

Rights of Inpatients

**IN NEW YORK STATE
OFFICE OF MENTAL HEALTH
PSYCHIATRIC CENTERS**

**State of New York
David A. Paterson
Governor**

Office of Mental Health
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Commissioner



THE LAWS AND POLICIES of New York State protect the rights of people who are inpatients in state psychiatric centers.

This booklet discusses those rights, and ways in which you can proceed if you believe your rights - or those of someone you know - are being violated.

Each person who enters one of our hospitals is entitled to care and treatment that is suited to his or her needs. Staff people are expected to administer this treatment skillfully, safely and humanly with full respect for the patient's dignity and personal integrity.

Michael F. Hogan, Ph.D.
Commissioner

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Rights and the laws

Most people are admitted to New York State psychiatric centers under the Mental Hygiene Law. If you are among them, you are entitled to a broad array of basic rights. Certain of these rights are absolute and cannot be limited. Others may be limited by law for medical reasons. If you have been admitted under the Criminal Procedure Law or Correction Law, different standards may apply to your rights.

If your rights are limited for medical reasons, the clinical grounds must be explained to you and placed in writing in your record. The amount of time that this limitation is to remain in effect also must be stated.

You may appeal any limitation of your rights. You may go first to the director of your hospital. Help is also available from the Mental Hygiene Legal Service (MHLS), your hospital's Board of Visitors and the New York State Commission on Quality of Care and Advocacy for Persons with Disabilities. The telephone numbers for each should be displayed on "Inpatient Rights" posters in your psychiatric center. Staff people also can help you get those numbers, and other sources of information are listed at the end of this booklet.

Civil rights

The fact that you are in a psychiatric center cannot be used by itself as grounds to deprive you of any of your civil rights.

The law specifically provides that you retain the right to register and vote in elections, the right to civil service ranking and appointment and rights connected with getting, losing or being denied a license, permit, privilege or other benefit provided by any law.

You also have the right to be protected from abuse and mistreatment by employees or other residents.

If you believe you have been subjected to mental, verbal, sexual or physical abuse, or if you see this happen to someone else, please report it as soon as possible.

Personal rights

All patients in New York State psychiatric centers have the rights listed in this section, unless there is a specific provision of another law – such as the Criminal Procedure Law or Correction Law for individuals admitted under these laws – which provides otherwise.

You have the right to:

- ◆ Appropriate personal clothing.
- ◆ A safe and sanitary environment.
- ◆ A balanced and nutritious diet.
- ◆ Practice the religion of your choice, or no religion.
- ◆ Freedom from abuse and mistreatment by employees or other residents.
- ◆ Adequate grooming and personal hygiene supplies.
- ◆ A reasonable amount of safe storage space for clothing and other personal property.
- ◆ Reasonable privacy in sleeping, bathing and toileting areas.
- ◆ Receive visitors at reasonable times, have privacy when visited, and communicate freely with people inside or outside the psychiatric center.
- ◆ Appropriate medical and dental care.
- ◆ An individualized plan for treatment and active participation in developing that plan.
- ◆ Contact the facility director; the Mental Hygiene Legal Service, the hospital's Board of Visitors, or the New York State Commission on Quality of Care and Advocacy for Persons with Disabilities about any questions or complaints. (Addresses and telephone numbers are posted at hospitals, and some appear at the back of this publication.)

The rights stated above shall not be limited as a punishment or for the convenience of staff. These rights can be limited only upon written order of a physician. This order must be placed in the patient's clinical record and state the time period and clinical justification for the limitation.

Privacy and confidentiality

The law also gives you right to privacy and confidentiality when talking with those who examine or treat you and to confidentiality of your clinical records and other information about you.

The Office of Mental Health will provide you with a separate *Notice of Privacy Practices* that will tell you how we use and disclose your confidential mental health treatment information. It will also tell you what your rights are with regard to your mental health treatment information, and who you can contact if you have questions or a complaint about how we have used or shared your treatment records.

Generally, no information about you may be given out unless you or your legal representative give written permission.

