
- ~~(b) — Use of the drug is according to physician's order; and~~
- ~~(c) Use of the drug is documented on the medication administration record.~~
- ~~(6) All medication shall be administered solely for the purpose of providing effective treatment. Medications shall not be used as punishment or for the convenience of staff.~~
- ~~(7) Storage of medications. Medications shall be stored safely and appropriately monitored to prevent unauthorized use or access.~~
- ~~(a) — Medications shall be stored under lock and key at all times whether kept by a resident or kept by the residence, except when required to be kept by the resident on his or her person due to need for frequent or emergency use, as determined by the physician. A key must be maintained within the residence and accessible to authorized staff at all times.~~
- ~~(b) — Medication kept by a resident shall be stored in the resident's bedroom in a locked cabinet or other locked storage container, stored in a single occupancy bedroom which is kept locked at all times, or stored in such a way as to make it inaccessible to others.~~
- ~~(c) Medications requiring refrigeration shall be stored separately from food. If a separate refrigerator is not available, these medications may be placed in a locked container in the same refrigerator in which food is stored. The temperature of the refrigerator shall be maintained between 36 degrees Fahrenheit and 41 degrees Fahrenheit.~~
- ~~(8) Medications shall be properly labeled and handled in accordance with current accepted standards of practice. Outdated, mislabeled, or otherwise unusable medications shall not be available for resident use.~~
- ~~(9) Staff members providing supervision of self-administration of medications shall be trained by a licensed nurse or physician's assistant prior to supervising self-administration of medications. Documented evidence of training shall be kept within the staff member's personnel file. Staff competencies related to the supervision of self-administration of medications shall be tested and documented annually.~~
- ~~(10) Staff training must include but may not be limited to:~~

- ~~(a) Purpose of a resident's medications, including risks and benefits;~~
- ~~(b) Identifying and responding appropriately to adverse reactions to medications;~~
- ~~(c) Following physician's orders, including rationale for ensuring timely receipt of medications;~~
- ~~(d) Documenting all medications, including vitamins and dietary and herbal supplements, taken by the resident on the Medication Administration Record (MAR);~~
- ~~(e) Documenting medications changed or discontinued by a physician;~~
- ~~(f) Proper storage of medication;~~
- ~~(g) Proper disposal of medication; and~~
- ~~(h) Information about medication errors, error-prone situations, and strategies to prevent such medication errors and instructions on proper documentation and reporting of medication errors.~~

~~(11) Community Living Arrangements shall have a written policy that specifies the procedures to be followed regarding oversight of medication. Such policy shall include but may not be limited to:~~

- ~~(a) Emergency procedures such as the employees to be notified, the local poison information center telephone number, the person responsible for decision making, and the physician, clinic, emergency room, or comparable medical personnel to be contacted in the event of a medication emergency;~~
- ~~(b) Procedures regarding management of medications including disposal of discontinued or out-of-date medications;~~
- ~~(c) Definitions and procedures for documenting and reporting medication errors;~~
- ~~(d) Procedures to flag allergies and other critical information; and~~
- ~~(e) Requirements for staff training.~~

~~Rule 290-9-37-.21 Medical Protection Devices and Adaptive Support Devices~~

~~(1) Medical protection devices and adaptive support devices are designed to facilitate and not impede the resident's participation in usual activities of daily living. Medical protection devices and adaptive support devices shall be used appropriately as treatment interventions only where less restrictive methods and devices have been evaluated and determined to be inappropriate and so documented.~~

~~(2) Where medical protection devices and adaptive support devices have been determined to be the least restrictive alternative in accordance with subparagraph (1) above, the following steps shall be taken prior to use:~~

~~(a) — An appropriate health care professional conducts an assessment, a copy of which shall be kept in the resident's file, that describes and supports the specific needs for the device(s);~~

