

DISABILITY & AGING RIGHTS



DEVELOPED BY EQUIP FOR EQUALITY UNDER A GRANT PROVIDED BY THE ILLINOIS DEPARTMENT ON AGING



RIGHTS IN FACILITIES

Involuntary Treatment in Mental Health Facilities

You have many rights when you are admitted to a mental health facility. One of those rights is the right to refuse treatment, such as psychotropic medication and electro convulsive therapy (ECT). The facility cannot give you medication or ECT against your wishes unless it is necessary in an emergency, a court has ordered your involuntary treatment, or you previously gave authority to another person to consent to medication over your objection.

This fact sheet discusses your right to refuse treatment and the circumstances under which the facility can provide treatment to you even if you have refused it.

The right to refuse treatment

If you are admitted to a mental health facility, you have the right to refuse mental health treatment at any time during your admission, including psychotropic medication and electro convulsive therapy (ECT). You can refuse treatment even if you were admitted to the facility against your wishes (involuntary admission), and even if you previously consented to such treatment.

If you refuse mental health treatment, the facility cannot give it to you unless one of these conditions applies:

Involuntary treatment in an emergency

If your treatment is necessary to prevent you from causing serious and immediate physical harm to yourself or others, and no less restrictive alternatives are available, the facility can provide treatment to you against your wishes (involuntary treatment).

If the facility involuntarily administers psychotropic medication or ECT, the facility must evaluate whether you still meet the emergency standard every 24 hours, and it must document its determination in your record. The facility can only administer short-term psychotropic medication and ECT for up to 72 hours, not including Saturdays, Sundays and holidays. The facility must stop administering the treatment after that time unless the treatment remains necessary and the facility has filed a petition for court-ordered treatment.

NOTE: Psychotropic medication is medication that has the ability to affect your behavior, emotions and mental ability. Examples include mood stabilizers, antipsychotics and anti-depressants.

Involuntary treatment by court order

The facility can give you psychotropic medication or ECT against your wishes if the treatment is ordered by a court. Any person 18 or older, including your guardian, may file a petition asking the court to order your involuntary treatment. In most cases, the treating psychiatrist or director of the mental health facility asks for the court order.

The hearing

The involuntary treatment hearing will be scheduled within seven days after the petition is filed. The court will automatically extend, or continue, the hearing date for seven days at your request, a request by the state, or by the person who filed the petition. The court may grant an additional continuance of not longer than 21 days if time is needed for a psychological examination or to allow you to arrange for an attorney. The hearing will most likely be held at the facility where you have been admitted.

The involuntary treatment hearing is separate from the hearing to involuntarily admit you to the facility, but it may occur immediately before or after the admission hearing. You might have the same judge for both hearings.



Your rights at the hearing

- **The right to an attorney.** If you cannot afford one, the Illinois Guardianship and Advocacy Commission or the public defender will represent you.
- **The right to attend the hearing.** You must attend the hearing unless your attorney tells the court that you do not want to attend and the court decides that attending would cause you emotional or physical harm.
- **The right to present evidence.**
- **The right to testify and call witnesses.**
- **The right to cross-examine the other side's witnesses.** At least one psychiatrist, clinical social worker, clinical psychologist or other qualified examiner who has examined you must testify, and you have a right to ask that person questions.
- **The right to a closed hearing.** Anyone can request that the hearing be closed so that no one else is present in the courtroom except the parties and the judge. The court will grant the request to close the hearing if no one objects. If you object, the hearing will remain open. If someone else objects, the court will not close the hearing unless it decides that your interest in having the hearing closed is compelling.
- **The right to an independent examination.** You have the right to be examined and evaluated by a physician, qualified examiner, clinical psychologist or other expert of your choice. The court may also order a separate examination by one or more physicians, qualified examiners, clinical psychologists or other experts to examine you, speak to anyone listed in the petition for involuntary admission, and file a report with the court. You should receive a copy of the report.

NOTE: Unlike involuntary admission hearings, you have no right to a jury trial in an involuntary treatment hearing.

When the court can order involuntary treatment

The court can enter an order for involuntary treatment if it finds all of the following:

- You have a serious mental illness or developmental disability.
- Because of your mental illness or developmental disability, you have lost your ability to function, are suffering or are displaying threatening behavior.
- You have ongoing symptoms from your illness or disability, or you have had repeated episodes.
- The benefits of the treatment outweigh the harm.
- You do not have the ability to make a reasoned decision about the treatment.
- Other less-restrictive treatment options have been considered and are not appropriate.
- If the petition seeks authorization for testing and other procedures, the testing and procedures are necessary for the treatment to be safe and effective.

How long the order can last

The court can order involuntary treatment for up to 90 days. The court can order a second 90-day period of involuntary treatment after holding another hearing. After that, the court can authorize 180-day periods of involuntary treatment. Each time the 180-day time period expires, the court must hold another hearing as discussed above.

NOTE: The court's order does not mean the facility is required to administer involuntary treatment, only that it is authorized if necessary. If the facility determines at any time that involuntary treatment is not necessary, it should stop the treatment.

Consent of substitute decision maker

If you have completed a Power of Attorney for Healthcare or a Mental Health Treatment Preference Declaration, the person you named as your agent may be able to consent to treatment even if you have refused it.

The facility may accept the consent of your agent if a physician determines that you do not have the ability to make a reasoned decision about the treatment.

If you have a guardian and you have refused treatment, the guardian cannot agree to the treatment unless a court has ordered involuntary treatment as discussed above. ■

For more information:

Equip for Equality: **1-800-537-2632** or **1-800-610-2779** (TTY)

Illinois Guardianship and Advocacy Commission: **1-866-274-8023** or **1-866-333-3362** (TTY)

Office of the Inspector General, Department of Human Services: **1-800-368-1463** (Voice/TTY)



Equip for Equality
20 North Michigan Avenue
Suite 300
Chicago, IL 60602

www.equipforequality.org
1-800-537-2632
1-800-610-2779 (TTY)

Illinois Department on Aging
One Natural Resources Way
Suite 100
Springfield, IL 62702-1271

Senior HelpLine:
1-800-252-8966
1-888-206-1327 (TTY)
www.illinois.gov/aging

The Illinois Department on Aging does not discriminate in admission to programs or treatment of employment in programs or activities in compliance with appropriate State and Federal statutes. If you feel like you have been discriminated against, call the Senior HelpLine at 1-800-252-8966, 1-888-206-1327 (TTY).