

Colorado's Emergency Mental Health Procedures Stakeholder Process

Hosted by:



COLORADO
Office of Behavioral Health
Department of Human Services



MENTAL HEALTH
COLORADO

May 24, 2021

Timeline

May

- May 24th: CHA Presentation and patient rights continued

June

- June 14th: Discharge Planning
- June 28th: Presentation by Dr. Lacey Beruman, discharge planning continued

July

- July 12th: Inconsistencies in M1s: evaluations

27-65-117

Current rights of persons receiving evaluation, care, or treatment

- (1) Each person receiving evaluation, care, or treatment under any provision of this article has the following rights and shall be advised of such rights by the facility:
 - (a) To receive and send sealed correspondence. No incoming or outgoing correspondence shall be opened, delayed, held, or censored by the personnel of the facility.
 - (b) To have access to letter-writing materials, including postage, and to have staff members of the facility assist him or her if unable to write, prepare, and mail correspondence;
 - (c) To have ready access to telephones, both to make and to receive calls in privacy;
 - (d) To have frequent and convenient opportunities to meet with visitors. Each person may see his or her attorney, clergyman, or physician at any time.
 - (e) To wear his or her own clothes, keep and use his or her own personal possessions, and keep and be allowed to spend a reasonable sum of his or her own money.

27-65-117

Current rights of persons receiving evaluation, care, or treatment

- (2) A person's rights under subsection (1) of this section may be denied for good cause only by the professional person providing treatment. Denial of any right shall in all cases be entered into the person's treatment record. Information pertaining to a denial of rights contained in the person's treatment record shall be made available, upon request, to the person or his or her attorney.
- (3) No person admitted to or in a facility shall be fingerprinted unless required by other provisions of law.
- (4) A person may be photographed upon admission for identification and the administrative purposes of the facility. The photographs shall be confidential and shall not be released by the facility except pursuant to court order. No other nonmedical photographs shall be taken or used without appropriate consent or authorization.
- (5) Any person receiving evaluation or treatment under any of the provisions of this article is entitled to a written copy of all his or her rights enumerated in this section, and a minor child shall receive written notice of his or her rights as provided in section 27-65-103 (7)(g). A list of such rights shall be prominently posted in all evaluation and treatment facilities.

Suggested Patient Rights (27-65-105)

Each person receiving evaluation, care, or treatment under any provision of this article has the following rights and shall be advised of such rights by the facility **under a 72-hour treatment and evaluation procedure has the following rights, regardless of receiving facility, a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient (CA). The facility shall assist the patient in exercising the rights granted in this subdivision:**

- ~~Any person receiving evaluation or treatment under any of the provisions of this article is entitled to~~ **Immediately upon placement in the facility,** to receive a written copy **and verbal description in a language or modality accessible to the patient** of all his or her enumerated rights outlined in this section and any accompanying rules, and a minor child and his or her guardian shall receive written notice of his or her rights as provided in section 27-65-103(7)(g).

To be told verbally and in writing:

- The reason for his or her detainment
- The limitations of their detainment, including a description of their right to refuse medication, and that the detainment does not mean that all treatment during confinement is mandatory
- If not certified pursuant to 27-65-107, the patient has the right to leave after 72 hours
- The patient has the right to be evaluated *by a professional person* as soon as he or she is medically cleared, not to exceed **XX** hours; and

Suggested Patient Rights (27-65-105)

- To request a change to voluntary status. (Minnesota)
- To be treated fairly, with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility with whom the patient comes in contact (Wisconsin).
- To receive the same consideration and access to appropriate services as others, regardless of race, color, national origin, age, gender identity, sexual orientation, political affiliation, religious beliefs, financial status, or disability; (27-81)
- ~~Each person may see his or her attorney, clergyman, or physician at any time.~~ To retain and consult with an attorney during normal waking hours at any time. Facility responsibility?
- To meet with or call a personal clinician, spiritual advisor, counsel, crisis hotline, family, workplace, childcare provider, or school at all reasonable times. The patient has the right to continue the practice of religion (Minnesota). Facility responsibility?