~~(b) — An order shall be written by a physician for the use of the device and shall be filed in the resident's record. The order shall be for no longer than 180 days or six calendar months. The order shall include the type of device, the rationale for its use, the duration of its use, a plan for reduction in its use, and appropriate instructions for release and monitoring of its use. Reordering the device's use shall be preceded by the physician's physical examination of the resident;~~

~~(c) The proposed use of the device is discussed in advance with the resident and his or her legally authorized representative or legal guardian, if any;~~

~~(d) — The use of the device shall be specifically authorized in the individual service plan; and~~

~~(e) — Staff shall be trained in the application of the device and the care of the residents to whom they are applied.~~

~~(3) A registered nurse, or other appropriate health care professional, shall personally assess the resident once per quarter, or more frequently as ordered by a physician, and shall document his or her findings in the file of the resident, including the resident's response to the use of the device.~~

~~(4) Devices shall be:~~

~~(a) — Authorized specifically in a resident's ISP;~~

~~(b) — Kept clean and used only in ways which cause no physical harm to the resident;~~

~~(c) Fully inspected prior to use to ensure that they are in good repair and free from tears or protrusions that might cause injury; and~~

~~(d) — Discontinued when no longer needed as a treatment intervention.~~

~~(5) The use of medical protection devices and adaptive support devices shall be monitored by staff to ensure that the terms of the order are followed and the devices are used appropriately.~~

~~(6) On an annual basis, training must be updated and staff must demonstrate competency in the application of medical protection devices and adaptive support devices as part of the training activities enumerated in Section .15 of these rules.~~

~~(7) Chemical restraints, mechanical restraints, and seclusion may not be used under any circumstances.~~

~~Rule 290-9-37-22 Use of Personal Restraints and Quiet Time~~

~~(1) The Community Living Arrangement shall have and enforce effective procedures to minimize to the greatest extent possible the use of personal restraints. The use of personal restraints shall be specified in the individual service plan and shall be used as a safety intervention solely for the purposes of protecting the safety of the resident or other persons in the residence after a hierarchy of appropriate interventions have been utilized in the situation and the resident continues to be a danger to self or other persons in the residence.~~

~~(2) Prior to the use of personal restraints, Community Living Arrangements shall have evidence that an appropriate plan is in place in the event emergency care is required.~~

~~(3) All interventions utilized but not effective prior to the use of personal restraints must be documented in the sequence used and identified as to the staff member conducting the intervention.~~

~~(4) The length of time permitted to use personal restraints for any one episode shall not exceed one hour. Consecutive periods of personal restraints, which have the effect of restraining the resident in excess of one hour, are not permitted.~~

~~(5) In the event that personal restraints are used, the resident shall be cared for in the following way:~~

~~(a) ——— During the use of personal restraints, the door to the room shall be left open. The physical and emotional status of the resident shall be checked at least every 15 minutes by staff members trained in the use of personal restraint, and a written record of these checks and all other activities shall be made. The personal restraint pressure sites should be checked every 15 minutes for evidence of swelling or abrasion;~~

~~(b) ——— When personal restraints are used, the resident shall be spoken to, checked for indications of obvious physical distress, offered water, and provided an opportunity to meet his or her need to urinate and defecate as needed or at least one time during the episode unless the resident is asleep or his or her condition does not permit; and~~

~~(c) The resident shall be provided an opportunity to eat if the application of personal restraints occurs during meals. If the resident is unable to participate in the meal, the resident will be offered food immediately following the personal restraint episode.~~

~~(6) In all cases, the resident shall be released from personal restraints when that resident's demeanor evidences that he or she is no longer a danger to himself or herself~~

~~or to others. A resident shall not remain in personal restraints longer than 15 minutes beyond which time he or she is no longer a danger to himself or herself or to others but in no event, shall the total time exceed one hour.~~

~~(7) Notification of the use of personal restraints shall be given by telephone to the resident's representative or legal guardian, if any, and to the regional MHDDAD office within 24 hours of the use of personal restraints and shall be documented in the resident's file. In the event the resident's representative or legal guardian, if any, cannot be reached, that fact shall be documented in the resident's file, and a report shall be faxed or mailed to the resident's representative or legal guardian, if any.~~