In limited circumstances, however, the law does allow or require release of records or information to certain individuals or entities. For example, government agencies and insurance companies can receive information necessary to make payments for services provided. In most cases a disclosure will be noted in your record, and you are entitled to learn about it upon request.

A psychiatric center may wish to take a photograph of you so it can issue you a photo identification card. You have the right to be informed of the purpose and use of the photograph, and any objections you may have will be considered.

People admitted under the Criminal Procedure Law or Correction Law may be required to have photographs on file for law enforcement purposes.

Work and education

Except for maintaining personal possessions and living area when able, no patient will be required to perform any work.

However, work is regarded as one of the mainstays of recovery, so State Office of Mental Health facilities do offer opportunities for work or work training in keeping with state and federal labor laws.

You must be told verbally and in writing about work or work training. You must be told the rate of pay, the pay period, how total pay is determined, what deductions are made and the reason for each of them. You also must be told about the provisions of State Office of Mental Health regulations about work and work training.

If you are between the ages of 5 and 21, you have a right to the same educational and vocational services that you are entitled to outside a state psychiatric center.

Communications

Correspondence

You may send and receive sealed, unopened and uncensored mail unless your treatment team decides that certain limits are necessary for your well-being or that of other people.

You must be notified of any limitation on your mail, and you may appeal the decision to the director of your psychiatric center.

If, for any reason, you are unable to read or write, the treatment team will assign one of its members to read or write for you, and will provide reasonable time for this. If you do not speak English, someone who speaks your language will assist you when necessary.

Persons who are non-English speaking, deaf or hard-of-hearing shall not be denied care and treatment or otherwise discriminated against. Each facility shall take reasonable steps to ensure that: necessary steps are taken to provide information in appropriate languages; the timely availability of interpreters is provided, when necessary for effective communication; persons serving as interpreters are sufficiently competent to ensure effective communication. Communication with persons who are deaf or hard-of-hearing must be provided in accordance with the Americans with Disabilities Act (Public Law 101-336). That law can be obtained at Department of State, Office of Information Services, 41 State Street, Albany, NY 12207, and the Office of Mental Health, Counsel's Office, 44 Holland Avenue, Albany, NY 12229.

Telephone

You will have reasonable access to a telephone.

Visitors

You have the right to have visitors at reasonable times, and to have privacy when they visit. You also have the right to refuse visitors.

Any limitation on visiting must be upon written order of your doctor, and will be discussed with you in advance. This order is to be placed in your clinical record. It must state the clinical justification for this limitation and the specific time that the limitation will be in effect.

Mental hygiene law admissions

When you are admitted, you will receive a notice that tells you your admission status and states your right to receive assistance from the Mental Hygiene Legal Service.

When someone is admitted to a New York psychiatric center under the Mental Hygiene Law, the admission falls under one of three general categories: informal, voluntary or involuntary.

Informal admission occurs when someone requests treatment and is admitted without a formal or written application. The patient is free to leave at any time while on such admission status.

Voluntary admission occurs when someone who is 16 or older applies in writing for admission. If the person is under 18, the parent, legal guardian, custodian or next of kin may have authority to apply on the person's behalf.

A voluntary status patient may make a written request for discharge at any time. If the patient is under age 18, the request for discharge may also be made by the person who applied for the patient's admission, by another person of equal or closer relationship, or by the Mental Hygiene Legal Service.

A voluntary patient who submits a written request to leave the hospital must be released unless the director of the psychiatric center believes that the person meets the requirements for involuntary admission and therefore needs to stay. In this case, the director must apply to a judge within 72 hours for authorization to keep the patient.

If you are hospitalized as either a voluntary or informal status patient, you must be informed periodically of your status and rights, including your right to assistance from Mental Hygiene Legal Service. In addition, once a year the psychiatric center director and the Mental Hygiene Legal Service must review each voluntary or informal status patient's suitability and willingness to remain on such status.

