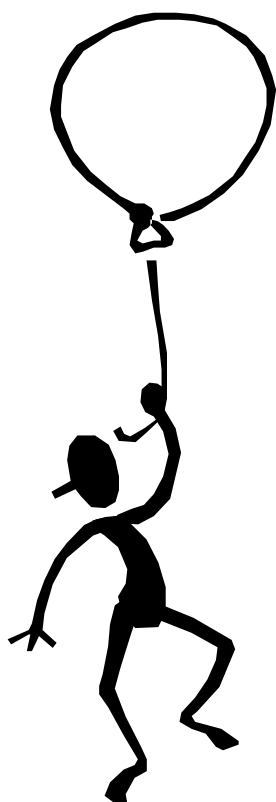


Handbook of Consumer Rights

Mental Health Services



This Book Belongs To:



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Handbook of Mental Health Consumer Rights

This handbook is provided to make you aware of the rights guaranteed to you while you are receiving services within the TXMHMR system. This listing of rights is not intended to be comprehensive; rather, it should increase your awareness that you retain your rights as a citizen unless there is a specific authority to restrict them under law or court order. The information in this handbook should not be considered the granting or denying of any right guaranteed under the law.

Under law, the facility or community program is responsible for making sure that you have been informed of your rights. However, just because you have been given this information does not mean that your rights have been protected. The TXMHMR system is required to respect and provide for your rights.

To help you determine which rights in this handbook apply to you, you should be aware of your status with respect to the following conditions:

- the type of treatment program you are in (outpatient, inpatient, or other residential),
- your legal status (competent adult, adult or minor with a guardian, emancipated minor, or minor with a conservator),
- your admission status (voluntary, emergency detention, Order, of Protective Custody, Court order for Temporary or Extended Services).

If you are not sure of your status, ask your treatment provider or ask for assistance from your Rights Protection Officer.

Your Right To Be Informed of Your Rights

You have the right, under the rules of the department, to be given a copy of these rights before you agree to accept voluntary services or upon your admission to involuntary services. If you so desire, a copy will be given to the person of your choice also. If a guardian has been appointed for you or you are less than 18 years-of-age (less than 16 years-of-age if you have been admitted voluntarily to inpatient services), an additional copy will be given to your guardian, parent, or conservator.

You also have the right to have these rights explained to you aloud in terms you can understand within 24 hours of being admitted for services (e.g., in your language if you are not English-speaking, in sign language if you are deaf or hard-of-hearing, in braille if you are visually impaired, or by other appropriate methods). This same explanation must also be given to your guardian, parent, or conservator, as appropriate.

Your Right To Make a Complaint

You have the right to make a complaint and to be informed of whom to call for help. These people, their addresses and phone numbers are listed below. You have the right to make a complaint without any form of retaliation.

If you believe any of your rights have been violated or you have other questions, concerns, or complaints about your rights or your care, you may contact one or more of the following:

- Rights Protection Officer – see stamp on front of handbook.
- Public responsibility Committee – see stamp on front of handbook
- Texas Department of Mental Health and Mental Retardation
Office of Consumer Services and Rights Protection
P.O. Box 12668
Austin, TX 78711-2668
1-800-252-8154
- Advocacy, Inc.
7800 Shoal Creek Blvd., Suite 171-E
Austin, TX 78757
1-800-252-9108 (voice and TDD)

You have the right to be told about Advocacy, Inc. when you first enter an inpatient unit and also when you leave. Advocacy, Inc. is a federally-mandated agency which is independent of TXMHMR and whose purpose is to protect and speak up for your rights.

If you believe that you have been abused or neglected, you may report your complaint by contacting:

- Texas Department of Protective
and Regulatory Services
P.O. Box 149030
Austin, TX 78714-9030
Mail Code E-561
1-800-647-7418

If you have been involuntarily committed and you believe that your attorney did not prepare your case properly or that your attorney failed to represent your point of view to the judge, you may report the attorney's behavior to the Ethics Committee of the State Bar of Texas by writing:

- Office of the General Counsel State Bar of Texas
PO Box 12487
Austin, TX 78711-2487
(512) 463-1463, 1-800-932-1900

If you have been admitted to a state hospital, additional notifications regarding the RAJ v. Jones Settlement Agreement and Medicare must be made available to you. On discharge, you will be provided with a Satisfaction Survey which you may complete. All of these are provided by the facility separately.

