



# EFE FACT SHEET – Mental Health

## RIGHTS WHILE IN MENTAL HEALTH FACILITIES IN ILLINOIS

**Statutory References: 405 ILCS 5/2-100, 5/2-200, 5/3-207, 5/3-900**

### In a Mental Health Facility:

- You do not lose your rights upon admission.
- You cannot be denied any rights, benefits or privileges guaranteed by law, the Illinois State Constitution or the Constitution of the United States solely because you are receiving mental health services unless your rights have been restricted.
- You are not automatically determined to be legally incompetent. (A court makes this decision in a separate hearing. If you are determined by a court to be legally incompetent, a guardian is appointed to help you make decisions and/or manage your property.)

### Your Rights:

- You have the right to be free from abuse and neglect.
- You have the right to receive adequate and humane care in the least restrictive environment that is appropriate for your care and treatment.
- You have the right to an individual treatment plan, which must be put into writing and periodically reviewed.
- You have the right to participate in creating the treatment plan and subsequent review of that plan (if feasible).
- You have the right to have your guardian, other legal representation, substitute decision maker or any other person whose name you provide in writing to participate in preparing the treatment plan.

### Your Rights Concerning Emergency Forced Medication, Restraint and Seclusion

- You have the right to be informed about the circumstances that could lead to the use of emergency forced medication, physical restraints or seclusion. (In general, these measures cannot be used unless you are an imminent threat to

the health and safety of yourself or others, and these methods cannot be used to punish or discipline you, or for the convenience of the facility or staff.)

- You have the right to tell your therapist how you feel about forced medication, restraints and seclusion, should they ever become necessary.
- You have the right to have your treatment preferences noted in your record.
- You have the right to request notification of someone outside of the facility in the case of medication, seclusion, restraint or the restriction of rights in any other way. The individual or organization's name and contact information should be recorded in your records. For example, "Recipient requests Equip for Equality, (312) 341-0022, be notified each time he or she is secluded or restrained."

### **Your Rights Concerning Notifying Others of Your Location**

- You have the right at any time to request that the facility staff contact at least two people of your choice and inform them of your circumstances and how to contact you.
- You also have the right to request that certain individuals not be told of the admission.

### **Your Rights Concerning Communication**

- You have the right to receive mail, phone calls and visitors. The facility staff may not read your mail or listen to your phone calls. In certain limited circumstances, the facility staff may restrict the right to communications, such as the time and location of visits and calls, or to protect you from harassment or harm.
- You have the right to see your attorney at any time during normal business hours.

### **Your Rights Concerning Personal Property**

- You have the right to have personal property items while in the facility. Unlawful items and those things that may cause harm to you or others can be confiscated.
- You have the right to have any lawful property that the facility staff confiscated returned to you upon discharge. (You should receive a written inventory of any property confiscated by the facility staff. The staff member who collected the property should sign the inventory list. You should review the list at discharge to ensure that all legal property has been returned.)

### **Your Rights Concerning Money**

- You are allowed to have some money in the facility and use it in any way you want **unless** you are a minor, are prohibited by a guardianship order, or there is a valid restriction on the right to have money. Money deposited with the facility must be returned to you, with any interest it earned, when you are discharged.
- You should request and be provided a signed receipt when depositing money at a facility. You may also deposit money at any financial institution while in a facility.

## **Your Rights Concerning Smoking**

- Smoking IS NOT considered a right. Some facilities are totally smoke free, which means there is no smoking anywhere in the building or on the grounds. Other facilities place restrictions on smoking, such as when and where.
- If you smoke, you may request treatment, such as a nicotine patch or chewing gum, in order to stop smoking while in a facility.

## **Your Rights to be Informed about Treatment (Informed Consent)**

- Informed consent means that you agree to undergo or participate in a medical or surgical procedure, receive medication or other treatment, or take part in an experimental study, and you confirm that you have been told and fully understand the risks and benefits of the treatment or procedure and any alternatives to it.
- This information must also be given to your guardian or substitute decision maker.

## **Your Rights Concerning Refusing Treatment**

- You have the right to refuse treatment, medication or any medical or surgical procedure or to participate in an experimental study, even if you previously gave consent to any of these.
- Guardians and substitute decision makers, if authorized by a court or an Advance Directive, have the right to refuse treatment, medication and these other procedures on your behalf. If you refuse treatment or medication, your guardian can consent only if the guardian receives a court order. A substitute decision maker can consent only if given the authority under an Advance Directive.

