## Legal Rights of Persons in Psychiatric Hospitals

*Last Updated: September 14, 2021 at 4:00 PM EST*

### Resources

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<th>RESOURCE</th>
<th>INFORMATION AND LINKS</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 <strong>1-877-382-1609</strong> 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 <strong>1-877-382-1609</strong> to learn more.</td>
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<td>Resources for Mental Health Crises</td>
<td>National Alliance on Mental Illness (NAMI) also provides <a href="https://www.nami.org">information for those experiencing a mental health crisis</a> or for those supporting someone experiencing a mental health crisis. The Department of Mental Health (DMH) website also provides a list of <a href="https://www.mass.gov/info-details/mental-health-crisis-resources">mental health crisis resources</a>. <a href="https://www.mass.gov/info-details/programas-de-servicios-de-emergencia-informacion-en-espanol">Programas de Servicios de Emergencia--información en español</a></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 patients in psychiatric hospitals. The <a href="https://www.mhlac.org/guides">Mental Health Legal Advisors Committee (MHLAC) resource page</a> provides several guides about the rights of inpatients, including admission and discharge rights as well as the six fundamental rights of persons receiving services at inpatient mental health facilities in Massachusetts. Las guías también están disponibles en español. A separate guide describes rights in the context of COVID-19 policies at DMH and DDS facilities. The Disability Law Center’s <a href="https://www.mass.gov/info-details/self-advocacy-materials">self-advocacy materials</a> provide an overview of the commitment process and individual rights while in the hospital.</td>
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How have my rights while in a hospital been affected by COVID-19?

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:** DMH hospitals are operating under a March 19, 2021 Guidance, which allows for outdoor visitation and indoor visitation under certain circumstances. If the DMH facility has not had any COVID cases in residents or staff in the previous 14 days, then indoor visitation is permitted but limited to two visitors at a time – more if the visitors are part of the same household. Residents who are fully vaccinated may visit with fully-vaccinated loved ones in a private room (or if their roommate is fully vaccinated). Visits must be scheduled in advance. Non-DMH hospitals may also have restrictions on visitors during this time, and it is best to contact the hospital for more information on their policies.

- **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.

Can individuals in psychiatric hospitals be forced to take the COVID-19 vaccine?

There is no mandate from the state that people must be vaccinated. The vaccine is entirely voluntary. You can find answers to many questions about the vaccine here.

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

The Executive Office of Health and Human Services has released guidance for use of personal protective equipment (PPE), stating that all health care providers should wear face masks in clinical areas.

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.
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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 February 12, 2021, DMH issued a bulletin 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 four weeks 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 Health, using one of these complaint forms available in nine languages. 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.