Basic Rights for All Persons Receiving Mental Health Services (Outpatient as well as Residential/Inpatient Programs)

- 1.) You have all the rights of a citizen of the State of Texas and the United States of America, including the right of habeas corpus (to ask a judge if it is legal for you to be kept in the hospital), property rights, guardianship rights, family rights, religious freedom, the right to register and vote, the right to sue and be sued, the right to sign contracts, and all the rights relating to licenses, permits, privileges, and benefits under the law.
- 2.) You have the right to be presumed mentally competent unless a court has ruled otherwise.
- 3.) You have the right to be treated without discrimination due to your race, religion, sex, ethnicity, nationality, age, sexual orientation, or disability.
- 4.) You have the right to be treated in a clean and humane environment in which you are protected from harm, have privacy with regard to personal needs, and are treated with respect and dignity.
- 5.) You have the right to appropriate treatment in the least restrictive, appropriate setting available. This is a setting that provides you with the highest likelihood for improvement, one that is not more restrictive of your physical or social liberties than is necessary for the most effective treatment and that protects against any dangers which you might pose to yourself or others.
- 6.) You have the right to be free from mistreatment, abuse, neglect, and exploitation.
- 7.) You have the right to protection of your personal property from theft or loss.
- 8.) You have the right to be told in advance of all estimated charges being made, the cost of services provided, sources of the program's reimbursement, and any limitations on length of services. You should be given a detailed bill of services upon request, the name of an individual to contact for any billing questions, and information about billing arrangements and available options if insurance benefits are exhausted or denied. You *may not be denied services due to an inability to pay for them*.
- 9.) You have the right to fair compensation for labor performed in accordance with the Fair Labor Standards Act.
- 10.) Before you are admitted voluntarily or upon an involuntary admission, you have the right to be informed of all rules and regulations concerning your conduct and course of treatment.

Confidentiality

- 11.) You have the right to review the information contained in your medical record. If your

doctor says you shouldn't see parts of your record, you have the right to have the decision reviewed. The right extends to your parent or conservator if you are a minor (unless you have admitted yourself to services) and to your legal guardian if you have been declared by a court to be legally incompetent.

12.) You have the right to have your records kept private and to be told about the conditions under which information about you can be disclosed without your permission. You should be aware that your records may be shared with employees of the TXMHMR system (state facilities and community MHMR centers) who need to see them in order to provide services to you. Also, unless you make a written objection, your doctor is authorized to give information about you to law enforcement personnel if the doctor thinks that doing so would be in your best interest.

13.) You have the right to be informed of the current and future use of products of special observation and audiovisual techniques, such as one-way vision mirrors, tape records, television, movies, or photographs.

Consent

14.) You have the right to agree to or to refuse any of the following, except in certain circumstances which must be explained to you:

- Surgical procedures
- electroconvulsive therapy
- unusual medications,
- behavior therapy, when aversive procedures are used or a right otherwise guaranteed to you is restricted,
- hazardous assessment procedures,
- audiovisual equipment, and
- other procedures for which your permission is required by law.

15.) You have the right to give or to withhold consent to take psychoactive medications unless a court has ordered you to take them when you are in an inpatient unit or a doctor in an inpatient setting believes there is an emergency situation in which you or someone else might be harmed due to your behavior.

16.) You have the right to agree to or to refuse to take part in research.

17.) You have the right to withdraw your permission at any time in all matters for which you have previously consented. If you do not grant consent or if you withdraw your consent for any particular treatment, it will have no effect upon your eligibility for any other care and treatment.

Care and Treatment

18.) You have the right to have a treatment plan that is solely for you. You have the right to take part in developing that plan, as well as the treatment plan for your care after you leave the facility or community program. Your parent or conservator (if you are a minor) or your legal

guardian, if one has been appointed, has the right to take part in the development of the treatment plan. You have the right to request that any other person of your choosing (e.g., spouse, friend, relative, etc.) take part in the development of the treatment plan. You have the right to expect that your request will be reasonably considered and that you will be informed of the reasons for any denial of such a request. Staff must document in your medical record that the parent, guardian, conservator, or other person of your choice was contacted and invited to participate.