Involuntary admission can take place in one of three ways:

1. Medical certification, which requires that two physicians examine a person and certify that he or she needs involuntary care and treatment in a psychiatric facility. This is sometimes known informally as a "two p.c." shorthand for "two physicians certify." This certification must be accompanied by an application for admission, made by someone familiar with the individual (for example, a legal guardian, custodian, next of kin, treating psychiatrist or someone who lives with the person) or by one of a number of government officials.

If you are involuntarily admitted on a medical certificate, or converted to that status, you may be kept in a psychiatric center for up to 60 days. If you - or a relative, friend or the Mental Hygiene Legal Service - believe that you do not need to be involuntarily hospitalized you or any of the others may apply for a court hearing on this matter.

At the end of this 60 days, and periodically after that, the psychiatric center director must apply to a judge for authorization to retain you as an involuntary status patient. You must be notified when such an application is made, and you have the right to object and to be represented by the Mental Hygiene Legal Service or your own attorney at the hearing.

2. Certification by a director of community services, or an examining physician designated by the director of community services.

This certificate states that the person has a mental illness which is likely to result in serious harm to self or others and for which immediate inpatient care and treatment is appropriate.

If you are admitted in this way, you must be examined within 72 hours by a staff psychiatrist. If the psychiatrist confirms that you meet the requirements for involuntary admission based on medical certification, you may be kept in the psychiatric center for up to 60 days. The procedure for involuntary retention beyond 60 days, and the patient's right to a hearing, are the same as outlined in Section 1, above.

3. Emergency admission based on the claim that the person has a mental illness which is likely to result in serious harm to self or others and for which immediate observation, care and treatment in a psychiatric center is appropriate.

If you are admitted in this way, you must be examined within 48 hours by a staff psychiatrist. If he or she confirms that you meet the requirements for emergency admission, you may be kept in the psychiatric center for up to 15 days. For you to be kept involuntarily beyond 15 days, you must meet the requirements for, and be converted to, an involuntary admission based on medical certification. (See Section 1, above, for a description of your right to a hearing.)

Criminal procedure law and correction law admissions

Individuals may be admitted and retained by a psychiatric center under the following provisions of the Criminal Procedure Law (CPL) or Correction Law.

- ◆ A person who is confined in jail awaiting trial or sentencing may be admitted to a psychiatric center under Section 508 of the Correction Law. This admission is equivalent to an involuntary admission under the Mental Hygiene Law, except that the patient remains under guard and in custody of jail officials.
- ◆ A person who is a defendant in a criminal proceeding, who is or may be incapable of understanding the proceedings or helping in his or her own defense, may be committed under one of several court orders under Article 730 of the Criminal Procedure Law. An order of examination requires that the person be confined in a hospital for up to 30 days while a psychiatric examination is conducted. If necessary to complete the examination, the judge may authorize confinement for an additional period of up to 30 days. An order of

commitment or retention commits, for a period of one or two years, a defendant who is legally incapable and indicted for a felony. A defendant may be retained on one of these court orders for no longer than two-thirds of the maximum sentence he or she could have received upon conviction of the felony charge. At the time one of these orders expires, the individual must be converted to a Mental Hygiene Law admission status - informal, voluntary or involuntary - or discharged.

- ◆ A person who has been found not responsible for a crime by reason of what the law calls mental “disease or defect” may be committed to a hospital by a court order under Section 330.20 of the Criminal Procedure Law. These are: examination orders which commit the individual for 30-day periods for psychiatric evaluation; orders of civil commitment with an order of conditions imposed by the judge committing a person found to be mentally ill; and commitment orders in which a person is found to have a dangerous mental disorder and to require placement in a secure facility.
- ◆ An individual serving a prison sentence may be admitted to a secure hospital under Section 402 of the Correction Law. Except in emergencies, advance court authorization must be obtained. The patient, or someone acting on his or her behalf, may seek a hearing. If a person is admitted on an emergency basis, court authorization must be obtained afterward.

Guardians

If you are legally incapacitated while you are an inpatient at a state psychiatric center, a judge may appoint a guardian to make decisions on your behalf.

The judge decides whether a guardian is needed and who it will be (typically considering friends and relatives, if they qualify). You have the right to be represented by the Mental Hygiene Legal Service or another lawyer at the proceeding.