## **Exceptions to the Right to Refuse Treatment**

### **Emergency**

- Short-acting medication can be administered, even if you object, if the facility believes that you are likely to cause immediate serious harm to yourself or others. The circumstances leading to the order for medication must be documented in your chart.
- The order expires after 24 hours unless it is re-determined by a physician that the need for medication continues. Emergency medication may only be administered for a total of 72 hours (not including Saturdays, Sundays and holidays) unless the facility files a petition in court for a hearing to obtain a court order to use long-acting medications or electro convulsive therapy (ECT).

### **Court Order**

- Anyone over 18 can file a petition for a hearing to get a court order for you to receive involuntary treatment or medication, including ECT.

- Typically, your psychiatrist or the facility where you are receiving treatment files this petition.
- Certain standards must be met before the court will order involuntary treatment, medication or ECT.

### **Your Rights Concerning Petition for Discharge**

- You or any person on your behalf may file a petition for your discharge. The petition must include:
  - Your name;
  - The underlying circumstances and date of the involuntary admission order;
  - A request for discharge from the order; and
  - The reasons for the request for discharge.
- Upon the filing of a petition for discharge, the court must set the matter for a hearing to be held within five days, excluding Saturdays, Sundays and holidays. If the court finds that you no longer meet the standard to be involuntarily admitted, the court must enter an order and discharge you.
- If the court determines that you continue to meet the standard for involuntary admission, the court may continue or change its original order.

### **Discharge by the Facility and Your Rights Concerning Objection to Discharge**

- In general, the facility director may at any time discharge you if it is clinically appropriate to do so. (The law puts certain restrictions on the discharge of an involuntarily committed patient).
- The director of a state-operated facility, if possible, must give seven days notice of the intent to discharge you.
- You may object by filing a written objection with the facility director before the scheduled discharge date.
- Within seven days of receiving an objection, the director must schedule a hearing before the facility's utilization review committee; you cannot be discharged during that time. You are entitled to representation at the hearing.
- The facility must demonstrate by substantial evidence that you meet the standards for discharge. Those standards are as follows:
  - You are clinically suitable for discharge and not in need of hospitalization, **and** are able to live independently in the community;
  - You require further oversight and supervisory care for which arrangements have been made with responsible relatives or a supervised residential program approved by the Illinois Department of Human Services (DHS); **or**
  - You require further personal care or general oversight (as defined in the Nursing Home Care Act) for which placement arrangements have been

made with a suitable home or a family member or other **licensed** facility approved by DHS.

- At the conclusion of the hearing, the utilization review committee will decide if you are to be discharged or remain at the facility; it can also recommend that you be transferred to a more appropriate facility.

### **Your Rights Concerning Transfer to Another Facility or Program**

- If you have been involuntarily admitted by court order, you may file a petition in court to be transferred to a different facility, to a program of alternative treatment or to the care and custody of another person.
- The court cannot order a transfer between state facilities in response to your petition.
- A state-run facility may request to transfer you to another state-run facility or treatment program. You must be given at least 14 days' notice unless, due to an emergency, your mental or physical health or that of others is in immediate danger and appropriate care is not available where you are receiving services. In such a case, the notice must be given as soon as possible, but not more than 48 hours, after the transfer.
- You have the right to object to a transfer, either prior to the transfer or within 14 days after an emergency transfer.
- Within seven days of receiving your written objection, the facility director must hold the same type of hearing as a contested discharge hearing.
- To be successful at this hearing, the facility must demonstrate by substantial evidence to the utilization review committee that your transfer is clinically advisable and consistent with your treatment needs.
- For transfer to a significantly more physically restrictive facility, the Department of Human Services must also show that the transfer is required for your safety or the safety of others.



**DO YOU HAVE A QUESTION?**

Contact Equip for Equality (all services are free of charge):  
800.537.2632 (voice) or 800.610.2779 (TTY)

[Contactus@equipforequality.org](mailto:Contactus@equipforequality.org)

[www.equipforequality.org](http://www.equipforequality.org)

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities.

This publication was made possible by a grant from the Center for Mental Health Services. The contents of this publication are the sole responsibility of the authors and do not represent the official views of the Center for Mental Health Services.

©Equip for Equality, 2005 Revised: 09/19/2008