~~(8) In the case of an accident or adverse change in the condition of a resident resulting from the use of personal restraints, procedures specified in Section .24 of these rules shall apply.~~

~~(9) The use of quiet time shall be specified in the individual service plan and shall be used under the supervision and observation of staff.~~

~~(10) All interventions utilized prior to the use of quiet time must be documented in the sequence used and identified as to the staff member conducting the intervention.~~

~~(11) The length of time permitted for the use of quiet time shall not exceed 15 minutes per episode.~~

~~(12) Every use of quiet time shall be conducted in an unlocked, well-lighted, well-ventilated area with a means of observation available. The area to be used for quiet time shall be identified within the Community Living Arrangement's policy for the utilization of quiet time.~~

~~(13) The Community Living Arrangement shall maintain documentation reflecting that the residence monitors and evaluates all aspects of its use of personal restraints and quiet time to ensure that the Community Living Arrangement takes all appropriate steps to minimize or eliminate the need for personal restraints and quiet time to be used in the residence at all.~~

Rule 290-9-37-.23 Nutrition

~~(1) A minimum of three regularly scheduled, well-balanced meals shall be available seven days a week. Meals shall be served in the early morning, at midday, and the evening, with the last meal taking place no earlier than 5:00 P.M. Meals shall meet the general requirements for nutrition published by the Department or currently found in the Recommended Daily Diet Allowances, Food and Nutrition Board, National Academy of Sciences or a diet established by a registered dietitian. Meals shall be of sufficient and proper quantity, form, consistency, and temperature. Food for at least one nutritious snack shall be available and offered mid-afternoon and evening. All food groups shall be available within the residence and represented on the daily menu.~~

~~(2) All foods, while being stored, prepared, or served, shall be protected against contamination and be safe for human consumption in accordance with accepted standards for food safety.~~

~~(3) Food received or used in a Community Living Arrangement shall be clean, wholesome, free from spoilage, adulteration, and misbranding, and safe for human consumption.~~

~~(4) A residence shall have a properly equipped kitchen to prepare regularly scheduled, well-balanced meals unless it arranges for meals to be provided by a permitted food service establishment.~~

~~(5) A residence shall maintain a three-day supply of non-perishable foods for emergency needs.~~

~~(6) A residence shall arrange for and serve special diets as prescribed.~~

~~(7) The Community Living Arrangement shall show evidence of individual choice and participation in the planning of meals, as appropriate. Records of the meals as served shall be kept on file for 30 days for review by the Department.~~

~~Rule 290-9-37-.24 Procedures for Change in Condition or Serious or Unusual Incident~~

~~(1) In case of an accident or adverse change in the condition of a resident, the residence shall immediately obtain needed care and notify the resident's emergency contact, representative or legal guardian, if any.~~

~~(2) In case of an accident or adverse change in the condition of a resident, the Community Living Arrangement administrator or designee shall conduct an immediate investigation to determine the cause and shall follow Division of MHDDAD protocol on reporting serious or unusual incidents.~~

~~(3) A summary of the incident, including follow-up and notifications, shall be documented.~~

~~Rule 290-9-37-.25 Death of a Resident~~

~~Should a resident die while in the residence or while at another location when still a resident of the Community Living Arrangement, the resident shall immediately notify the resident's next of kin, physician, and representative or legal guardian, if any. Statutes applicable to the reporting of death and reports that must accompany the deceased shall be observed. The residence shall report the death to the Office of Regulatory Services of the Department of Human Resources within 24 hours and follow Department policy and Division of MHDDAD protocol on reporting deaths.~~

