

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

Prepared by the Mental Health Legal Advisors Committee
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Under Massachusetts General Laws Chapter 123, individuals have specific rights regarding admission to and discharge from a psychiatric or general hospital.¹ These rights depend on a person's *legal status*, which is the reason for an individual's admission and the way they were admitted. Information about legal status should be found in a person's medical record, and individuals have the right to ask hospital staff about their status at any time.

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

What is a "Section 12"?

In Massachusetts, Section 12 of Chapter 123 of the Massachusetts General Laws controls the admission of a person to a public or private facility for care and treatment of persons with mental illness. Section 12 allows for psychiatric examination and, potentially, admission and treatment. This admission is usually to an emergency department of a hospital.

Section 12(a) allows for a person to be brought against their will to such a facility, either with or without an examination. Once at a facility, Section 12(b) allows for an individual to be admitted upon application of a physician or a qualified advanced practice registered nurse for **up to three business days** against the individual's will or without the individual's consent. Special rules, discussed later in this flyer, apply to youths age 17 and under.

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 examination **and** the admission for up to three days are commonly referred to as being "Section 12'd."

Who can sign a Section 12(a) application?

Pursuant to Section 12(a), a **physician, advanced practice registered nurse, qualified psychologist, licensed independent clinical social worker, after examining the person**, may apply to admit a person to a facility. A person pursuing a Section 12 must believe that the standard for admission has been met. If none of these clinicians are available, a **police officer** may pursue a Section 12(a).³

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

The standard is whether the person 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;
- 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 a clinician cannot examine the person before doing a Section 12(a) application?

If an examination of the person is not possible because of the emergency nature of the case **and** because the person refuses to consent to examination, then a physician, advanced practice registered nurse, qualified psychologist, or licensed independent clinical social worker may apply for hospitalization without completing the examination.⁶ Thus, it is possible that the clinician signing the 12(a) application has not seen the subject of the application.

In such a case, the clinician may rely instead on whatever "facts and circumstances" have come to the clinician's attention.⁷ Since the law does not say what "facts or circumstances" might be considered relevant, a 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 their version of events.

If the medical professionals listed above are unavailable, then a police officer is allowed to make the application.⁸

What is a Section 12(b) admission?

Upon arrival at the facility on Section 12(a) status, a person may be admitted under Section 12(b) in one of two ways:

1. Immediately, if the Section 12(a) application was completed by a physician or qualified advanced practice registered nurse with authority to admit.⁹
2. Otherwise, the person should be immediately given a psychiatric examination by a physician or qualified advanced practice registered nurse with authority to admit.¹⁰ If the examiner believes that failure to hospitalize would create a likelihood of serious harm by

reason of mental illness, the person may be admitted pursuant to Section 12(b).¹¹ The examination must occur within two hours of arrival at the facility.¹²

Admission is for up to three business days, but Saturdays, Sundays, and legal holidays are excluded from the computation of the three days.¹³

When is a lawyer appointed?

At the time of admission, the hospital must inform each patient that the facility will, upon the person's request, notify the public defender agency, the Committee for Public Counsel Services (CPCS), of the admission.¹⁴ The hospital will present the patient with a form asking if they would like to contact CPCS.¹⁵ If so, CPCS will appoint an attorney to meet with and represent the patient, unless the patient voluntarily and knowingly declines.¹⁶

Practical Advice: Ask staff if you can use a phone to call an attorney.

If the patient believes that "an abuse or misuse" of the admission process has occurred, they may seek emergency judicial review in district court.¹⁷ The hearing must be held no later than the next business day after the request is made, unless the patient seeks a delay.¹⁸

What can the hospital do during these first three days?

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

- **discharge** the patient if staff determines that the patient is not in need of care and treatment;¹⁹ or
- file a **petition for involuntary commitment** with the district court.²⁰

What can a patient do during these first three days?

