

YOUR RIGHTS REGARDING ADMISSION TO AND DISCHARGE FROM A HOSPITAL UNDER MASSACHUSETTS MENTAL HEALTH LAW

Prepared by the Mental Health Legal Advisors Committee
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Massachusetts General Laws Chapter 123, the Massachusetts mental health statute, provides individuals with certain rights regarding admission to and discharge from a general or psychiatric hospital.¹ Rights regarding admission and discharge depend on one's legal status. A hospitalized person can ask staff for information about this legal status.

The paperwork stating legal status is kept in the person's medical record. There are three possible legal statuses:

- section 12;
- voluntary admission;
- conditional voluntary admission.

EMERGENCY ADMISSIONS: SECTION 12 OF MASS. GEN. LAWS CHAPTER 123

Special rules apply to individuals under age 16 and individuals ages 16 & 17. These rules are discussed in later sections of this flyer.

What is a Section 12?

In Massachusetts, Section 12 of Chapter 123 of the Massachusetts General Laws controls the admission of an individual to a general or psychiatric hospital for psychiatric evaluation and, potentially, treatment. Section 12(a) allows for an individual to be brought against his or her will to such a hospital for evaluation. Section 12(b) allows for an individual to be admitted to a psychiatric unit for **up to three business days** against the individual's will or without the individual's consent.

Practical advice: Both the Section 12(a) and Section 12(b) are documented on the same standard form, an "Application for an Authorization of Temporary Involuntary Hospitalization."²

Practical advice: Both the transport to the facility and initial psychiatric evaluation **and** the admission for up to three days are commonly referred to as being "Section 12'd" or "pink papered," the latter because the form may be printed on pink paper.

Who can sign a Section 12(a) application?

Pursuant to Section 12(a), a **physician, nurse practitioner,³ qualified psychiatric nurse, qualified psychologist, licensed independent clinical social worker, or police officer** may apply to admit anyone to a facility if he or she believes that, without hospitalization,

the person meets the standard for admission.

What is the standard for an application for admission under Section 12(a)?

The standard is whether the individual would "**create a likelihood of serious harm by reason of mental illness.**"⁴

"**Likelihood of serious harm**" means one of three things:

- The person poses a substantial risk of physical harm to him/herself as manifested by evidence, threats of, or attempts at suicide or serious bodily injury; or
- The person poses a substantial risk of physical harm to others as evidenced by homicidal or violent behavior or evidence that others are in reasonable fear of violent behavior and serious physical harm from that person; or
- The person's judgment is so affected that there is a very substantial risk that the person cannot protect himself or herself from physical impairment or injury, and no reasonable provision to protect against this risk is available in the community.⁵

What if examination is not possible?

If an examination of the individual is not possible because of the emergency nature of the case **and** because the person refuses to consent to such examination, then a doctor, qualified psychologist, licensed independent clinical social worker, or psychiatric nurse can sign the Application for an Authorization of Temporary Involuntary Hospitalization.⁶

This provision may mean that the person signing the application has not seen the individual subject to the application. The clinician may rely instead on whatever "facts and circumstances" have come to his or her attention.⁷ If none of those four medical professionals is available, then a police officer is allowed to make the application.⁸ Since the law does not say what "facts or circumstances" might be considered relevant, a mental health clinician may have considerable leeway in making the decision. For example, a clinician might rely on facts learned from a 911 call from another person or from a family member's call to a doctor giving his or her version of the events.

What happens after admission?

Following this procedure, an individual may be admitted to a psychiatric facility without a court hearing and against his or her will for up to three business days, provided that a physician designated by the hospital has examined the person and signed the admission papers.⁹ If the paper is signed by a physician who is not designated by the hospital, by a qualified psychologist, by a licensed independent clinical social worker, by a qualified psychiatric nurse, or by a police officer, it is considered only an application for hospitalization; a designated physician at the facility must still actually examine and admit the person.¹⁰ The examination must occur within two hours of reception at the facility.¹¹

Saturdays, Sundays and legal holidays are excluded from the computation of the three days.¹²

Can one have a lawyer appointed?