~~Rule 290-9-37-.26 Discharge or Transfer of a Resident~~

~~(1) Each admission agreement shall include a written procedure for handling discharge and transfer of the resident that complies with these rules. Thirty days' written notice, including the reason for the proposed discharge or transfer, shall be given to both the resident and his or her representative or legal guardian, if any, prior to discharge or transfer of the resident except where an expedited transfer or discharge planning process is initiated, per Section .27 of these rules.~~

~~(2) The applicable regional office of the Division of MHDDAD shall be copied on the notice provided to the resident.~~

~~(3) The Department may require an appropriate physical examination and psychosocial assessment of a resident at any time when the Department has reason to believe that the needs of a resident are not being met.~~

~~(4) In all cases, except those requiring expedited transfer, residents whose needs cannot be met by the residence or who no longer choose to live in the residence shall be discharged or transferred to an appropriate residence based on discharge and transfer procedures entered into at the time of admission. For such discharge or transfer, a 30-day written notice shall be given to both the resident and his or her representative or legal guardian, if any, except when transfer is necessitated by a change in physical or mental condition as specified in these rules.~~

~~(5) The residence shall notify the Division of MHDDAD for the county in which residence is located and other appropriate agencies when transfer assistance is needed and no legally authorized representative or legal guardian is willing to provide assistance.~~

~~Rule 290-9-37-.27 Expedited Transfer or Discharge Planning~~

~~(1) A Community Living Arrangement may initiate an expedited transfer or discharge planning process to relocate a resident immediately from the residence if the resident develops a physical or mental condition requiring continuous medical care or nursing care, beyond that for which the Community Living Arrangement is capable of providing care, or if the condition or continuing behavior of a resident directly and substantially threatens the health, safety, or welfare of that resident or any other resident.~~

~~(2) As appropriate, the expedited transfer or discharge planning process shall involve the resident (if he or she is able to participate), the treatment team, a family member or a friend who has been active with the resident, a representative from the regional MHDDAD office, and, as appropriate, the resident's representative or legal guardian, if any.~~

~~(3) In all cases where an expedited transfer or discharge is to be made, the residence shall transfer the resident to an appropriate facility or service provider where the needs~~

~~of the resident can be met. Prior to making such transfer or discharge, the administrator or site manager shall:~~

- ~~(a) — Notify the resident and his or her representative or legal guardian, if any, of the reason for the immediate transfer;~~
- ~~(b) — Inquire as to any preference of the resident and his or her legally authorized representative or legal guardian, if any, regarding the facility or service provider to which the resident is to be discharged or transferred;~~
- ~~(c) Inform the resident and his or her representative or legal guardian, if any, about resident rights and choice regarding the proposed discharge or transfer; and~~
- ~~(d) — Inform the resident and his or her representative or legal guardian, if any, of the place to which the resident is to be discharged or transferred.~~

~~(4) Within 24 hours of the discharge or transfer, the administrator or site manager of the Community Living Arrangement shall:~~

- ~~(a) — Provide a full photocopy of the resident's file to the receiving facility or service provider; and~~
- ~~(b) — Document in the resident's file the following:
 - ~~1. — The reason for the discharge or transfer;~~
 - ~~2. — The fact that the resident, his or her representative or legal guardian, if any, and the Regional MHDDAD Board were informed pursuant to this subparagraph; and~~
 - ~~3. — The name, address, and telephone number of the place to which the resident is to be transferred or discharged.~~~~

~~Rule 290-9-37-.28 Application for License~~

~~(1) The governing body of the Community Living Arrangement shall submit to the Department an application for a license to operate under these rules. No Community Living Arrangement shall operate or provide services to residents without a valid license issued by the Department.~~

~~(2) The application for a license shall be made on forms provided by the Department.~~

~~(3) The following shall accompany the application for a license to operate a Community Living Arrangement:~~

- ~~(a) — A fingerprint records check application for the administrator or site manager;~~

