§ 33.07 * Care and custody of the personal property of persons receiving services.

* NB Effective until June 30, 2027

* Care and custody of the personal property of patients.

* NB Effective June 30, 2027

(a) A patient's right to retain his personal belongings upon admission to a facility shall be respected. The director, subject to the regulations of the commissioner, may take temporary custody of the patient's personal property upon the person of the patient. Personal property which is retained for the patient's protection shall be used for the support and benefit of the patient if deemed desirable. Otherwise, it is to be conserved for his benefit. If a patient is transferred to another facility, his personal belongings shall be transferred with him. Gifts received by a patient in a facility shall be handled in the same manner.

(b) The director of a department facility shall have the power to take temporary and immediate custody of the personal property of a patient which is in the possession of other persons upon giving a receipt therefor to the person having possession thereof.

(c) Any interest on money received and held for a patient shall be the property of the individual patient and shall not accrue for the general welfare of all patients in a facility.

* (e) A mental hygiene facility director who is a representative payee for a person pursuant to designation by the social security administration or other federal agency and who assumes management responsibility over the funds of such person, including benefits for which there is a state share, shall maintain such funds in a fiduciary capacity to the person; provided that the application of such funds to the cost of care and treatment of such person shall not, in and of itself, be a violation of such fiduciary obligation if such director acts in accordance with federal law and regulations. The commissioners of mental health, developmental disabilities, and alcoholism and substance abuse services shall promulgate regulations regarding the management and protection of such funds in collaboration with persons receiving services, advocacy groups representing persons receiving services and families of such persons, and mental hygiene legal service. Such regulations shall include, but not be limited to, the use of

Medicaid exception trusts, including special needs trusts or similar devices, notice requirements to qualified persons as defined by section 33.16 of this article regarding the intent of the facility director to apply to be the person's representative payee, and the appropriate establishment and maintenance of a discharge account for future needs.

In the event that a director of a department facility receives a lump sum retroactive payment of a federal or state benefit on behalf of a person in the director's capacity as representative payee and the receipt of such funds would, in combination with other funds held on behalf of such person, make the person ineligible for government benefits, such director shall, to the extent permissible by law, apply the funds in excess of the appropriate eligibility level to the person's personal needs or seek to place such excess funds into a qualifying Medicaid exception trust, including a special needs trust, or similar device; provided, however, that, for purposes of this section, the term "lump sum retroactive payment" shall not apply to any payment that exceeds the expected monthly recurring amount where such excess is due to a delay in processing an application, changing a representative payee or similar administrative delay. The director of a department facility shall ensure that the treatment team meet with, and determine the current and future personal needs of, the person receiving services. For purposes of this section, a treatment team is one that is responsible for the following, including but not limited to, clinical assessments, treatment plan development, any necessary discharge planning, and personal expenditure planning.

* NB Effective until June 30, 2027

* (e) A mental hygiene facility which is a representative payee for a patient pursuant to designation by the social security administration or which assumes management responsibility over the funds of a patient, shall maintain such funds in a fiduciary capacity to the patient. The commissioners of mental health and developmental disabilities shall develop standards regarding the management of patient funds.

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* (f) The commissioners of mental health, developmental disabilities, and alcoholism and substance abuse services shall post on the offices' respective websites, in a prominent location, the applicable standards,

regulations and/or policies established pursuant to this section.

* NB Repealed June 30, 2027

* (g) Upon request by a person receiving services from a department facility, his or her guardian, qualified persons, as defined by section 33.16 of this article, or other legally authorized representative, the director of such facility shall, on a quarterly basis, make a statement of deposits and disbursements from the personal account of the person receiving services available for review.

* NB Repealed June 30, 2027

* (h) The office of mental health and the office for people with developmental disabilities and mental hygiene legal service shall collaboratively review, at least annually, the management of funds which a department facility director receives as a representative payee or of funds received pursuant to section 29.23 of this title. In such review, the office of mental health and the office for people with developmental disabilities shall make available final federal reviews regarding facility directors' handling of federal benefits and other related documents to aid the proper conduct of such review.

* NB Repealed June 30, 2027

* (i) The office of mental health and the office for people with developmental disabilities shall, by the fifteenth day of December of each year, commencing on December fifteenth, two thousand eleven, submit and publish on its official website, a report to the governor, speaker of the assembly, temporary president of the senate, chair of the assembly committee on mental health, and the chair of the senate committee on mental health, detailing how persons' federal benefits are being utilized.

* NB Repealed June 30, 2027