At the time of admission, the hospital must inform each individual that the facility will, upon the person's request, notify the state public defender agency, the Committee for Public Counsel Services (CPCS), of the admission.¹³ The hospital will present the individual with a form asking if he or she would like the hospital to contact CPCS.¹⁴

In those cases in which the hospital notifies CPCS, CPCS will "forthwith" appoint an attorney to meet with and, unless the person voluntarily and knowingly declines assistance, represent the person.¹⁵

Practical Advice: Ask staff to use a phone to call an attorney yourself if possible.

Additionally, if the confined person believes that "an abuse or misuse" of the admission process has occurred, the person or his or her counsel may seek emergency judicial review in district court.¹⁶ Unless the individual seeks a delay, the hearing must be held no later than the next business day after the request for the hearing.¹⁷

What can the hospital do during these first three days?

At any time during these three business days, the hospital may:

- **discharge** the individual if the hospital determines that he or she is not in need of care and treatment;¹⁸ or
- file a **petition for involuntary commitment** with the district court.¹⁹

What can an individual do during these first three days?

At any time during the three days, an individual may:

- apply to the hospital to change one's status to that of a **conditional voluntary** patient (an application which the hospital must accept);²⁰ or
- seek **emergency judicial review** in the district court (discussed above).

Practical advice: Always ask to speak to an attorney to discuss your legal options. Attorneys are available at the Committee for Public Counsel Services, the Mental Health Legal Advisors Committee and the Disability Law Center.

VOLUNTARY ADMISSIONS

If a person is admitted to a hospital as a **voluntary** patient, one's status is totally voluntary and may be terminated by the individual or the hospital at any time.²¹ Nevertheless, the hospital may restrict the person's right to leave to normal working hours and weekdays.

Although the law allows for voluntary admissions, in practice hospitals rarely offer them. When facility staff persons describe a patient as "voluntary," typically they mean that the

patient has "conditional voluntary" status.

CONDITIONAL VOLUNTARY ADMISSIONS (Section 10 & 11)

If the hospital staff believe a person has the capacity to make the decision, the person may apply for *conditional voluntary* admission status.²² There is a form to sign to apply.²³

As a conditional voluntary patient, the person remains on this status until the hospital decides discharge is appropriate, the person asks to leave by filing a "three day notice," or the hospital decides to pursue civil commitment.²⁴

What happens when one considers signing into a hospital as a conditional voluntary patient?

DMH has a notice of rights regarding conditional voluntary admission which must be shared with patients.²⁵

Before signing in as a conditional voluntary patient, the person *must* be given the opportunity to consult with an attorney or legal advocate.²⁶

A facility may accept an application for conditional voluntary admission only if, upon assessment by the admitting or treating physician, the physician determines that the person understands the conditional voluntary admission process and desires treatment.²⁷

An application made on behalf of a person by his health care agent may be accepted upon a determination by the admitting or treating physician that the health care agent is acting pursuant to a valid and invoked health care proxy that has not been revoked by the patient.²⁸

Are there advantages to signing in as a conditional voluntary patient?

By pursuing conditional voluntary admission status, an individual prevents the facility, in most cases, from being able to pursue court-ordered commitment.²⁹

However, if the facility believes that a patient on voluntary or conditional voluntary status no longer has the capacity to remain on that status, and the patient remains in need of continued hospitalization, then the facility director must take reasonable steps to obtain alternate authority for continued hospitalization by seeking an order of commitment pursuant to M.G.L. c. 123, § 7 & 8 or the consent of a legally authorized representative.³⁰

If a person is on conditional voluntary status, the facility also is prevented from pursuing a district court order authorizing the administration of antipsychotic medication, although the facility could seek a comparable order in probate court.³¹

In addition, an individual on conditional voluntary status has the ability to sign a three-day notice of the intention to leave the facility.³² This notice forces the staff to act, either to allow the patient to leave or to petition for commitment.³³

Practical advice: Hospitals generally have their own 3-day notice form. After you sign it, ask for a copy.

Are there disadvantages to signing in as a conditional voluntary patient?

By signing a conditional voluntary admission, an individual forfeits certain rights:

- An individual waives the right to a hearing before a judge to determine whether you meet the legal standard for involuntary commitment. However, one regains this right by signing a “three day notice.”
- An individual waives the right in some situations to certain guarantees of the *federal* constitution (right to safety, right to adequate treatment, and freedom from harm and undue restraint).³⁴ However, the facility may be compelled to provide these rights under the *state* constitution.