At any time during the three days, a patient may:

- apply to the hospital to change the patient's status to a **conditional voluntary** admission; or
- seek **emergency judicial review** in the district court (discussed above).²¹

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 on **voluntary** status, they may leave the hospital at any time.²² However, the hospital may restrict the patient'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 describe a patient as "voluntary," typically they mean that the patient has "conditional voluntary" status.²³

CONDITIONAL VOLUNTARY ADMISSIONS (Sections 10 & 11)

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

The Department of Mental Health (DMH) has a notice of rights regarding conditional voluntary admission which must be shared with patients.²⁴ Before signing in as a conditional voluntary patient, the person *must* be given the opportunity to consult with an attorney or legal advocate.²⁵

To apply for conditional voluntary status, an individual must fill out an admission form.²⁶ The facility must accept the application if the admitting or treating clinician determines that the person has the capacity to make the decision 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 clinician that the health care agent is acting pursuant to a valid health care proxy that has not been revoked by the patient.²⁸

As a conditional voluntary patient, the patient remains on this status until the hospital decides discharge is appropriate, the patient asks to leave by filing a "three-day notice," or the hospital concludes that the person no longer has the capacity to remain conditional voluntary status.²⁹

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

By pursuing conditional voluntary admission status, a patient prevents the facility, in most cases, from being able to pursue court-ordered commitment.³⁰ 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 Sections 7 & 8 of Chapter 123 or the consent of a legally authorized representative.³¹

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, but they may seek a comparable order in probate court.³² In addition, a patient on conditional voluntary status can sign a "three-day notice" of the intention to leave the facility.³³ This notice forces the staff to either allow the patient to leave or to petition for commitment.³⁴

Practical advice: If you sign a "three-day notice" form, ask for a copy.

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

By signing a conditional voluntary admission, a patient forfeits certain rights:

- A patient 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.”
- A patient 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).³⁵ 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, a patient may submit a written notice to the hospital of their intent to leave.³⁶ This notice is called a “three-day notice.” During these three days, the patient 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 their will for longer than three days *unless*, prior to the end of the third day, the hospital petitions for commitment.³⁷ Saturdays, Sundays, and legal holidays are excluded from the computation of the three days.³⁸

A patient may retract the three-day notice in writing at any time before action is taken on it.³⁹ No specific form need be used.⁴⁰ A facility may try to persuade a patient to retract their three-day notice.

Practical advice: In deciding whether to submit a “three-day notice,” you might consult with hospital staff 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).

Youths under age 16

Prior to admission pursuant to Section 12(b), the facility must give the parent or guardian of a minor the option to request “conditional voluntary status” and to speak with an attorney about the advantages and disadvantages of that action.⁴¹

DMH requires facilities to provide the parent or guardian of a youth under age 16 with a notice of rights upon a Section 12(b) admission.⁴² 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”).⁴³ 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.⁴⁴

Youths ages 16 & 17

Prior to admission pursuant to Section 12(b), the facility must give youths ages 16 or 17 the option to request “conditional voluntary status” and to speak with an attorney about the advantages and disadvantages of that action.⁴⁵

DMH requires facilities to provide youths ages 16 or 17 a notice of rights regarding conditional voluntary admission specific for those ages.⁴⁶ Youths age 16 or older have the authority to ask a facility for conditional voluntary admission.⁴⁷

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.⁴⁸ Similarly, once a youth turns 16, a parent/guardian may not remove the minor from the facility if the minor wants to stay.⁴⁹ Essentially, youths age 16 or older may sign themselves in and out of the facility even if a parent/guardian admitted them. Legally, there also exists a “true” voluntary admission status for youths age 16 and older.⁵⁰

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

What are a person’s rights regarding civil commitment?

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

- The appointment of an **attorney** to represent the patient at the state's expense if a patient cannot afford one.⁵¹ 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 patient or the patient’s attorney requests a delay).⁵²
- The hearing may be held in court or at the facility where the patient is being held.⁵³ The patient’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.⁵⁴
- An **independent psychiatric examination** (which the patient may request through the attorney).⁵⁵
- A full adversarial **hearing** which the patient can attend, cross-examine witnesses through the attorney, and testify on their own behalf.⁵⁶
- All civil commitment hearings, wherever conducted, must be recorded and must be open and public proceedings.⁵⁷

How can one prevent the hospital from going forward with a civil commitment hearing?

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

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

What is the standard at a civil commitment hearing?

To commit a patient, 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;**⁵⁸
- **no less restrictive alternative is appropriate or available;**⁵⁹ and
- **the likelihood of serious harm is imminent.**⁶⁰

This standard must be proven **beyond a reasonable doubt**.⁶¹ The judge must issue a decision within ten days unless the judge provides written reasons for the delay.⁶² If the standard is not met, the hospital must discharge the patient.

How long is a civil commitment?

