Legal Rights of Persons in Psychiatric Hospitals

Resources

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<th>RESOURCE</th>
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<td>Emergency Services Program (ESP) (24/7) and Crisis Services</td>
<td>If you or a loved one is experiencing a mental health crisis, the Emergency Services Program (ESP) available to help 24 hours a day, 7 days a week, 365 days a year. Anyone may contact ESP for assistance. Call 1-877-382-1609 and enter your zip code. You will receive the phone number for the provider that serves your area. ESP services are available to individuals covered by MassHealth or who are uninsured. If you have a different health plan, you still may be able to get ESP services. You can call 1-877-382-1609 to learn more. National Alliance on Mental Illness (NAMI) also provides information for those experiencing a mental health crisis or for those supporting someone experiencing a mental health crisis. The Department of Mental Health (DMH) website also provides a list of mental health crisis resources.</td>
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<td>Advocacy Guides to Patient Rights</td>
<td>Legal advocacy groups in the Commonwealth have developed excellent guides related to the legal rights of people who are patients in psychiatric hospitals. The Mental Health Legal Advisors Committee (MHLAC) guide to Inpatient Admission and Discharge Rights describes the relevance of your legal status at the time of your admission for treatment in understanding a patient’s rights. A separate guide describes rights in the context of COVID-19 policies at DMH and DDS facilities. The Disability Law Center’s self-advocacy materials provide an overview of the commitment process and individual rights while in the hospital.</td>
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<td>Department of Mental Health (DMH)</td>
<td>The DMH website provides information on steps being taken to stop the spread of COVID-19, changes to visitor access at DMH hospitals, and changes to other protocols.</td>
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FAQs

How have my rights while in a hospital been affected by COVID-19?

By declaring a state of emergency on March 10, 2020, Governor Baker granted the Department of Public Health (DPH) special, temporary powers to take actions determined to be necessary to assure the maintenance of public health and disease prevention. Related, the Commissioner of the Department of Mental Health
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Health (DMH) adopted several changes in normal operating procedures in DMH facilities to address the spread of COVID-19. For example, a May 1, 2020 DMH Bulletin directed facilities to presume patients that refuse testing or have test results pending to be positive for COVID-19 and develop necessary isolation capacity. The Bulletin also temporarily waived or modified some regulations on seclusion and restraint.

Under Massachusetts law, individuals in mental health facilities have six fundamental rights. COVID-19 has resulted in some policy changes that affect these rights, including the following:

- **Right to Visitors:** Even though some of the state is reopening, all hospitals, including DMH hospitals, are still limiting the number of visitors to protect staff and patients from infection. Phase 2 Reopening Guidance allows one visitor and requires that person to wear a face mask. There are limited exceptions, but attorneys and independent medical examiners are expected to communicate with patients virtually. Attorneys may be able to visit patients in accordance with court guidelines. Accommodations should be made to permit parents to visit their children who are younger than 18 and to allow visitors in compassionate care situations, such as end-of-life circumstances.

- **Right to a Humane Environment:** While patients remain entitled to feel safe and have their privacy preserved, new policies introduced to the hospital to contain the spread of COVID-19 have resulted in changes to day-to-day experiences. Group areas, such as cafeterias or communal living spaces and recreational areas, may be restricted to comply with social distancing guidelines. For this reason, patients’ ability to move about the hospital to program areas or outdoor areas may be restricted.

- **Right to Fresh Air:** Patients who are in a hospital with a secure outdoor space that permits social distancing should be allowed to go outside for fresh air. However, if a hospital does not have such a space, then patients may not be permitted to go outside.

The following rights below should be minimally affected:

- **Right to a Telephone:** Patients should continue to have access to a phone at the hospital. Due to COVID-19, facilities have been encouraged to allow patients to reach out to their supports by phone, internet, or video call.

- **Right to Send and Receive Letters:** Patients should be able to send and receive letters in the same way as before COVID-19.

- **Right to Talk to a Lawyer, Pastor, Therapist, or Doctor:** Patients should continue to be able to contact these individuals or other supports. Because of the restrictions on visitors, these communications may be limited to phone or internet communication. Because patients cannot have visitors, DMH has directed facilities to either provide a device to help with access to virtual visits or to permit patients to use their own electronic devices.