What is a “Three Day Notice”?

At any time during a conditional voluntary stay at the hospital, an individual may submit a written notice to the hospital of intent to leave.³⁵ This notice is called a “three day notice.” During these three days, the individual may be held at the hospital while the staff evaluates the person’s clinical progress and suitability for discharge. A person may not be held against his or her will for longer than three days *unless*, prior to the end of the third day, the hospital petitions for your commitment.³⁶ Saturdays, Sundays and legal holidays are excluded from the computation of the three days.³⁷

An individual may retract the three-day notice at any time before action is taken on it; no particular form is needed.³⁸ In practice, facilities often try to persuade people to cancel.

Practical advice: In deciding whether to submit your “three day notice” you may want to consult with your physician on the unit about your discharge plan and timetable for release. You may be able to negotiate an agreeable date for discharge, assuming your condition continues to be stable or improve. You may want to ask if the hospital would petition for your commitment were you to submit a “three day notice.”

WHAT ARE THE RIGHTS OF YOUTHS REGARDING INVOLUNTARY AND CONDITIONAL VOLUNTARY ADMISSIONS?

Youths may be admitted pursuant to Sections 12(a) and 12(b).

Youth under age 16

Prior to admission pursuant to Section 12(b), the facility must give the parent or guardian of any minor the option to request “conditional voluntary status” and to speak with an attorney about the advantages and disadvantages of that action.³⁹

DMH requires facilities to provide the parent or guardian of a youth under age 16 a notice of rights upon a Section 12(b) admission.⁴⁰ The parent or guardian may, using this form, ask the hospital to contact CPCS to appoint an attorney to meet with the parent/guardian and the youth.

The parent or guardian of a youth of any age has the authority to ask a facility for conditional voluntary admission (often referred to as “signing in”).⁴¹ Like adults, parents/guardians should receive a Notice of Rights about this process and have the right to consult with an attorney before making the decision about signing a conditional voluntary admission for a youth.⁴²

Youth age 16 & 17

Prior to admission pursuant to Section 12(b), the facility must give a youth (if age 16 or older) the option to request “conditional voluntary status” and to speak with an attorney about the advantages and disadvantages of that action.⁴³

DMH requires facilities to provide youths age 16 and 17 a notice of rights regarding conditional voluntary admission for youths of those ages.⁴⁴

An individual who is age 16 or older has the authority to ask a facility for conditional voluntary admission.⁴⁵

As a general rule, for those youths age 16 or older, conditional voluntary procedures and the three-day notice rule apply, even if the youth’s parents/guardian requested the admission.⁴⁶ Similarly, once a youth turns 16, a parent/guardian may not remove the minor from the facility if he or she wants to stay.⁴⁷ Essentially, youths who are age 16 or older may sign themselves in and out of the facility even if a parent/guardian admitted them.

Legally, there also exists “true” voluntary admission status for youths age 16 or older.⁴⁸

THE DISTRICT COURT CIVIL COMMITMENT PROCESS (Section 7 & 8)

What are an individual’s rights regarding civil commitment?

If a hospital petitions the district court for involuntary commitment pursuant to Section 7 & 8 of Chapter 123, an individual has certain rights:

- The appointment of an **attorney** to represent the individual in the proceeding at the state's expense if an individual cannot afford one.⁴⁹ The district court will notify the person of the name of the attorney. The person has a right to communicate with the appointed attorney and to participate in the preparation of the case.
- **Notice** of the time and place of the court hearing, which must be held within five business days of the filing of the petition (unless the individual or the individual's attorney requests a delay).⁵⁰
- The hearing may be held in court or at the facility where the individual is being held.⁵¹ The individual's attorney may file a motion with the court to request a certain location. Ultimately, the judge has the discretion to the location on a case-by-case basis.⁵²
- An **independent psychiatric examination** (which the individual may request through the attorney).⁵³
- A full adversarial **hearing** which the individual can attend, cross-examine witnesses through the attorney, and testify on one's own behalf.⁵⁴
- All civil commitment hearings, wherever conducted, must be recorded and must be open and public proceedings.⁵⁵

How can one get the hospital not to go forward with a civil commitment hearing?