The first commitment is for up to six months. Subsequent commitments are for 12 months.⁶³ During the commitment, if the hospital determines that the person no longer needs treatment and care, the hospital must discharge the person.⁶⁴ Prior to the end of each commitment period, the hospital must file a new petition to continue holding the person involuntarily.⁶⁵

DISCHARGE UNDER CIVIL COMMITMENT (Section 9)

If a person 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

A person may request that the appellate division of the district court review a **matter of law** arising in a commitment hearing.⁶⁶ Section 9(a) appeals must be filed within 10 days of the judicial decision.⁶⁷ 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).⁶⁸ 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 patient 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.⁶⁹ 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 7 days of receiving the petition, the superior court must notify the hospital and other

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.

interested persons (for example, the patient's physician, spouse or family) of the time and place of the hearing, which must be held promptly before a superior court judge. The court will appoint an attorney to represent the patient if the patient cannot afford one. If the judge determines that the individual does not presently meet the commitment standard, the patient must be discharged.

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

Discretionary Discharge by the Facility

The hospital must discharge the patient when, in the hospital staff's opinion, the individual no longer needs inpatient care.⁷⁰ 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 patient's status at least once during the first three months of commitment, once during the second three months, and annually thereafter.⁷¹ The review must include a consideration of all possible alternatives to continued hospitalization.⁷² If a patient is found to no longer to need hospitalization, the patient must be discharged.⁷³ Both the patient and the nearest relative/guardian have a right to advance notice of the review, as well as the right to attend and participate.⁷⁴

¹ Mass. Gen. Laws ch. 123, <http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter123> (last amended by emergency legislation, Chapter 260 of the Acts of 2020).

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 Mass. Gen. Laws ch. 123, § 12(a).

⁴ Mass. Gen. Laws ch. 123, § 12(a).

⁵ Mass. Gen. Laws ch. 123, § 1.

⁶ Mass. Gen. Laws ch. 123, § 12(a).

⁷ See Mass. Gen. Laws ch. 123, § 12(a).

⁸ Mass. Gen. Laws ch. 123, § 12(a).

⁹ Mass. Gen. Laws ch. 123, § 12(a), (b); see also 104 CMR 27.07(2).

¹⁰ Mass. Gen. Laws ch. 123, § 12(b).

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- ¹¹ Mass. Gen. Laws ch. 123, § 12(b); see also 104 CMR 27.07(2).
- ¹² 104 CMR 27.07(2).
- ¹³ 104 CMR 25.04(2).
- ¹⁴ Mass. Gen. Laws ch. 123, § 12(b); 104 CMR 27.07(3).
- ¹⁵ DMH, Notice of Rights to be given to all patients admitted under Mass. Gen. Laws ch. 123, § 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>.
- ¹⁶ Mass. Gen. Laws ch. 123, § 12(b); 104 CMR 27.07(3).
- ¹⁷ Mass. Gen. Laws ch. 123, § 12(b); 104 CMR 27.07(4).
- ¹⁸ Mass. Gen. Laws ch. 123, § 12(b).
- ¹⁹ Mass. Gen. Laws ch. 123, § 12(c).
- ²⁰ Mass. Gen. Laws ch. 123, §§ 7 & 8.
- ²¹ Mass. Gen. Laws ch. 123, §§ 10, 11, 12(d); 104 CMR 27.06(1)(a).
- ²² Mass. Gen. Laws ch. 123, §§ 10, 11; 104 CMR 27.06(4).
- ²³ 104 CMR 27.06(1)(c).
- ²⁴ 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>.
- ²⁵ 104 CMR 27.06(2).
- ²⁶ DMH, Notice of Rights, <https://www.mass.gov/doc/form-cv-301pdf/download>. Conditional voluntary admission forms are found at <https://www.mass.gov/info-details/civil-commitment-and-hospital-admissions-forms>. DMH has created three forms for conditional voluntary admissions, depending on the circumstances: an Application for Care and Treatment on a Conditional Voluntary Basis (CV-300 Conditional Voluntary Form), an Application for Care and Treatment of a Minor under Sixteen (16) Years of Age (CV-300G), and an Application for Care and Treatment on a Conditional Voluntary Basis – Made By Health Care Agent (CV-300HCA).
- ²⁷ Mass. Gen. Laws ch. 123, §§ 10, 11; 104 CMR 27.06(1)(b). Capacity is defined at 104 CMR 27.06(1)(c).
- ²⁸ Mass. Gen. Laws ch. 123, § 11; see also 104 CMR 27.06(1)(b).
- ²⁹ 104 CMR 27.06(1)(b)2.
- ³⁰ Acting Superintendent of Bournewood 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).
- ³¹ Mass. Gen. Laws ch. 123, § 7 & 8.
- ³² Acting Superintendent of Bournewood Hospital v. Baker, 431 Mass. at 106-107.
- ³³ Mass. Gen. Laws ch. 123, § 11; 104 CMR 27.06(5).
- ³⁴ Mass. Gen. Laws ch. 123, § 11; 104 CMR 27.09(4).
- ³⁵ Williams v. Hartman, 413 Mass. 398, 403-04 (1992) (patient held under conditional voluntary status has no federal substantive due process right to adequate medical care).
- ³⁶ Mass. Gen. Laws ch. 123, § 11; 104 CMR 27.06(5).
- ³⁷ Mass. Gen. Laws ch. 123, § 12(d).
- ³⁸ 104 CMR 25.04(2).
- ³⁹ 104 CMR 27.06(5)(b).

