§ 33.03 Quality of care and treatment.

(a) Each patient in a facility and each person receiving services for mental disability shall receive care and treatment that is suited to his needs and skillfully, safely, and humanely administered with full respect for his dignity and personal integrity.

(b) Subject to regulations of the commissioner, the director of a facility shall require the following in order to assure protection of patients in their care and treatment:

1. careful reexamination and evaluation of each patient not less than once a year.

2. medical and dental evaluations and evaluations of mental disabilities of inpatients by qualified professionals no less frequently than once a year.

3. the order of a staff member operating within the scope of a professional license for any treatment or therapy based on appropriate examination.

4. consent for surgery, shock treatment, major medical treatment in the nature of surgery, or the use of experimental drugs or procedures.

5. inclusion in the patient's clinical record of all written treatment plans and notation of examinations, individualized treatment programs, evaluations and reexaminations, orders for treatment, and specific therapies, signed by the personnel involved.

(c) A patient who is removed, but not discharged, from a hospital to receive medical or surgical care at a facility, at a hospital as defined in article twenty-eight of the public health law, or at the offices of a health care professional, shall remain subject to the provisions of article nine of this chapter. During the period of time that the patient is removed for the purpose of receiving such medical or surgical care, all of the patient's rights enumerated by article nine of this chapter shall be preserved. Nothing in this subdivision shall be construed to affect the status or rights of a patient pursuant to article nine of this chapter, who is removed, but not discharged from a hospital for

other purposes.

(d) The commissioner shall promulgate and administer regulations and policies for the establishment of minimum standards for the active programming of patients in adult psychiatric centers.

1. Such standards shall take into account the: medical, psychological, social, vocational, educational and recreational needs of patients including the specialized needs of patients such as those whose mental illness is combined with chemical dependency or developmental disability. The standards shall also take into account the type and mix of programs required at a given facility, and the availability of programming at a variety of times and locations.

2. Such standards shall include but not be limited to, a minimum number of required hours of programming per patient per week and staff requirements based on the type of programming and the needs of patients served. Such standards shall provide for programming exemptions for patients whose clinical or medical condition renders program participation inappropriate and for the regular review of those exemptions. Additionally, a patient may refuse participation in programming provided however that such refusal is consistent with applicable provisions of law. The regulations shall also provide for routine evaluations of the implementation of scheduled programming as well as its effect on identified patient needs.

* (e) 1. Notwithstanding the provisions of subdivisions four and five of section twenty-nine hundred eighty-one of the public health law, the commissioners of health, and developmental disabilities may approve and authorize the use of a simplified advance health care directives form by persons receiving supports and services from a provider of services which is authorized to provide services pursuant to article sixteen of this chapter. Such form shall specify, at the option of the principal, what end-of-life treatment the person wishes to receive; may designate a health care agent consistent with the provisions of this article; and may, at the option of the principal, authorize the health care agent to commence making decisions immediately upon the execution of the proxy, provided that all such decisions made prior to a determination of incapacity pursuant to section twenty-nine hundred eighty-three of the

public health law shall be made in direct consultation with the principal and the attending physician; and provided, further, that if, after such consultation, the principal disagrees with the agent's proposed decision, the principal's wishes shall prevail; and provided, further, that, in the case of any decision to withhold or withdraw artificial nutrition or hydration, the principal's wishes must have been recorded in the health care directive or stated in the presence of the agent and the attending physician; and further, provided, that the consultation among principal, agent and attending physician must be summarized and recorded in the principal's medical record.

2. The simplified advance health care directives form, authorized by paragraph one of this subdivision, shall be developed by the commissioner of developmental disabilities, in consultation with the commissioner of health, providers of service authorized to provide services pursuant to article sixteen of this chapter, advocates, including self-advocates, and parents and family members of persons receiving services from such providers.

* NB Effective upon the date of the approval and availability of the simplified advance health care directives form authorized by this subdivision and repealed 2 years after such date.

* NB There are 2 sb (e)'s

* (e) Meals provided by a facility in furtherance of a person's right to a balanced and nutritious diet, as required by section 33.02 of this article, shall be served at appropriate times and in as normal a manner as possible. Altering the composition or timing of regularly served meals shall be prohibited for disciplinary or punishment purposes, the convenience of the staff, or behavior modification. Restrictions may be made for clinical reasons, pursuant to documentation by a qualified professional, which shall specify the clinical justification for the restriction and the time period that such restriction shall be in effect, and which shall be included in the individual's written treatment or services plan.

* NB There are 2 sb (e)'s