At any time prior to the hearing the hospital may withdraw the commitment petition if:

- the individual agrees to sign an application for conditional voluntary admission and the hospital accepts that application, or
- the hospital decides that the individual no longer need hospitalization and can safely be discharged.

What is the standard at a civil commitment hearing?

To commit you, the district court judge must find that:

- **the individual poses a present danger to him or herself or others by virtue of a mental illness;**⁵⁶
- **no less restrictive alternative is appropriate or available;**⁵⁷ and
- **the likelihood of serious harm is imminent.**⁵⁸

This standard must be proved **beyond a reasonable doubt.**⁵⁹

If this standard is not met, the hospital must discharge the individual. The judge must issue a decision within ten days unless he or she provides written reasons for the delay.⁶⁰

How long is a civil commitment?

The first commitment is valid for up to six months.⁶¹ Subsequent commitments extending, without break, an initial six month commitment, are valid for 12 months.⁶²

During the commitment, if the hospital determines that the individual no longer needs treatment and care, it must discharge.⁶³ Prior to the end of each commitment period, the hospital must file a new petition in order to continue holding the person involuntarily.⁶⁴

DISCHARGE UNDER CIVIL COMMITMENT (Section 9)

If an individual is involuntarily committed, the options for discharge are limited to judicial and administrative reviews.

Can one seek judicial review if committed?

Section 9(a) Appeal of a Commitment Order

An individual may request with the appellate division of the district court a review of *matters of law* arising in commitment hearings.⁶⁵ Section 9(a) appeals must be filed within 10 days of the judicial decision.⁶⁶ The petitioner must claim that an error of law occurred regarding the prior hearing (for example, the judge improperly allowed a witness to be qualified as an expert).⁶⁷ Using this method to obtain discharge has drawbacks: it usually requires an attorney's help, it is a slow process, and it is an uphill battle. Regardless of the outcome of the appeal, the individual is likely to be confined for several months before going to court.

Section 9(b) Application for Discharge

Any person may petition for a patient's discharge by applying in writing to a superior court.⁶⁸ This application may be filed at any time and in any county and must state that the person named is improperly or unnecessarily retained.

Within seven days of receiving the petition, the superior court must notify the hospital and other interested persons (for example, the individual's physician, spouse or family) of the time and place of the hearing.⁶⁹ The hearing must be held promptly before a superior court judge.⁷⁰ The court will appoint an attorney to represent the individual if he or she cannot afford one.⁷¹ If the judge determines that the individual does not presently meet the commitment standard, the person must be discharged.⁷²

Practical Advice: If you are committed, you may file the 9(b) application for discharge at any time after commitment. Ask the attorney who represented you in your district court commitment hearing to file the 9(b) paperwork in the superior court. The attorney is required to initiate this proceeding upon your request. The superior court will then appoint a new attorney to handle your 9(b) proceeding. Since you will have the burden in this proceeding of proving that you do not need hospitalization, it is helpful to have an expert conduct an evaluation of you and testify on your behalf. Your attorney may request funds from the court to pay for this evaluation and testimony.

Are there any forms of administrative review of a commitment order?

Discretionary Discharge by the Facility

The hospital must discharge the individual when, in the hospital staff's opinion, the individual

no longer needs inpatient care.⁷³ Therefore, one need not necessarily be confined for the full term of the commitment order.

Periodic Review by the Facility

The hospital must review a committed person's status at least once during the first three months of commitment, once during the second three months, and annually thereafter.⁷⁴ The review must include a consideration of all possible alternatives to continued hospitalization.⁷⁵ If a person is found no longer to need hospitalization, the person must be discharged.⁷⁶ Both the individual and the nearest relative/guardian have a right to advance notice of the review, as well as the right to attend and participate.⁷⁷

ENDNOTES

¹ Mass. Gen. L. ch. 123,

<http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter123>.

² DMH, Application for an Authorization of Temporary Involuntary Hospitalization, <http://www.mass.gov/eohhs/docs/dmh/forms/form-aa-5.pdf>. A Spanish version is available at <http://www.mass.gov/eohhs/gov/departments/dmh/civil-commitment-and-hospital-admissions-forms.html>.

³ The authority for a nurse practitioner to sign (in lieu of a physician) is codified at Mass. Gen. L. ch. 112, § 80I.