Health care proxy and advance directives

You have the right to complete a health care proxy, which appoints a health care agent - another adult to make health care decisions for you in the event that you lose capacity to make decisions. You also

have rights, consistent with New York State Law, relating to advance directives - a person's written instructions relating to the provision of care in the event the person lacks capacity to make health care decisions. When you are admitted, the hospital will tell you about these rights and, upon request, will provide you with a form to designate an agent and offer additional assistance.

Your right to quality care

You have the right to an individual plan of treatment.

This basic treatment plan shall include a statement of the goals of treatment, appropriate programs, treatment or therapies to be undertaken to meet the goals and a specific timetable for reviewing progress. You must have the opportunity to participate as fully as you are able in establishing and revising your individual treatment plan. This includes the right to ask that the plan be revised.

You have a right to receive services that are suited to your needs provided in a skillful, safe and humane manner. Under state and federal law, staff people may not discriminate against you because of race, color, sex, creed, religion, age, national origin or the nature and severity of your disability.

As an inpatient, you will receive periodic medical and dental examinations. Treatment for medical and dental problems is available, with appropriate follow-up services as needed.

Medications may be used only for therapeutic purposes, and the purpose and possible side effects, along with alternative treatments available, must be explained to you.

In case of serious illness or injury, your guardian, family or a close friend whom you have designated will be notified immediately.

Your right to object

You have a right to object to any form of care and treatment, and to appeal decisions with which you disagree.

If you object, the treatment team must make every effort to provide an alternative treatment or procedure which will be acceptable to you.

Medications or other medical treatments proposed for you must be explained to you. If you object, you have the right to have the proposed treatment, and your objections, fully reviewed both by Office of Mental Health physicians and by a court. Except in an emergency, you cannot be treated over your objection without court authorization, and you have a right to have the Mental Hygiene Legal Service or another representative assist you in administrative and court procedures.

Restraint and seclusion

Restraint and seclusion of patients are last-resort safety measures to prevent injury, and Office of Mental Health policy states that they are to be used only in emergency situations.

Specific types of restraining devices which doctors may order include four-point restraints, five-point restraints, wrist-to-belt restraints and calming blankets. Camisoles and restraining sheets may be used only upon authorization of the OMH chief medical officer or his designee, and only with the particular patient for whom authorization is given. Staff people are expected to use the least restrictive type of restraint which is appropriate and effective.

Seclusion occurs when a person is placed alone in a room which he or she cannot leave at will.

You can be restrained or secluded only upon the written order of a doctor, based on personal examination. If a doctor is not immediately available, a senior clinician can start the procedure while waiting for the doctor to arrive only if the patient presents an immediate danger to self or others. An order is valid for no more than two hours for adults and to renew an order, the physician must conduct another examination and write another order. Patients in restraint or seclusion must be monitored continuously and their vital signs taken regularly. Restraint and seclusion are not to be used as punishment, or for the convenience of staff or as a substitute for treatment, and excessive force shall not be used.

As soon as practicable after a person has been restrained or secluded, and as soon as the person is willing, staff must review the circumstances surrounding the episode with the individual. They must try to identify with the person's help what could have been done differently and how a future emergency could be averted.

Hospital quality assurance programs also are expected to monitor restraint and seclusion.

Surgery and other treatments

Surgery, electroconvulsive therapy (shock treatment), major medical treatment or experimental drugs or procedures are allowed only with appropriate authorization.

Unless you are under age 18 or a judge determines that you lack the capacity to consent to treatment, such procedures may be performed only with your informed consent. This means agreeing to the procedure after being given full and comprehensive information on potential benefits and harm.

If a person is under age 18 or lacks the capacity to consent to treatment, authorization for such procedures may be obtained from a close relative, a health care agent (the person designated in a health care proxy), a court-appointed surrogate, a surrogate decision-making committee or a judge. However, even with consent of a surrogate, such procedures cannot be administered in a non-emergency to someone who objects unless he or she is on involuntary status and has been given a chance to seek judicial or administrative review of the decision.

