



Orientation to Client Rights
397.501 (1) – (10), F.S.

Rights of individuals: Individuals receiving substance abuse services from any service provider are guaranteed protection of the rights specified in this section, unless otherwise expressly provided, and service providers must ensure the protection of such rights.

(1) RIGHT TO INDIVIDUAL DIGNITY.

The dignity of the individual served must be respected at all times and upon all occasions, including any occasion when the individual is admitted, retained, or transported. Individuals served who are not accused of a crime or delinquent act may not be detained or incarcerated in jails, detention centers, or training schools of the state, except for purposes of protective custody in strict accordance with this chapter. An individual may not be deprived of any constitutional right.

(2) RIGHT TO NONDISCRIMINATORY SERVICES.

(a) Service providers may not deny an individual access to substance abuse services solely on the basis of race, gender, ethnicity, age, sexual preference, human immunodeficiency virus status, prior service departures against medical advice, disability, or number of relapse episodes. Service providers may not deny an individual who takes medication prescribed by a physician access to substance abuse services solely on that basis. Service providers who receive state funds to provide substance abuse services may not, if space and sufficient state resources are available, deny access to services based solely on inability to pay.

(b) Each individual in treatment must be afforded the opportunity to participate in the formulation and periodic review of his or her individualized treatment or service plan to the extent of his or her ability to so participate.

(c) It is the policy of the state to use the least restrictive and most appropriate services available, based on the needs and the best interests of the individual and consistent with optimum care of the individual.

(d) Each individual must be afforded the opportunity to participate in activities designed to enhance self-image.

(3) RIGHT TO QUALITY SERVICES.

(a) Each individual must be delivered services suited to his or her needs, administered skillfully, safely, humanely, with full respect for his or her dignity and personal integrity, and in accordance with all statutory and regulatory requirements.

(b) These services must include the use of methods and techniques to control aggressive behavior that poses an immediate threat to the individual or to other persons. Such methods and techniques include the use of restraints, the use of seclusion, the use of time-out, and other behavior management techniques. When authorized, these methods and techniques may be applied only by persons who are employed by service providers and trained in the application and use of these methods and techniques. The department must specify by rule the methods that may be used and the techniques that may be applied by service providers to control aggressive behavior and must specify by rule the physical facility requirements for seclusion rooms, including dimensions, safety features, methods of observation, and contents.

(4) RIGHT TO COMMUNICATION.

(a) Each individual has the right to communicate freely and privately with other persons within the limitations imposed by service provider policy.

(b) Because the delivery of services can only be effective in a substance abuse free environment, close supervision of each individual's communications and correspondence is necessary, particularly in the initial stages of treatment, and the service provider must therefore set reasonable rules for telephone, mail, and visitation rights, giving primary consideration to the well-being and safety of individuals, staff, and the community. It is the duty of the service provider to inform the individual and his or her family if the family is involved at the time of admission about the provider's rules relating to communications and correspondence.

(5) RIGHT TO CARE AND CUSTODY OF PERSONAL EFFECTS.

An individual has the right to possess clothing and other personal effects. The service provider may take temporary custody of the individual's personal effects only when required for medical or safety reasons, with the reason for taking custody and a list of the personal effects recorded in the individual's clinical record.

(6) RIGHT TO EDUCATION OF MINORS.

Each minor in a residential service component is guaranteed education and training appropriate to his or her needs. The service provider shall coordinate with local education agencies to ensure that education and training is provided to each minor in accordance with other applicable laws and regulations and that parental responsibilities related to such education and training are established within the provisions of such applicable laws and regulations. This chapter does not relieve any local education authority of its obligation under law to provide a free and appropriate education to every child.

(7) RIGHT TO CONFIDENTIALITY OF INDIVIDUAL RECORDS.