~~(b) — A copy of the application submitted to the Department's Office of Human Resource Management that has been submitted within the year immediately preceding the date of application for licensure as a Community Living Arrangement shall be submitted unless the administrator or director was serving as an administrator or site manager of a personal care home immediately prior to application for the Community Living Arrangement license and has a satisfactory fingerprint criminal history background check on file with the Department;~~

~~(c) Evidence of a satisfactory Georgia Crime Information Center (GCIC) state criminal history background check done by local law enforcement authorities for the administrator or site manager shall accompany the application.~~

~~(4) Each application for a license shall be accompanied by a floor sketch of the residence to be licensed as a Community Living Arrangement showing windows, doors, room measurements, and bed placement for residents, family, and staff.~~

~~(5) The ownership of the residence shall be fully disclosed in the application for a license. In the case of ownership by corporations, partnerships, and other bodies created by statute, the corporate officers and all other individuals or family groups owning 5 percent or more of the corporate stock or ownership, as well as the registered agent for service of process, shall be disclosed in the application for a license.~~

~~(6) Where a residence has not been licensed as a Personal Care Home immediately prior to application for licensure as a Community Living Arrangement, satisfactory proof shall accompany license applications that all electrical, water, and sewage systems of the residence meet applicable federal, state, and local standards and regulations and that the residence is in compliance with any local fire safety standards and the fire and safety standards promulgated by the Office of the Safety Fire Commissioner.~~

~~(7) Proof that at least one staff member is qualified by training or experience to perform competently all duties and responsibilities of his or her job shall accompany the application.~~

~~Rule 290-9-37-.29 Licenses~~

~~(1) The governing body of each Community Living Arrangement shall obtain a valid license or provisional license from the Department prior to beginning operation. To be eligible for a license the residence must be in compliance with these rules.~~

~~(2) The license shall be available within the residence.~~

~~(3) Licenses are not transferable from one residence to another.~~

~~(4) A license shall no longer be valid and shall be returned to the Department when the residence ceases to operate or is moved to another location, the ownership changes, the governing body is significantly changed, the service requirement changes, or the license is suspended or revoked.~~

~~(5) A license shall be required for each residence located on different premises where more than one residence is operated under the same governing body.~~

~~(6) A Community Living Arrangement shall not exceed its licensed capacity. The licensed capacity of a Community Living Arrangement shall not exceed six residents except under the following circumstances:~~

~~(a) — The Division of Mental Health, Developmental Disabilities, and Addictive Diseases limits its funding of residents to a lesser number; or~~

~~(b) —~~

~~1. — The Division of Mental Health, Developmental Disabilities, and Addictive Diseases authorizes, under special circumstances, the placement and funding of one or more additional residents in the Community Living Arrangement; and~~

~~2. — Pursuant to authorization by the Division of Mental Health, Developmental Disabilities, and Addictive Diseases, the Community Living Arrangement makes direct application to the Office of Regulatory Services of the Department of Human Resources to increase the licensed capacity for a Community Living Arrangement; and~~

~~3. — The Office of Regulatory Services approves the increase in licensed capacity based upon the written authorization of the Division of Mental Health, Developmental Disabilities, and Addictive Diseases and the demonstration of the Community Living Arrangement's compliance with applicable regulations; or~~

~~(c) A residence licensed under the Rules and Regulations for Personal Care Homes that may become a Community Living Arrangement upon promulgation of these rules shall continue to be licensed to serve the same number of residents previously permitted that residence under the Rules and Regulations for Personal Care Homes provided that the Community Living Arrangement maintains compliance with applicable regulations.~~

~~Rule 290-9-37-.30 Provisional Licenses~~

~~(1) Provisional licenses may be issued to the governing body of a Community Living Arrangement to provide time in which to demonstrate compliance with these rules.~~

~~(2) Provisional licenses shall be issued to a Community Living Arrangement that has been previously licensed as a personal care home to allow a reasonable time to demonstrate compliance with operating procedures or to allow reasonable time to correct violations of rules that relate to the structural or physical condition of the residence shall not exceed six months.~~