In emergencies, the psychiatric center director may authorize a procedure necessary to preserve life or limb without obtaining consent of people. Electroconvulsive therapy is not regarded as an emergency treatment, and its use cannot be authorized by a psychiatric center director as an emergency procedure.

Research

A patient may participate in research only if it does not conflict with his or her individual treatment plan. Agreeing or refusing to participate in research will not deprive you of any rights, privileges or protection provided in the law.

You have the right to refuse to participate in any staff training activity that is not an integral part of your treatment plan.

Criminal background

When you are admitted, an automatic computer check is made to determine whether you have a criminal history. Information from the Division of Criminal Justice Services can be summarized and included in your clinical record, although the report itself is to be destroyed within two weeks of receipt. You will be given written notice that your criminal history information will be obtained and that there is an opportunity to request correction of inaccurate information.

Discharge

A person admitted under the Mental Hygiene Law will be discharged to the community after the person's treatment team or a judge has determined that the individual no longer needs inpatient care and treatment.

A service plan will be prepared for the person being discharged. That individual, along with his or her authorized representative, must be given the opportunity to actively participate in its development.

The plan will include:

- ◆ A statement of the person's need, if any, for supervision, medication, aftercare services and help finding work.
- ◆ A specific recommendation of the type of residence in which the patient is to live and a listing of the services available in such a residence.

Staff also must consult with the local department of social services, and must process any applications for public assistance, Medicaid and Supplemental Security Income (SSI) before the individual is released.

People committed under the Criminal Procedure Law or Correction Law will be released or discharged under terms of those laws.

Conditional release

A person may be released conditionally rather than discharged, if he or she has clinical needs that require supervised placement.

An involuntary status patient may be released conditionally only for the remainder of the court-authorized retention period. For example, if a judge has ordered that someone be retained for 30 days, and ten days have passed, the person could be released conditionally for the remaining 20 days. If a staff physician of the psychiatric center determines that such a person on conditional release may be in need of involuntary rehospitalization, such person may be recommitted for a period of up to 72 hours, during which time the person shall be evaluated for rehospitalization (in accordance with the procedures for involuntary admission under the Mental Hygiene Law explained above) or released, either conditionally or unconditionally.

A voluntary status patient may be released conditionally only if the individual consents. If the patient is under 18, the parent, legal guardian, custodian or next of kin may have authority to consent on the patient's behalf. The person may be returned to the facility only if he or she consents, unless his or her psychiatric condition has changed to the point where an involuntary admission is required.

Assisted Outpatient Treatment (Kendra's Law)

Background

New York State has enacted legislation that provides for Assisted Outpatient Treatment (AOT) of certain persons with mental illness who, in view of their treatment history and present circumstances, are unlikely to survive safely in the community without supervision. This legislation is commonly referred to as "Kendra's Law" and is set forth in Section 9.60 of the Mental Hygiene Law. Those individuals in the community, or about to return to the community from correctional facilities or hospitals, who are suffering from mental illness and are unlikely to survive safely without some formal supervision, may be found in need of AOT. AOT is a general

term describing the services which a person may be required to receive in the community, including case management services, medication, drug testing, educational and vocational training, group therapy, substance abuse treatment and counseling, and supervision of living arrangements. Before a court may order assisted outpatient treatment, it must be satisfied that AOT is the least restrictive alternative for the patient.

Eligibility

In order to be found in need of assisted outpatient treatment, an individual must:

- ◆ be at least 18 years old and have a mental illness;
- ◆ be unlikely to survive safely in the community without supervision, based on a clinical determination;
- ◆ have a history of lack of compliance with treatment that has lead to (a) at least two hospitalizations for mental illness in the preceding 36 months, or (b) resulted in one or more acts of violence toward self or others, or threats of serious physical harm toward self or others, within the preceding 48 months (when calculating the 36 month or 48 month “look-back” period, the duration of the current hospitalization, or of any hospitalization which ended in the six months immediately preceding the filing of the petition, is excluded);
- ◆ be unlikely to voluntarily participate in outpatient treatment interventions that would allow the person to live safely in the community;
- ◆ in view of the person’s treatment history and current behavior, be in need of AOT to avoid a relapse or deterioration that would likely result in serious harm to the person or others; and
- ◆ be likely to benefit from AOT.

