

# BASIC RIGHTS AT INPATIENT MENTAL HEALTH FACILITIES IN MASSACHUSETTS

Prepared by the Mental Health Legal Advisors Committee  
February 2021

While patients at inpatient mental health facilities operated by, licensed by or contracted with the Department of Mental Health (DMH) do not have all the same rights that people have in the community, certain rights are protected by the U.S. Constitution and/or Massachusetts General Law Chapter 123, section 23.<sup>1</sup> These rights cannot not be denied merely because a person exercises a protected choice, such as refusing medication, or as punishment.

## RIGHTS REGARDING MAIL

- The absolute right to **stationery and postage** in reasonable amounts.
- The right to reasonable assistance in writing, addressing, and posting mail.
- **The right to send and receive "sealed, unopened, uncensored mail."** If you are present, staff may open and check mail for contraband, but may not read it. The superintendent, director, or designee of the superintendent or director must document with specific facts the reason for opening the mail.

## RIGHTS REGARDING VISITATION

- **The right to receive visitors of your "own choosing daily and in private, at reasonable times."** Visiting hours may be limited only to "protect the privacy of other persons and to avoid serious disruptions in the normal functioning of the facility or program and shall be sufficiently flexible as to accommodate" your and your visitors' individual needs and desires.

*Note:* The facility's superintendent, director, acting superintendent or director may temporarily suspend the right to have visitors for a *substantial risk of serious harm to you or others and less restrictive alternatives would be futile*. Staff must document a suspension in your record and it may last no longer than the time necessary to prevent the harm.

## RIGHTS REGARDING TELEPHONE\*

- The right to speak by phone with your **attorney**.
- **The right to "reasonable access" to a telephone to make and receive confidential calls**, unless making the call would be a criminal act or cause an unreasonable infringement of another's access to the telephone.

**MHLAC Intake line at 617-338-2345 or 1-800-342-9092** (toll free), press 4 to hear instructions. TTY users and callers from jail and houses of corrections, call **617-227-6500**. For intake by email, go to <http://mhlac.org/request-intake/>.

**Note:** *The facility's superintendent, director, acting superintendent or acting director may temporarily suspend the right to use the phone (for calls other than those with your attorney) if there is a substantial risk of serious harm to you or others and less restrictive alternatives would be futile. Staff must document a suspension in your record and it may last no longer than the time necessary to prevent the harm.*

## **RIGHTS REGARDING ACCESS TO ADVOCATES**

- The **right to be visited** (even outside normal visiting hours) by your attorney or legal advocate, as well as by your physician, psychologist, clergy person or social worker, regardless of who initiates the visit.
- The **right of an attorney** (or legal advocate) to access, with your consent your record, clinical staff, and meetings regarding treatment or discharge planning which you are entitled to attend.
- The **right to "reasonable access by attorneys and legal advocates**, including those of the Mental Health Protection and Advocacy Project, the Committee for Public Counsel Services, and the Mental Health Legal Advisors Committee."
- Upon admission and upon request, facilities must provide the name, address and telephone numbers of these legal agencies and must provide you with "reasonable assistance" in contacting and visiting them.
- These agencies may conduct unsolicited visits and distribute educational materials at times the facility designates as "reasonable."

## **RIGHT TO A HUMANE PSYCHOLOGICAL AND PHYSICAL ENVIRONMENT**

The **right to a humane environment** including living space which ensures "privacy and security in resting, sleeping, dressing, bathing and personal hygiene, reading and writing and in toileting." This right does not mean that you have the right to a private bedroom.

## **RIGHT TO REASONABLE DAILY ACCESS TO THE OUTDOORS**

- You have the right to "reasonable daily access" to the outdoors, consistent with reasonable schedules.<sup>2</sup> "Outdoors" may include a porch, courtyard, roof deck, a secured outdoor area, or other outdoor area.
- Access may be limited or restricted in cases of bad weather, if the facility cannot safely provide access, or if a clinician finds it necessary.
- A facility may not require a person to participate in clinical programming as a condition of access to the outdoors.
- Access may be supervised or unsupervised and provided individually or in groups. A

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facility does not need to provide clinical programs outdoors or provide access to the outdoors “on demand.”

- Each facility should have a written plan of how patients will safely access the outdoors.

*Note:* A psychiatrist must conduct an initial psychiatric examination within 24 hours of admission. It must include a written assessment of the patient's ability to access the outdoors.

- The psychiatrist may limit outdoor access after considering medical conditions, symptoms, legal status, and safety. Any limitation must be documented in the patient’s medical record.
- A patient's status regarding access to the outdoors must be reviewed at treatment team meetings and reassessed by the treating clinician whenever it appears that there has been a change in circumstances that may affect the patient's ability to safely access the outdoors. Such reviews must occur at least daily to determine if there have been changed circumstances. If so, a new assessment must be conducted.
- A patient may also request that a limitation be reviewed. However, a facility is not required to make more than one assessment within a 24-hour period.

## **OTHER LEGAL RIGHTS CONTAINED IN MASS. GEN. L. CH. 123, § 23**

- You also have the right to keep and spend a reasonable sum of **money** for canteen expenses and small purchases, to wear your own **clothes**, to keep and use your **personal possessions** including toilet articles, and to have access to individual **storage space** for your private use.

*Note:* The facility's superintendent or designee may deny these rights for *good cause*. The superintendent or designee must document in your record why the right was denied.

## **WHAT TO DO IF THESE RIGHTS ARE DENIED**

If you believe that you were unfairly denied a right while at a program or facility operated, contracted for, or licensed by DMH, talk to a member of your treatment team or the Human Rights Officer.

You may also file a written **complaint**. Your complaint can be on any piece of paper; a form is not required. You can give your complaint to any facility employee. That employee must forward it to the Person in Charge. For more information, see [http://mhlac.org/wp-content/uploads/2018/10/dmh\\_complaint\\_process.pdf](http://mhlac.org/wp-content/uploads/2018/10/dmh_complaint_process.pdf)

If you have questions, contact the Human Rights Officer or the Mental Health Legal Advisors Committee (1-800-342-9092 or 1-617-338-2345, press 4).

## **ENDNOTES**

<sup>1</sup> Section 23 was amended in 1997 by the Five Fundamental Rights Act (Chapter 166 of the Acts of 1997) and in

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2014 by Chapter 476 of the Acts of 2014. The **1997 Five Fundamental Rights Act** established protections regarding mail, visitation, telephone, access to advocates and privacy. All programs must post a notice of these five fundamental rights "in appropriate and conspicuous places." The notice must be provided upon request and must be in a language "understandable" to the person. The **2014 Act** established a right to access to the outdoors.

<sup>2</sup> See M.G.L. c. 123, § 23(f) and 104 CMR 27.13(5)(f).

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