Suggested Patient Rights 27-65-105

- The legal guardian of the patient shall be given the opportunity to authorize disclosure of the patient's presence in the facility to callers and visitors who may seek to communicate with the patient (Minnesota).
- To see and receive the services of a patient advocate who has no direct or indirect clinical, administrative, or financial responsibility for the person. The person must have access to such services within 2 hours of their request (CA). Facility responsibility?
- ~~To receive and send sealed correspondence. No incoming or outgoing correspondence shall be opened, delayed, held, or censored by the personnel of the facility.~~ To receive and send sealed correspondence as well as the assistance of facility staff if the person is unable to write, prepare, or mail correspondence.
- ~~To have ready access to telephones, both to make and to receive calls in privacy;~~ To have reasonable access to telephones or other communication devices, and to make and to receive calls or communications in privacy. Facility staff shall not open, delay, intercept, read, or censor mail or other communications or use mail or other communications as a method to enforce compliance with facility staff. (27-81)
- To wear his or her own clothes, keep and use his or her own personal possessions, and keep and be allowed to spend a reasonable sum of his or her own money.

Suggested Patient Rights 27-65-105

- To have access to medical records;
- To have treatment records remain confidential, except as required by law;
- ~~No person admitted to or in a facility shall be fingerprinted unless required by other provisions of law~~ To not be fingerprinted, unless required by law;
- A person may be photographed upon admission for identification and the administrative purpose of the facility. The photographs shall be confidential and shall not be released by the facility except pursuant to court order. No other nonmedical photographs shall be taken or used without appropriate consent or authorization.
- To have appropriate access to adequate food in accordance with dietary preferences and practices, water, and hygiene products;
- To have physical privacy in showering, changing, and using the restroom; and
- To have frequent and convenient opportunities to meet with visitors.
- Have immediate access to a representative within the facility who provides assistance to file a grievance. Facility responsibility?

Suggested Patient Rights 27-65-105

- A person's right under subsection (1) of this section may be denied for ~~good cause~~ **only if access to the item, program, or service would endanger the safety of the individual or another person in close proximity and may only be denied** by the professional person providing treatment. Denial of any right shall in all cases be entered into the person's treatment record. Information pertaining to a denial of rights contained in the person's treatment record shall be made available **immediately**, upon request, to the person or his or her attorney.
- Information must be made available to legal guardian
- Individual must be told why they are being denied item or service
- Are there any rights that can never be denied?
- Should this denial be reevaluated every 12 hours? 24 hours?
- Requirement for all EDs to have clear policies and procedures around when and why denials may occur that are reviewed by CDPHE annually to ensure physical and psychiatric clients are treated fairly?

Suggested Patient Rights 27-65-105

No person may intentionally retaliate or discriminate against any patient or employee for contacting or providing information to any official or to an employee of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized under this section. Whoever violates this paragraph may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

Any patient whose rights are protected under this section who suffers damage as the result of the unlawful denial or violation of any of these rights may bring an action against the person or facility, including the state or any political subdivision thereof, which unlawfully denies or violates the right in question. The individual may recover any damages as may be proved, together with exemplary damages of not less than \$1000 for each violation and such costs and reasonable actual attorney fees as may be incurred. (Wisconsin)

Wisconsin Burden of Proof process

<https://www.dhs.wisconsin.gov/clientrights/cgdd-gp-burden-proof.pdf>

Follow-up Items

Massachusetts Human Rights Officer

(1) Human Rights Officer

Each facility shall have a person or person employed by or affiliated with the facility appointed to serve as the human rights officer and to undertake the following responsibilities:

- (a) To participate in training programs for human rights officers offered by the Department;
- (b) To inform, train and assist patients in the exercise of their rights;
- (c) To assist patients in obtaining legal information, advice and representation through appropriate means, including referral to attorneys or legal advocates when appropriate; and
- (d) In the case of Department facilities, to serve as staff to the facility's human rights committee. The human rights officer must have no day-to-day duties that are in conflict with his or her responsibilities as a human rights officer, including carrying out fact-finding activities under 104 CMR 32.00

<https://www.mass.gov/doc/human-rights-handbook-1/download>

Follow-up Items

(2) Human Rights Committee.