(a) The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with this chapter and with applicable federal confidentiality regulations and are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such records may not be disclosed without the written consent of the individual to whom they pertain except that appropriate disclosure may be made without such consent:

1. To medical personnel in a medical emergency.
2. To service provider personnel if such personnel need to know the information in order to carry out duties relating to the provision of services to an individual.
3. To the secretary of the department or the secretary's designee, for purposes of scientific research, in accordance with federal confidentiality regulations, but only upon agreement in writing that the individual's name and other identifying information will not be disclosed.
4. In the course of review of service provider records by persons who are performing an audit or evaluation on behalf of any federal, state, or local government agency, or third-party payor providing financial assistance or reimbursement to the service provider; however, reports produced as a result of such audit or evaluation may not disclose names or other identifying information and must be in accordance with federal confidentiality regulations.
5. Upon court order based on application showing good cause for disclosure. In determining whether there is good cause for disclosure, the court shall examine whether the public interest and the need for disclosure outweigh the potential injury to the individual, to the service provider and the individual, and to the service provider itself.

(b) The restrictions on disclosure and use in this section do not apply to communications from provider personnel to law enforcement officers which:

1. Are directly related to an individual's commission of a crime on the premises of the provider or against provider personnel or to a threat to commit such a crime; and

2. Are limited to the circumstances of the incident, including the status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last known whereabouts.

(c) The restrictions on disclosure and use in this section do not apply to the reporting of incidents of suspected child abuse and neglect to the appropriate state or local authorities as required by law. However, such restrictions continue to apply to the original substance abuse records maintained by the provider, including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.

(d) Any answer to a request for a disclosure of individual records which is not permissible under this section or under the appropriate federal regulations must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for substance abuse. The regulations do not restrict a disclosure that an identified individual is not and has never received services.

(e)1. Since a minor acting alone has the legal capacity to voluntarily apply for and obtain substance abuse treatment, any written consent for disclosure may be given only by the minor. This restriction includes, but is not limited to, any disclosure of identifying information to the parent, legal guardian, or custodian of a minor for the purpose of obtaining financial reimbursement.

2. When the consent of a parent, legal guardian, or custodian is required under this chapter in order for a minor to obtain substance abuse treatment, any written consent for disclosure must be given by both the minor and the parent, legal guardian, or custodian.

(f) An order of a court of competent jurisdiction authorizing disclosure and use of confidential information is a unique kind of court order. Its only purpose is to authorize a disclosure or use of identifying information which would otherwise be prohibited by this section. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as, and accompany, an authorizing court order entered under this section.

(g) An order authorizing the disclosure of an individual's records may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the individual's records are needed to provide evidence. An application must use a fictitious name, such as John Doe or Jane Doe, to refer to any individual and may not contain or otherwise disclose any identifying information unless the individual is the applicant or has given a written consent to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

(h) The individual and the person holding the records from whom disclosure is sought must be given adequate notice in a manner which will not disclose identifying information to other persons, and an opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order.

(i) Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that identifying information is not disclosed to anyone other than a party to the proceeding, the individual, or the person holding the record, unless the individual requests an open hearing. The proceeding may include an examination by the judge of the records referred to in the application.

(j) A court may authorize the disclosure and use of records for the purpose of conducting a criminal investigation or prosecution of an individual only if the court finds that all of the following criteria are met:

1. The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury, including but not limited to homicide, sexual assault, sexual battery, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.
2. There is reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.
3. Other ways of obtaining the information are not available or would not be effective.
4. The potential injury to the individual, to the physician-individual relationship, and to the ability of the program to provide services to other individuals is outweighed by the public interest and the need for the disclosure.

(8) RIGHT TO COUNSEL.

Each individual must be informed that he or she has the right to be represented by counsel in any involuntary proceeding for assessment, stabilization, or treatment and that he or she, or if the individual is a minor his or her parent, legal guardian, or legal custodian, may apply immediately to the court to have an attorney appointed if he or she cannot afford one.

(9) RIGHT TO HABEAS CORPUS.

At any time, and without notice, an individual involuntarily retained by a provider, or the individual's parent, guardian, custodian, or attorney on behalf of the individual, may petition for a writ of habeas corpus to question the cause and legality of such retention and request that the court issue a writ for the individual's release.

(10) LIABILITY AND IMMUNITY.

(a) Service provider personnel who violate or abuse any right or privilege of an individual under this chapter are liable for damages as determined by law.

(b) All persons acting in good faith, reasonably, and without negligence in connection with the preparation or execution of petitions, applications, certificates, or other documents or the apprehension, detention, discharge, examination, transportation, or treatment of a person under the provisions of this chapter shall be free from all liability, civil or criminal, by reason of such acts.

Staff Signature

Date

Human Resources Staff Signature

Date