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- ⁴⁰ 104 CMR 27.06(5)(d).
- ⁴¹ See 104 CMR 27.07(1); 104 CMR 27.06.
- ⁴² DMH, Notice of Rights, Parent of a Minor under age 16 or a Guardian, Temporary Involuntary Hospitalization, A Spanish version is available at commitment-and-hospital-admissions-forms.html.
- ⁴³ Mass. Gen. Laws ch. 123, § 10(a); 104 CMR 27.07(1).
- ⁴⁴ DMH, Notice of Rights, Parent or Guardian with Authority to Admit, Conditional Voluntary Hospitalization, A Spanish version is available at hospital-admissions-forms.html.
- ⁴⁵ See 104 CMR 27.07(1); 104 CMR 27.06(2).
- ⁴⁶ DMH, Notice of Rights to be given to all patients age 16 or older, Conditional Voluntary Hospitalization, A Spanish version is available at hospital-admissions-forms.html.
- ⁴⁷ Mass. Gen. Laws ch. 123, § 10(a); 104 CMR 27.07(1).
- ⁴⁸ 104 CMR 27.06(7); see Mass. Gen. Laws ch. 123, §§ 10(a), 11.
- ⁴⁹ 104 CMR 27.06(7).
- ⁵⁰ Mass. Gen. Laws ch. 123, §§ 10, 11; 104 CMR 27.06(7).
- ⁵¹ See Mass. Gen. Laws ch. 123, §§ 5, 12.
- ⁵² Mass. Gen. Laws ch. 123, § 7(c).
- ⁵³ Mass. Gen. Laws ch. 123, § 5.
- ⁵⁴ Mass. Gen. Laws ch. 123, § 5; In the Matter of M.C., SJC-12481, slip opinion (Mass. Feb. 5, 2019).
- ⁵⁵ Mass. Gen. Laws ch. 123, § 5.
- ⁵⁶ See Mass. Gen. Laws ch. 123, § 5.
- ⁵⁷ 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 Mass. Gen. Laws ch. 123, § 16(c) are presumptively open to the public).
- ⁵⁸ See Mass. Gen. L. ch. 123, §§ 8(a), 9(b).
- ⁵⁹ Commonwealth v. Nassar, 380 Mass. 908, 917-18 (1980).
- ⁶⁰ Commonwealth v. Nassar, 380 Mass. at 916-17; see also In the Matter of G.P., 473 Mass. 112, 127 (2015).
- ⁶¹ Superintendent of Worcester State Hosp. v. Hagberg, 374 Mass. 271, 276 (1978).
- ⁶² Mass. Gen. Laws ch. 123, § 8(c).
- ⁶³ Mass. Gen. Laws ch. 123, § 8(d).
- ⁶⁴ Mass. Gen. Laws ch. 123, § 4.
- ⁶⁵ Mass. Gen. Laws ch. 123, § 8(d).
- ⁶⁶ Mass. Gen. Laws ch. 123, § 9(a).
- ⁶⁷ See Mass. Gen. Laws ch 123, § 9(a); Dist./Mun. Cts. R. App. Div. App. Rule 4(a).
- ⁶⁸ Mass. Gen. Laws ch. 123, § 9(a).
- ⁶⁹ Mass. Gen. Laws ch. 123, § 9(b).
- ⁷⁰ Mass. Gen. Laws ch. 123, § 12(b).
- ⁷¹ Mass. Gen. Laws ch. 123, § 4.
- ⁷² Mass. Gen. Laws ch. 123, § 4.
- ⁷³ Mass. Gen. Laws ch. 123, § 4.
- ⁷⁴ Mass. Gen. Laws ch. 123, § 4.