⁴ Mass. Gen. L. ch. 123, § 12(a).

⁵ Mass. Gen. L. ch. 123, § 1.

⁶ Mass. Gen. L. ch. 123, § 12(a).

⁷ See Mass. Gen. L. ch. 123, § 12(a).

⁸ Mass. Gen. L. ch. 123, § 12(a).

⁹ Mass. Gen. L. ch. 123, § 12(a), (b).

¹⁰ Mass. Gen. L. ch. 123, § 12(b); 104 CMR 27.07(2).

¹¹ 104 CMR 27.07(2).

¹² 104 CMR 25.04(2).

¹³ Mass. Gen. L. ch. 123, § 12(b); 104 CMR 27.07(3).

¹⁴ DMH, Notice of Rights to be given to all patients admitted under M.G.L. c. 123, s. 12(b), <http://www.mass.gov/eohhs/docs/dmh/forms/form-302-12b-rights.pdf>. A Spanish version is available at <http://www.mass.gov/eohhs/gov/departments/dmh/civil-commitment-and-hospital-admissions-forms.html>.

¹⁵ Mass. Gen. L. ch. 123, § 12(b); 104 CMR 27.07(3).

¹⁶ Mass. Gen. L. ch. 123, § 12(b); 104 CMR 27.07(4).

¹⁷ Mass. Gen. L. ch. 123, § 12(b).

¹⁸ Mass. Gen. L. ch. 123, § 12(c).

¹⁹ Mass. Gen. L. ch. 123, §§ 7 & 8.

²⁰ Mass. Gen. L. ch. 123, §§ 10, 11, 12(d); 104 CMR 27.06.

²¹ Mass. Gen. L. ch. 123, §§ 10, 11; 104 CMR 27.06(4).

²² Mass. Gen. L. ch. 123, §§ 10, 11; 104 CMR 27.06(1)(b). Capacity is defined at 104 CMR 27.06(1)(c).

²³ DMH, Application for Care and Treatment on a Conditional Voluntary Basis, <http://www.mass.gov/eohhs/docs/dmh/forms/form-cv-300.pdf>. A Spanish version is available at

<http://www.mass.gov/eohhs/gov/departments/dmh/civil-commitment-and-hospital-admissions-forms.html>.

²⁴ Mass. Gen. L. ch. 123, §§ 10, 11.

²⁵ DMH, Notice of Rights, <http://www.mass.gov/eohhs/docs/dmh/forms/form-cv-301.pdf>. A Spanish version is available at <http://www.mass.gov/eohhs/gov/departments/dmh/civil-commitment-and-hospital-admissions-forms.html>.

²⁶ 104 CMR 27.06(2).

²⁷ Mass. Gen. L. ch. 123, § 11; 104 CMR 27.06(1)(b).

²⁸ 104 CMR 27.06(1)(b)2.

²⁹ Acting Superintendent of Bournemouth Hospital v. Baker, 431 Mass. 101, 105-06 (2000) (under civil commitment statute, petitioner may only seek commitment of respondent, a conditional voluntary patient, after respondent gave the statutory notice of her intent to withdraw from the facility).

³⁰ Mass. Gen. L. ch. 123, § 7 & 8.

³¹ Acting Superintendent of Bournemouth Hospital v. Baker, 431 Mass. at 106-107.

³² Mass. Gen. L. ch. 123, § 11; 104 CMR 27.06(5).

³³ Mass. Gen. L. ch. 123, § 11; 104 CMR 27.09(4).

³⁴ Williams v. Hartman, 413 Mass. 398, 403-404 (1992) (patient held under conditional voluntary status has no federal substantive due process right to adequate medical care).

³⁵ Mass. Gen. L. ch. 123, § 11; 104 CMR 27.06(5).

³⁶ Mass. Gen. L. ch. 123, § 12(d).

³⁷ 104 CMR 25.04(2).

³⁸ 104 CMR 27.06(5).

³⁹ See 104 CMR 27.07(1); 104 CMR 27.06.

⁴⁰ DMH, Notice of Rights, Parent of a Minor under age 16 or a Guardian, Temporary Involuntary Hospitalization, <http://www.mass.gov/eohhs/docs/dmh/forms/form-302-12b-rights-guardian.pdf>. A Spanish version is available at <http://www.mass.gov/eohhs/gov/departments/dmh/civil-commitment-and-hospital-admissions-forms.html>.

