



## **KNOW YOUR DISCHARGE PLANNING RIGHTS FROM MASSACHUSETTS LICENSED PSYCHIATRIC UNITS!**

Patients on locked psychiatric units have a right to effective and appropriate discharge planning. Additional protections may apply depending on the patient's insurance coverage. Below please find a summary of your rights with respect to discharge planning and the filing of complaints to redress a violation of your rights. Please note that this document does not provide a complete list of all rights that apply to hospital patients, nor is it intended to provide legal advice with respect to the exercise of your rights.

### **FOR ALL PATIENTS REGARDLESS OF INSURANCE COVERAGE**

- A facility is required to arrange for necessary post-discharge support and clinical services.
- The Massachusetts Department of Mental Health (DMH) requires facilities to make every effort to avoid discharge to a shelter or the street. Sometimes such discharges are unavoidable, for instance in situations where alternative resources are unavailable or if you as the patient decline to take advantage of alternative options. Even in such situations, the discharge plan must nonetheless identify and document the potential alternatives.<sup>1</sup>
- You should be actively involved in formulating your discharge plan and should remain in discussion with your providers to be part of the planning process.
- You may designate a personal representative, such as a family member or other person to participate in your treatment or discharge planning.
- If you have a health care proxy, your designated health care agent may participate in treatment and discharge planning unless the health care proxy expressly restricts such authority or unless you revoke the health care proxy.
- If you have a legal guardian, that person has a right to participate in treatment and discharge planning and may consent to the treatment or discharge plan on your behalf.
- If you are a minor (under age 18) a parent or legal guardian usually has the right to be involved in treatment and discharge planning.<sup>2</sup>

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<sup>11</sup> “A facility shall make every effort to avoid discharge to a shelter or the street. The facility shall take steps to identify and offer alternative options to a patient and shall document such measures, including the competent refusal of alternative options by a patient in the medical record. In the case of such discharge, the facility shall nonetheless arrange for or, in the case of a competent refusal, identify post-discharge support and clinical services. The facility shall keep a record of all discharges to a shelter or the street in a form approved by the Department (of Mental Health) and submit such information to the Department on a quarterly basis. “ 104 CMR 27.09(1)(b)

<sup>2</sup> This rule does not apply in cases where the patient is an emancipated minor or where the patient has been deemed a Mature Minor, fully capable of consenting to treatment.

## **FOR MASSHEALTH RECIPIENTS:**

- The discharge professional (or the person responsible for formulating the discharge plan) should screen your admission data within 24 hours of admission to determine whether you have special considerations that may impact treatment or length of stay.
- Facility staff should commence discharge planning activities within 72 hours of your admission if a determination has been made that you require post-hospital care or services.
- If you require additional care and resources after discharge, a written plan must be developed.<sup>3</sup>

## **FOR MEDICARE RECIPIENTS**

- Medicare requires that professional and supportive staff engage in discharge planning.
- Your discharge summary must include recommendations concerning follow up or aftercare.<sup>4</sup>

## **FOR PATIENTS WHO ARE PRIVATELY INSURED**

- Additional protections afforded to patients regarding discharge planning may differ from one insurance policy to another. It is important to review your individual policy to understand your rights as an insured. Your insurance card should have a phone number on it to call if you have questions about your coverage or rights under your policy.

## **WHAT TO DO IF YOU BELIEVE A MEDICAL FACILITY HAS VIOLATED YOUR RIGHTS:**

- If you think that your rights or those of your loved one have been violated, complaints can be made to the Person in Charge of the facility or any employee including the following:
- **Unit staff:** Since psychiatric units are licensed by the Massachusetts Department of Mental Health, every psychiatric unit has to comply with the DMH complaint process which provides that complaints may be filed with unit staff.
- **Human Rights Officer:** Every psychiatric facility must have a Human Rights Officer who also must accept complaints and who can assist patients with writing and submitting complaints.
- **Director of Compliance/Quality Assurance:** Each facility will also have a director of compliance/quality assurance or the equivalent. NAMI Massachusetts can help you find out who this person is. You can complain to this person as well.

## **HOW TO FILE A COMPLAINT**

- Department of Mental Health regulations provide that any person may file a complaint regarding an incident or condition that is believed to be dangerous, illegal or inhumane.<sup>5</sup>
- The complaint form can be found at <http://www.mass.gov/eohhs/docs/dmh/forms/form-complaint.pdf>. The form is also readily available from the facility. A facility employee is required by DMH regulations to help

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<sup>3</sup> 130 CMR 415.419(B)(3)

<sup>4</sup> 42 CFR 412.27(c)(5)

<sup>5</sup> DMH regulations define dangerousness as “poses or posed a danger or the potential of danger to the health or safety of a client. Inhumane means without regard for client dignity.” 104 CMR 32.02

fill out the form if asked. Before submitting the complaint form, NAMI recommends that patients keep a copy for their own records.

- Upon receiving the complaint the Person in Charge will determine how to proceed. The Person in Charge may investigate the complaint and issue a decision within 10 days. In cases involving very serious incidents or complicated complaints, the Person in Charge will refer the matter to the DMH Office of Investigations (for DMH operated or contracted facilities) or the DMH Director of Licensing (for other facilities licensed by DMH) for investigation and decision within 40 days.<sup>6</sup>
- During the investigation both the complainant and patient (if not the complainant) will be interviewed. You may have a representative or Human Rights Officer with you during this process.
- The complaint and investigation process includes an appeal procedure. The facility's Human Rights Officer should be available to assist patients who wish to request reconsideration of the decision or file an appeal in accordance with DMH regulations.

In addition to the complaint process described above, Medicare or MassHealth recipients may send a letter of complaint to:

Complaint Unit  
Division of Health Care Quality  
99 Chauncy Street, 11<sup>th</sup> Floor  
Boston, MA 02111  
Fax: 617-753-8165

NAMI recommends that you file your complaints in writing, if possible. Keep a copy of your complaint for yourself. Keep also the name of the staff you filed the complaint with and the date you filed it.

Other individuals, such as family members, may file any of these types of complaints on your behalf.

**IF YOU PREFER, YOU CAN ALWAYS CONTACT NAMI Mass AND WE WILL HELP YOU WRITE AND SEND THE APPROPRIATE COMPLAINT LETTERS.**

NAMI Massachusetts  
400 West Cummings Park  
Suite 6650  
Woburn, MA 01801  
(781) 938-4048

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<sup>6</sup> A serious or complicated complaint is one that involves a medicolegal death, sexual assault or abuse, physical assault or abuse, attempted suicide resulting in serious harm, the commission of a felony, a violation of restraint or seclusion practices resulting in serious injury. See 104 CMR 32.05(2)(d).