~~(3) A provisional license shall not be issued to the governing body of a residence that has never been previously issued a license and is not in compliance with the rules and regulations relating to the structural or physical condition of the residence.~~

~~(4) A provisional license shall not be issued to a Community Living Arrangement in which there are conditions that present an immediate hazard to the life, health, or safety of resident or staff.~~

~~(5) A provisional license shall not be issued to a Community Living Arrangement unless the governing body shall first present to the Department a plan of correction acceptable to the Department. The plan of correction shall specify how each deficiency is to be corrected and the time, methods, and procedures to be used in the correction of the deficiencies.~~

~~(6) A Community Living Arrangement shall not exceed its licensed capacity.~~

~~Rule 290-9-37-.31 Inspections and Plans of Correction~~

~~(1) The Community Living Arrangement, its residents, and its records shall be available for review and examination by properly identified representatives of the Department. Inspections may be conducted both on an announced and unannounced basis as determined by the Department.~~

~~(2) For the purposes of conducting any inspection, investigation, or survey, the Department shall have the authority to require the production of any books, records, papers, or other information related to the initial or continued licensing of the residence.~~

~~(3) If violations of these licensing rules are identified, the Community Living Arrangement shall be given a written inspection report that identifies the violations. The Community Living Arrangement shall submit to the Department a written plan of correction in response to the inspection report of violations that states what the Community Living Arrangement will do and when to correct each of the violations identified. The plan of correction shall be submitted within 10 days of the Community Living Arrangement's receipt of the inspection report of violations and shall be determined to be acceptable by the Department. The Community Living Arrangement must correct all violations cited.~~

~~(4) A copy of the inspection report shall be available for inspection at the residence upon request by any person.~~

~~Rule 290-9-37-.32 Reporting to the Department~~

~~(1) The Community Living Arrangement shall report to the Office of Regulatory Services and also follow Division of MHDDAD reporting protocol whenever any of the following incidents involving residents occurs or the Community Living Arrangement has reasonable cause to believe that an incident involving a resident has occurred:~~

- ~~(a) — Any death of a resident;~~
 - ~~(b) — Any rape that occurs in the residence;~~
 - ~~(c) Any serious injury to a resident that requires medical attention;~~
 - ~~(d) — Any assault, any battery on a resident, or any abuse, neglect, or exploitation of a resident;~~
 - ~~(e) — Any time a resident cannot be located, where there are circumstances that place the health, safety, or welfare of the resident or others at risk and the resident has been missing for more than 24 hours;~~
 - ~~(f) An external disaster or other emergency situation that affects the continued safe operation of the residence; and~~
 - ~~(g) — Any circumstances where a member of the governing body, administration, staff associated with or affiliated with the Community Living Arrangement, or family member of staff is associated with a will, trust, or life insurance policy of a resident or former resident to verify that such gift is knowingly and voluntarily made and not the result of any coercion.~~
- ~~(2) The report shall be received by the Department, operating through the Office of Regulatory Services, in confidence and shall include at least:~~
- ~~(a) — The name of the Community Living Arrangement and the name of the administrator or site manager;~~
 - ~~(b) — The date of the incident and the date the Community Living Arrangement became aware of the incident;~~
 - ~~(c) The type of incident suspected, with a brief description of the incident; and~~
 - ~~(d) — Any immediate corrective or preventative action taken by the residence to ensure against the replication of the incident.~~
- ~~(3) Where the Department's Office of Regulatory Services determines that a rule violation related to the incident has occurred, the Department, through the Office of Regulatory Services, will initiate a separate complaint investigation of the incident. The complaint investigation report and the report of any rule violation compiled by the Office of Regulatory Services on behalf of the Department arising either from the initial report received from the Community Living Arrangement or an independent source shall be subject to disclosure in accordance with applicable laws.~~

~~Rule 290-9-37-.33 Variances and Waivers~~

~~The Department may, in its discretion, grant variances and waivers of specific rules upon application or petition filed on forms provided by the Department. The Department~~