19.) You have the right not to be given too much medication and the right not to be given medication which you don't need

20.) You have the right to be told about the care, procedures, and treatment you will be given; the risks, side effects, and benefits of all medications and treatment you will receive, including those that are unusual or experimental, the other treatments that are available, and what may happen if you refuse the treatment.

21.) You have the right to meet with the staff responsible for your care and to be told of their disciplines, job titles, and responsibilities. In addition, you have the right to know about any proposed change in the appointment of professional staff responsible for your care.

22.) You have the right to request the opinion of another professional treatment provider at your own expense. You have the right to be granted a review of your treatment plan or a specific procedure by in-house staff.

23.) You have the right to be told why you are being transferred to any program within or outside of the agency.

24.) You have the right to be notified of your right to appeal a decision by a community MHMR center to deny, terminate, or reduce services or support.

Additional Rights of Persons Admitted to Residential Programs (Hospitals, Crisis Stabilization Units, Halfway Houses, Etc.)

- 1.) You have the right to exercise religious freedom. However, no one can force you to attend or engage in any religious activity.
- 2.) You have the right to ask to be moved to another room if another person in your room is disturbing you. The staff must pay attention to your request and must give you an answer and a reason for the answer as soon as possible.
- 3.) You have the right to receive treatment of physical problems which affect your treatment while you are inpatient. You also have the right to receive treatment of any physical problem that develops while you are in the inpatient unit. If your physician believes treatment of the physical problem is not required for your health, safety, or mental condition, you have the right to seek treatment *outside* the *inpatient unit* at your own expense.
- 4.) If you are in a state hospital or a state center and there is way to pay for your own transportation home when you released, the state will pay the cost of transportation.
- 5.) If you are an adult who has been admitted to an inpatient program, you have the right to be given information about your right to make health care decisions and to execute advanced directives as allowed by state law.
- 6.) You have the right to have your family or anyone else of your choosing notified of your admission to and discharge from an inpatient unit if you want anyone to be so notified.
- 7.) If you have been admitted to a state facility, you have the right to be notified of the availability of the trust fund for the safekeeping of your personal funds. Your family will also be advised about the trust fund.
- 8.) You have the right to be informed in writing about any prescription medications ordered by your treating physician, including the name of the medication, the conditions under which it may be prescribed, any risks, benefits, and side-effects associated with it, and the source of the information provided. This right extends to your family, so long as you agree to it.
(* as of May 1, 1994)
- 9.) You have the right to receive a written list of the medication prescribed to you within four (4) hours of requesting it in writing. The list must include the name of each medication, its dosage, how it is given, and how often it is given as well as the name of the doctor who prescribed it. This right extends to your family, so long as you agree to it.
- 10.) If you are in an inpatient program, you have the right not to be physically restrained (restricted in the movement of parts of your body by another person or a device) or secluded

(placed into a locked room alone) unless a doctor orders it and writes it in your medical record. In an emergency situation, the order may be obtained after the restraint or seclusion has occurred, but the procedure must be stopped immediately if the doctor does not agree with it. If you are restrained or secluded, you must be told the reason and what you have to do to be released from restraint or seclusion. The use of restraint or seclusion has to be stopped as soon as possible.

There is no provision for limiting the following rights (11-16) for persons voluntarily admitted to a residential program (for example, a halfway house) which is not an inpatient unit, except for the general rules of the program.

However, if you are in an inpatient program (such as a hospital or a crisis stabilization unit), the following rights (11-16) may be limited by your doctor, but only on an individual basis in order to maintain your physical and/or emotional well-being or to protect another person. The reasons for any limitation must be written in your medical record, dated, signed by your doctor, and fully explained to you and any person legally authorized to represent your interest. Unless otherwise specified, the limit on your rights must be reviewed no less often than every seven- (7) days and if renewed, renewed in writing.

11.) You have the rights to talk and write to people outside the residential program. You have the rights to have visitors in private, to make private phone calls, and to send and receive sealed and uncensored mail. These rights includes a prohibition on barriers to communication imposed by an inpatient program, such as:

- rigid and restrictive visiting hours,
- policies that restrict hospitalized mothers and fathers from visiting with their minor children,
- policies that restrict parents from visiting their hospitalized children,
- limited access to telephones, and
- failure to provide assistance to patient who wish to mail a letter.