If the courthouses are closed because of COVID-19, can I or a loved one be held indefinitely in a hospital for evaluation?

Massachusetts courthouses have been closed to the general public but remain open to address emergency matters including mental health commitments. Commitment hearings are being held in a timely manner by telephone or video. Attorneys are being appointed by the Committee for Public Counsel Services (CPCS) and are contacting clients however they can. You can contact the CPCS Mental Health Litigation Division by calling (617) 988-8341.

I am currently in a hospital for mental health treatment. Does COVID-19 affect how or when I can leave?

If you or a loved one are in an emergency department and have been found to be in need of a psychiatric inpatient level of care, DMH has issued a No Rejection Policy for acute psychiatric facilities, which directs that facilities must admit patients unless the admission would result in the facility exceeding its operation capacity. If a facility has been identified as one admitting patients with COVID-19, then the facility must be prepared to
admit a patient who is positive or presumed positive. Additionally, DMH is working to enhance its capacity to provide assistance through the Expedited Psychiatric Inpatient Admission process, with the goal of getting a patient out of emergency departments as soon as possible after the determination that the patient is in need of psychiatric inpatient care.

If you have been involuntarily committed by a court, you may not leave until the commitment period expires and the hospital may delay discharge until a safe placement is available, something that may be challenging to arrange during the pandemic as community programs may be temporarily unable to accept new clients. To be released before the term of the commitment expires, you will have to petition the court. You can contact your attorney for further assistance filing a petition.

If you voluntarily entered the hospital, you are considered to be a “conditional voluntary” patient. You can notify the hospital at any time that you want to leave and receive treatment at home. The hospital has three business days to allow you to leave or to seek your involuntary commitment.

Do my health care providers or I have to wear a face covering?

On April 14, 2020, the Executive Office of Health and Human Services updated its guidance for residential and congregate care, stating that all staff should be provided with face masks, such as surgical masks. The latest guidance from the Centers for Disease Control (CDC) on protecting against the spread of COVID-19 among people in congregate facilities recommends that patients or residents at the hospital wear a face-covering when outside their rooms or when staff enter their rooms. The hospital should provide you with a facemask, such as a surgical mask or cloth mask. If you or another individual at the hospital develop symptoms of COVID-19—such as a dry cough, fever, or chills—the hospital staff may ask you to wear a mask and gloves.

What actions should the hospital be taking to protect me from getting COVID-19?

The U.S. Department of Health and Human Service’s Substance Abuse and Mental Health Services Administration has issued COVID-19 Interim Considerations for State Psychiatric Hospitals that address pandemic-specific recommendations for individuals in mental health facilities. For example, patients with certain health conditions that make them more vulnerable to infection or complications from infection should be informed of their higher risk and appropriately screened for COVID-19. Additionally, individuals newly admitted for treatment should be tested and, until the results are available, should be separated from other patients to reduce possible transmission of COVID-19.

On May 26, 2020, DMH issued a new bulletin with attachments addressing COVID-19 infection control. The guidance established standards for all DMH licensed facilities (called Tier 1) and for the subset of facilities (called Tier 2) that can admit and provide on-going care for patients who are positive or presumed positive for COVID-19. If you are in a Tier 1 facility, you should be screened for symptoms once a day, and if you have a fever, you should be tested for COVID-19. It is recommended that any patient in a Tier 1 facility who tests positive or is presumed positive should be transferred to a Tier 2 facility. Tier 2 facilities have a dedicated quarantine area and a dedicated positive COVID-19 area in separate areas or units.

For information about the numbers of COVID-19 positive staff and patients at state-operated facilities, the Executive Office of Health and Human Services releases updates every Wednesday on this data.

What should I do if I or a loved one feel at risk or treated unfairly by the COVID-19 restrictions in place at the hospital?

You should ask to speak to the hospital’s Human Rights Officer and raise your concerns with that individual. You can also file a complaint with the Massachusetts Department of Mental Health. Further instructions from the Disability Law Center (DLC) on how to file a complaint with DMH can be found here. You can also reach DLC for assistance by phone at (617) 723-8455 or (800) 872-9992.