⁴¹ Mass. Gen. L. ch. 123, § 10(a); 104 CMR 27.07(1).

⁴² DMH, Notice of Rights, Parent or Guardian with Authority to Admit, Conditional Voluntary Hospitalization, <http://www.mass.gov/eohhs/docs/dmh/forms/form-cv-301g.pdf>. A Spanish version is available at <http://www.mass.gov/eohhs/gov/departments/dmh/civil-commitment-and-hospital-admissions-forms.html>.

⁴³ See 104 CMR 27.07(1); 104 CMR 27.06(2).

⁴⁴ DMH, Notice of Rights to be given to all patients age 16 or older, Conditional Voluntary Hospitalization, <http://www.mass.gov/eohhs/docs/dmh/forms/form-cv-301.pdf>. A Spanish version is available at <http://www.mass.gov/eohhs/gov/departments/dmh/civil-commitment-and-hospital-admissions-forms.html>.

⁴⁵ Mass. Gen. L. ch. 123, § 10(a); 104 CMR 27.07(1).

⁴⁶ 104 CMR 27.06(7); see Mass. Gen. L. ch. 123, §§ 10(a), 11.

⁴⁷ 104 CMR 27.06(7).

⁴⁸ Mass. Gen. L. ch. 123, §§ 10, 11; 104 CMR 27.06(7).

⁴⁹ See Mass. Gen. L. ch. 123, §§ 5, 12.

⁵⁰ Mass. Gen. L. ch. 123, § 7(c).

⁵¹ Mass. Gen. L. ch. 123, § 5.

⁵² Mass. Gen. L. ch. 123, § 5; In the Matter of M.C., SJ-12481, slip opinion (Mass. Feb. 5, 2019).

- ⁵³ Mass. Gen. L. ch. 123, § 5.
- ⁵⁴ See Mass. Gen. L. ch. 123, § 5.
- ⁵⁵ In the Matter of M.C., SJC-12481, slip opinion (Mass. Feb. 5, 2019); see also Kirk v. Commonwealth, 459 Mass. 67, 68 (2011) (recommitment proceedings pursuant to G. L. c. 123, § 16 (c), are presumptively open to the public).
- ⁵⁶ See Mass. Gen. L. ch. 123, §§ 8(a), 9(b).
- ⁵⁷ Comm. v. Nassar, 380 Mass. 908, 917-18 (1980).
- ⁵⁸ In the Matter of G.P., 473 Mass. 112, 127 (2015).
- ⁵⁹ Superintendent of Worcester State Hosp. v. Hagberg, 374 Mass. 271, 276 (1978).
- ⁶⁰ Mass. Gen. L. ch. 123, § 8(c).
- ⁶¹ Mass. Gen. L. ch. 123, § 8(d).
- ⁶² Mass. Gen. L. ch. 123, § 8(d).
- ⁶³ Mass. Gen. L. ch. 123, § 4.
- ⁶⁴ Mass. Gen. L. ch. 123, § 8(d).
- ⁶⁵ Mass. Gen. L. ch. 123, § 9(a).
- ⁶⁶ See Mass. Gen. L. ch 123, § 9(a); Dist./Mun. Cts. R. App. Div. App. Rule 4(a).
- ⁶⁷ Mass. Gen. L. ch. 123, § 9(a).
- ⁶⁸ Mass. Gen. L. ch. 123, § 9(b).
- ⁶⁹ Mass. Gen. L. ch. 123, § 9(b).
- ⁷⁰ Mass. Gen. L. ch. 123, § 9(b).
- ⁷¹ Mass. Gen. L. ch. 123, § 9(b).
- ⁷² Mass. Gen. L. ch. 123, § 9(b).
- ⁷³ Mass. Gen. L. ch. 123, § 12(b).
- ⁷⁴ Mass. Gen. L. ch. 123, § 4.
- ⁷⁵ Mass. Gen. L. ch. 123, § 4.
- ⁷⁶ Mass. Gen. L. ch. 123, § 4.
- ⁷⁷ Mass. Gen. L. ch. 123, § 4.