In no case may your right to contact an attorney or an attorney's right to contact you be limited. You also have the right to have unrestricted visits with the Rights Protection Officer, members of the Public Responsibility Committee, and, with your consent, Advocacy, Inc. representative, private physicians, and other mental health professionals at reasonable times and places.

12.) You have the right to give or to withhold consent to take medication. You have the right not to be given medication you don't need and the right not to be given too much medication. However, you may be given appropriate medication without your consent if:

- your condition or behavior places you or others in immediate danger, or
- you have been admitted for treatment by order of a court (temporary or extended commitment) and, in a separate finding, the court has authorized your doctor to give you the medication. You have the right to have legal representation at a hearing regarding the authorization of the use of medication. You have the right to request a review of your

medication by another Physician, or

- you are admitted under the Code of Criminal Procedure (eg. Section 46.02 or 46.03). During the first fourteen days of this court-ordered commitment, your treating physician has the authority to give you the medication. After this fourteen day period, you can be given medication after a physician appointed by the chief physician of the facility has determined that you do not have the capacity to understand the consequences of not taking the medication and that the medication is medically appropriate treatment. This decision has to be reviewed on a monthly basis.

13.) You have the right to keep and use your personal possessions, including the right to wear your own clothing and religious or other symbolic items. You have the right to wear suitable clothing, which is neat, clean, and well fitting. If you do not have adequate clothing, it will be made available for you.

14.) You have the right to have opportunities for physical exercise and for going outdoors, with or without supervision, at least daily. A physician's order limiting this right must be reviewed and renewed no less often than every three- (3) days. The finding of the review must be written in your medical record and explained to you and, as applicable, to the guardian of your person, your parent, or your conservator.

15.) You have the right to go to areas of the campus away from your dormitory, including recreation areas and the canteen or snack area, with or without supervision, when you are not supposed to be participating in treatment activities.

16.) You have the right to have opportunities to meet with persons of the opposite sex, with or without supervision, as your treatment team considers appropriate for you.

Additional Rights of Persons Admitted to Inpatient Programs

Voluntary Admissions-Special Rights

1.) You have the right to request your discharge from voluntary admission to a hospital or crisis stabilization unit at any time. You can make this request by putting it in writing or by telling a staff person. If you tell a staff person that you want to request your discharge, the staff person must write it down for you.

2.) By law, you have the right to be discharged from the hospital within four (4) hours after you make a request to be discharged. There are only three reasons why you would not be allowed to go:

- First, if you change your mind and decide to stay, you can sign a paper that says that you do not wish to leave, or you can tell a staff member that you don't want to leave, and the staff member has to write it down for you.
- Second, if you are under 16 years old and the person who admitted you (your parents, guardian, or conservator) doesn't want you to leave, you may not be able to leave. If you request your release, staff must explain to you whether or not you can sign yourself out and why. The hospital or crisis stabilization unit must notify the person who does have the authority to sign you out and tell that person that you want to leave. The doctor or another member of your treatment team must talk to that person and must document the date, time, and outcome of the conversation in your medical record.
- Third, you may be detained longer than four (4) hours if a doctor has reason to believe that you might meet the criteria for court-ordered services or emergency detention because:
 - You are likely to cause serious harm to yourself,
 - You are likely to cause serious harm to others, or
 - Your condition will continue to deteriorate and you are unable to make an informed decision as to whether or not to stay for treatment.

If the doctor thinks you meet the criteria for court-ordered services or emergency detention, he or she must examine you in person within 24 hours of your filing the discharge request. You must be allowed to leave the hospital upon completion of the in-person examination unless your doctor confirms that you meet the criteria for court-ordered services and files an application for court-ordered services. The application asks the judge to issue a court order requiring you to stay at the facility for services. The order will only be issued if the judge decides that either:

- you are likely to cause serious harm to yourself,
- you are likely to cause serious harm to others, or
- your condition will continue to deteriorate and you are unable to make an informed decision as to whether or not to stay for treatment.

Even if an application for court-ordered services is filed, you cannot be detained at the hospital beyond 4:00 p.m. of the first business day following the in-person examination unless a court order (order for emergency detention or order of protective custody) is obtained.