~~may establish conditions that must be met by the Community Living Arrangement in order to operate under the variance or waiver granted.~~

~~(a) Variance. A variance may be granted by the Department upon showing by the applicant or petitioner that the particular rule or regulation that is the subject of the variance request should not be applied as written because strict application of the rule would cause undue hardship. The applicant or petitioner must also show that adequate standards affording protection for the health, safety, care, and rights of the residents exist and will be met in lieu of the exact requirements of the rule or regulations in question.~~

~~(b) Waiver. The Department may dispense entirely with the enforcement of a rule or regulation by granting a waiver upon a showing by the applicant or petitioner that the purpose of the rule or regulation is met through equivalent standards affording equivalent protection for the health, safety, care, and rights of the residents.~~

~~(c) Experimental variance or waiver. The Department may grant variances and waivers to allow experimentation and demonstration of new and innovative approaches to delivery of services upon a showing by the applicant or petitioner that the intended protections afforded by the rule or regulation that is the subject of the request are met and that the innovative approach has the potential to improve service delivery without compromising the health, safety, care, or rights of the residents or other relevant standards.~~

~~Rule 290-9-37-.34 Enforcement and Sanctions~~

~~The Department may refuse to grant an initial license, revoke a current license, or impose other sanctions as described in these rules and in the rules for the "Enforcement of Licensing Requirements," Chapter 290-1-6.~~

~~(a) Denial of an application for a license. The Department may refuse to grant an initial license or provisional license without the requirement of holding a hearing prior to the action. An application for a license may be refused or denied if:~~

- ~~1. The residence has failed to demonstrate compliance with these rules and regulations;~~
- ~~2. The governing body of the residence has had a license denied, revoked, or suspended within one year of the date of a new application;~~
- ~~3. The governing body of the residence has transferred ownership or governing authority of a Community Living Arrangement within one year of the date of the new application when such transfer was made in order to avert denial, suspension, or revocation of a license; or~~
- ~~4. The governing body of the residence has knowingly made any verbal or written false statements of material fact in connection with the application for the license or~~

~~on documents submitted to the Department as part of any inspection or investigation or in the falsification or alteration of records made or maintained by the residence.~~

~~(b) Sanction of a license. The Department may take an action to sanction the Community Living Arrangement license holder, subject to notice and opportunity for a hearing, where the Department finds that the governing body of the Community Living Arrangement has:~~

- ~~1. Knowingly made any verbal or written false statement of material fact either in connection with the application for the license or on documents submitted to the Department as part of any inspection or investigation or in the falsification or alteration of records made or maintained by the residence;~~
- ~~2. Failed or refused, without legal cause, to provide the Department with access to the premises subject to regulation or information pertinent to the initial and continued licensing of the residence;~~
- ~~3. Failed to comply with the licensing requirements of this state; or~~
- ~~4. Failed to comply with the provisions of O.C.G.A. Section 31-2-6 or Rules for the Enforcement of Licensing Requirements, Chapter 290-1-6.~~

~~(c) Sanctions may include any one or more of the following:~~

- ~~1. Administration of a public reprimand;~~
- ~~2. Suspension of the license;~~
- ~~3. Prohibition of persons in management or control;~~
- ~~4. Imposition of civil penalties as provided by law; and~~
- ~~5. Revocation of the license.~~

~~(d) If the sanction hearing process results in revocation of the license, the license shall be returned to the Department.~~

~~(e) The Department may suspend any requirements of these rules and the enforcement of any rules where the Governor of the State of Georgia has declared a public health emergency.~~

~~Rule 290-9-37-.35 Severability~~

~~In the event that any rule, sentence, clause, or phrase of any of these rules and regulations may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof. The remaining rules or portions shall remain in full force and effect, as if such rule or portions thereof so~~

~~determined, declared, and adjudged invalid or unconstitutional were not originally a part of these rules.~~