For each facility operated by, or under contract to the Department, the Commissioner or designee shall establish, impanel and empower a human rights committee in accordance with the provisions of 104 CMR 27.14. Such a human rights committee may be established jointly with other programs in an Area; provided however, that the number, geographical separateness or programmatic diversity of the programs is not so great as to limit the effectiveness of the committee in meeting the requirements of 104 CMR 27.14.

(3) The majority of members of each human rights committee shall be current or former consumers of mental health services, family members of consumers, or advocates; provided however, that a member who has any direct or indirect financial or administrative interest in the facility or the Department shall notify the facility director or Commissioner, as applicable, in writing.

(4) The general responsibility of each such human rights committee shall be to monitor the activities of the facility with regard to the human rights of the patients in the facility. The specific duties of the committee shall include:

- (a) Reviewing and making inquiry into complaints and allegations of patient mistreatment, harm or violation of patient's rights and referral of such complaints for investigation in accordance with the requirements of 104 CMR 32.00: Investigation and Reporting Responsibilities;
- (b) Reviewing and monitoring the use of restraint, seclusion and other physical limitations on movement;
- (c) Reviewing and monitoring the methods utilized by the facility to inform patients and staff of the patient's rights, to train patients served by the program in the exercise of their rights, and to provide patients with opportunities to exercise their rights to the fullest extent of their capabilities and interests;
- (d) Making recommendations to the facility to improve the degree to which the human rights of patients served by the facility are understood and enforced; and
- (e) Visiting the facility with prior notice or without prior notice provided good cause exists.

Follow-up Items

Right to an attorney at any time:

(Massachusetts)

Upon admission of a person under the provisions of this subsection, the facility shall inform the person that it shall, upon such person's request, notify the committee for public counsel services of the name and location of the person admitted. Said committee for public counsel services shall forthwith appoint an attorney who shall meet with the person (I spoke to MHA-Mass, and they said an attorney is to meet with the person within 24 hours). If the appointed attorney determines that the person voluntarily and knowingly waives the right to be represented, or is presently represented or will be represented by another attorney, the appointed attorney shall so notify said committee for public counsel services, which shall withdraw the appointment.

Any person admitted under the provisions of this subsection, who has reason to believe that such admission is the result of an abuse or misuse of the provisions of this subsection, may request, or request through counsel an emergency hearing in the district court in whose jurisdiction the facility is located, and unless a delay is requested by the person or through counsel, the district court shall hold such hearing on the day the request is filed with the court or not later than the next business day.

(c) No person shall be admitted to a facility under the provisions of this section unless he, or his parent or legal guardian in his behalf, is given an opportunity to apply for voluntary admission under the provisions of paragraph (a) of section ten and unless he, or such parent or legal guardian has been informed (1) that he has a right to such voluntary admission, and (2) that the period of hospitalization under the provisions of this section cannot exceed three days. At any time during such period of hospitalization, the superintendent may discharge such person if he determines that such person is not in need of care and treatment.

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter123/Section12>

Chapter 123, section 12

Next Steps

- June 14th
 - Discharge Planning
- Please send any feedback in the interim to lsnyder@mentalhealthcolorado.org with subject line “M1 patient rights”

Stay Connected

Ryan Templeton, Office of Behavioral Health ryan.templeton@state.co.us

Laura Ferguson, Office of Behavioral Health laura.ferguson@state.co.us

Lauren Snyder, Mental Health Colorado
lsnyder@mentalhealthcolorado.org

For updates, meeting notes, and relevant documents:

www.mentalhealthcolorado.org/emergency-mental-health-procedures/



COLORADO
Office of Behavioral Health
Department of Human Services