3.) You have the right not to have an application for court-ordered services filed while you are

receiving voluntary services at an inpatient unit unless your doctor, determines that you meet the criteria for court-ordered services and:

- you request your discharge,
- you are absent without authorization,
- your doctor believes you are unable to consent to appropriate and necessary treatment, or
- you refuse to consent to necessary and appropriate treatment and your doctor states in a certificate of medical examination that:
- there is no reasonable alternative treatment and
- you will not benefit from continued inpatient care without the recommended treatment.

Your doctor may consider the option of discharging you if you refuse to consent to treatment.

4.) The doctor must note in your medical record and tell you about any plans to file an application for court-ordered treatment or for detaining you for other clinical reasons. If the doctor finds that you are ready to be discharged, you should be discharged without further delay.

5.) You have the right to be free from threats or misleading statements about what might happen if you request to be discharged from a voluntary admission to the inpatient program.

Note: The law is written to ensure that people who do not need treatment are not committed. The Texas Health and Safety Code says that any person who intentionally causes or helps another person cause the unjust commitment of a person to a mental hospital is guilty of a crime punishable by a fine of up to \$5,000 and/or imprisonment in county jail for up to one year.

Emergency Detention-Special Rights

(Admission for up to 24 hours for evaluation)

1.) You have the right to be told:

- where you are,
- why you are being held, and
- that you might be held for a longer time if a judge decides that you need treatment.

2.) You have the right to call a lawyer. The staff must help you call a lawyer if you ask.

3.) You have a right to be seen by a doctor as soon as possible, but in no case more than 24 hours after you have been apprehended. You will not be allowed to leave if the doctor believes that

- you may seriously harm yourself or others,
- the risk of this happening is likely unless you are detained in an inpatient setting, and
- emergency detention is the least restrictive means of restraint.

If the doctor decides you don't meet all of these criteria, you must be allowed to leave. A decision concerning whether you must stay must be made within 24 hours, excluding weekends and legal holidays, when the decision may be delayed until 4:00 in the afternoon on the first regular workday. The decision may also be delayed in the event of an extreme weather

emergency. If the court is asked to order you to stay longer, you must be told that you have a right to a hearing within 72 hours.

4.) If the doctor decides that you don't need to stay in the inpatient unit, the hospital or crisis stabilization unit will arrange for you to be taken back to where you were picked up if you want to return, or to your home in Texas, or to another suitable place within reasonable distance.

5.) You have the right to be told that anything you say or do may be used in legal proceedings for further detention.

Order of Protective Custody-Special Rights

(Admission for up to 14 days.)

1.) You have the-right to call a lawyer or to have a lawyer appointed to represent you in a hearing (called a "probable cause hearing") to determine whether you must remain in custody until a hearing on court-ordered mental health services (temporary or extended commitment) is held.

2.) Before a probable cause hearing is held, you have the right to be told in writing:

- that you have been placed under an order of protective custody,
- why the order was issued,
- and the time and place of a hearing to determine whether you must remain in custody until a hearing on court-ordered mental health services can be held. This notice must also be given to your attorney.

3.) You have the right to a probable cause hearing within 72 hours of your detention, excepting weekends or legal holidays, when the hearing may be delayed until 4:00 in the afternoon on the first regular workday, or in the event of an extreme weather emergency.

4.) You have the right to be released from custody if:

- 72 hours have passed and a hearing has not taken place(excepting weather emergencies and extension for week-ends and legal holiday),
- an order for court-ordered mental health services has not been issued within 14 days of the filing of an application (30 days if a delay was granted),
- or a doctor finds that you no longer need court-ordered mental health services.

Court-ordered Services-Special Rights

(Temporary or Extended Commitment)

- 1.) You or another person may, at any time during your commitment, ask the court to grant a motion for re-hearing.

- 2.) If you are on a court order for extended mental health services, you may ask a judge to order a physician to re-examine you to determine whether you still meet the criteria for commitment. If the judge agrees to review the commitment, a physician must file a certificate of medical examination with the court within ten (10) days of the filing of your request with the court.

- 3.) If the physician says that you continue to meet the criteria for commitment, or if no certificate of medical examination has been filed within ten (10) days and you have not been discharged, the judge may set a time and place for a hearing on your request. If the doctor says that you do not meet the criteria for commitment, you must be discharged. *