



EFE FACT SHEET – Mental Health

INVOLUNTARY TREATMENT IN MENTAL HEALTH FACILITIES IN ILLINOIS

Statutory References: 405 ILCS 5/2-107-5/2-107.1, 5/3-800-5/3-813

RIGHT TO REFUSE TREATMENT

- You have the right to refuse medication, electro convulsive therapy (ECT) and any other mental health service.
- If you have a guardian, that person can only agree to treatment if you agree. If you do not agree to treatment, your guardian can agree to treatment only if a court has ordered treatment under the procedures explained below.

TREATMENT WITHOUT CONSENT

Under the *Illinois Mental Health and Developmental Disabilities Code*, involuntary medication or ECT may be given without your consent only under the following conditions:

Emergency Involuntary Treatment

- Involuntary treatment can be administered without a court hearing for up to 72 hours, not including Saturday, Sunday or holidays, in an emergency when it is necessary to prevent you from causing serious physical harm to yourself or others and no less restrictive alternative is available.
- The need for the treatment must be re-determined every 24 hours and it must be documented in your record.

Involuntary Treatment by Court Order

- Any person 18 years of age or older, including your guardian, may file a petition with the court asking the court to order involuntary treatment.
- The treating psychiatrist or director of the mental health facility treating you usually asks for the court order.
- You must remain in the facility until the court hearing is complete.

The Court Hearing

- The hearing must be held within seven days after the petition is filed.
- The state, the person who filed the petition or you can receive an automatic continuance of the hearing for up to seven days.
- The court may grant an additional continuance for not longer than 21 days if it decides that a continuance is necessary to:
 - o provide you with an independent psychological examination, or
 - o permit you time to arrange for a different attorney.
- The involuntary treatment hearing is held separately from a hearing to involuntarily admit you to the facility.
- The involuntary treatment hearing may occur immediately before or after the admission hearing.
- The same judge can preside over both hearings.

COURTROOM PROCEDURES

You have the right to the following:

- **An attorney** – If you cannot afford one, the Illinois Guardianship and Advocacy Commission or the public defender will represent you.
- **To be present at the hearing** – You are required to attend the involuntary treatment hearing unless your attorney states that you do not want to attend and the court decides that attending would cause you emotional or physical harm.
- **To present evidence, testify and have others testify** – You may testify at the hearing and present witnesses who will testify on your behalf.
- **To cross-examine witnesses** – Your attorney can cross-examine the other side's witnesses for you.
- **A hearing closed to the public** – Anyone can request a closed hearing. The request to close the hearing will be granted if no one objects. If you object, the hearing will remain open. If someone else objects, the court will deny the request for a closed hearing unless it decides that your interest in having the hearing closed is compelling.
- **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.
- **A court-ordered examination** – The court can choose one or more physicians, qualified examiners, clinical psychologists or other experts to examine you and speak to anyone listed in the petition for involuntary admission.

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

STANDARD OF PROOF

You may not be subject to involuntary treatment unless a court decides that there is clear and convincing evidence that all of the following are true:

- You have a serious mental illness or developmental disability;
- Because of the mental illness or developmental disability, you either:
 - o have lost your ability to function, as compared with your ability to function prior to the current symptoms of the mental illness for which involuntary treatment is being sought; or
 - o are suffering from your mental illness; or
 - o 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 explored and are not appropriate; and
- If the petition seeks authorization for testing and other procedures, the testing and procedures are essential for the treatment to be safe and effective.

COURT ORDER FOR INVOLUNTARY TREATMENT

- An order for involuntary treatment can be effective for up to 90 days.
- A second 90-day period of involuntary treatment may be authorized by the court at a second hearing.
- After that, unlimited additional 180-day periods of involuntary treatment may be authorized by the court.

NOTE: Authorization of involuntary treatment does not mean the treatment is required to happen, only that it is authorized if necessary.

TREATMENT UNDER ADVANCE DIRECTIVES

Treatment may be provided without a court order if it has been authorized under the terms of a Power of Attorney for Health Care or a Mental Health Treatment Preference Declaration. (See: Fact Sheet on Advance Directives in Illinois.)



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

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