Process

The process begins by the filing of a petition with the county court or the supreme court for the county where the subject individual is present or is believed to be present. A petition is a formal written statement to the court setting out the facts which demonstrate that the individual in question meets the criteria for AOT. A petition can be filed by a roommate, certain family members, the director of a hospital where the person is hospitalized, a qualified psychiatrist who is either treating the person or supervising the person’s treatment, a licensed psychologist or social worker who is currently treat-

ing the person, the director of a public or charitable organization providing mental health services or housing, the local director of community services or social services official or a parole or probation officer assigned to supervise the person.

In addition to the petition, an affidavit of an examining physician is required which shows, among other things, that the physician examined the patient within 10 days of filing the petition and that the subject of the petition meets the criteria for AOT. A copy of the petition is served on a number of persons including the person alleged to be mentally ill and in need of AOT and the person's closest known relative and the Mental Hygiene Legal Services among others. The court has 72 hours to set a hearing date, although the hearing can be adjourned for "good cause." At the hearing, the court considers all the evidence, which may include testimony from the person bringing the petition, and other admissible forms of evidence. After all information is supplied to the court, a determination is made whether the person meets the criteria for AOT. If the court determines the person meets the criteria for AOT, the initial order will require the person to receive assisted outpatient treatment for up to six months from the date of the order. The AOT order can be extended by a similar petition process for successive periods of up to one year.

Non-compliance with an order of AOT

If a patient fails to comply with an AOT order, his or her treatment team works with the patient to achieve compliance. If a physician determines that the person still has not complied with an AOT order and that the patient may be in need of involuntary admission to a hospital, the physician may recommend that the patient be removed from the community for examination and transported to a hospital. The patient may be retained for up to 72 hours to determine if he or she is in need of inpatient care and treatment. The patient must be released at the end of 72 hours unless he or she is admitted as an inpatient pursuant to the provisions of the Mental Hygiene Law pertaining to hospital admissions. The refusal of the patient to take required medication, or the failure of a test to determine such medication compliance or to determine alcohol or drugs use, may be considered by the physician when determining whether removal to a hospital for examination is necessary.

Legal assistance for you

The Mental Hygiene Legal Service (MHLS) provides legal services, advice and assistance, including representation, about all matters arising out of your hospitalization here. MHLS is an agency of the New York State Supreme Court, and is not part of the Office of Mental Health or any psychiatric center. MHLS staff members are lawyers or social workers who have a legal background. Their function is to help you understand and protect your rights as a patient.

If you object to being hospitalized, the MHLS can arrange for you to have a court hearing before a judge, who will decide if you need to remain. If you don't have your own lawyer, MHLS can either represent you or get a lawyer for you. It can also obtain an additional psychiatric opinion.

MHLS helps patients in other ways, including investigating complaints of patient abuse and mistreatment.

All patients, their families and others who work on behalf of patients have the right to communicate freely and privately with MHLS representatives at any time. The names, office address and telephone numbers of MHLS representatives are posted at each psychiatric center, and staff are required to provide this information to patients upon request. In addition, each psychiatric center's switchboard can connect a caller to MHLS or provide the telephone number. All MHLS services are free.

Telephoning for help

The State Office of Mental Health offers a toll-free Customer Relations Line. Call:

1-800-597-8481

The number for Spanish-speaking callers (en Espanol) is:

1-800-210-6456

The TDD number for callers who are deaf or hearing impaired is:

1-800-421-1220

To contact the State Commission on Quality of Care and Advocacy for Persons with Disabilities, a statewide oversight agency, call toll free:

1-800-624-4143

To contact Protection and Advocacy for Individuals with Mental Illness (PAIMI) call:

(518) 388-2892

or call toll free **1-800-624-4143**

To contact The Joint Commission or to express concern about this organization, call:

1-800-994-6610

or email

complaint@jointcommission.org