

YOUR RIGHTS IN EMERGENCY DEPARTMENTS IN MASSACHUSETTS

Prepared by the Mental Health Legal Advisors Committee*
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How a person with mental health issues might arrive at an Emergency Department

People with mental health issues arrive at Emergency Department (ED) for various reasons. You may arrive voluntarily or involuntarily.

- You went to the ED **voluntarily** (alone, with family or other escort – which could even include a police officer in some cases) such as
 - for a medical problem,
 - for an adjustment of your psychiatric medication, or
 - because you felt suicidal or homicidal.
- You were brought to the ED **involuntarily**, typically by a police officer or in an ambulance, after a clinician or police officer signed a Section 12(a) application for transport to the hospital.¹

Right to leave

Your right to leave an ED depends on your circumstances.

- If you arrived at the ED **voluntarily**, you have the right to leave unless hospital staff files an application for an emergency Section 12 admission. Staff may only do so if they believe that failure to hospitalize would "create a likelihood of serious harm by reason of mental illness."²
 - Persons that may file the application include a **physician, nurse practitioner,³ qualified psychiatric nurse, qualified psychologist, licensed independent clinical social worker or police officer.**⁴
 - If no application is done, you have the right to leave even if you have been triaged and moved into an area of the Emergency Department designated for psychiatric care.
 - If you are not allowed to leave and believe that you should be able to, seek assistance (see "**What to do if you believe that your rights have been violated**" below)
- If you arrived at the ED **involuntarily**, you cannot immediately leave. You will be evaluated for admission at the hospital by a physician.⁵

* This flier is an updated version of a flier originally created by Susan Stefan & the Center for Public Representation.

- - After that evaluation, if you are cleared, you may leave.
 - However, if you are admitted to the hospital, you can be detained against your will.⁶

If you aren't sure of your status, ask ED staff to show you the relevant paperwork and explain your legal status.

For more information regarding admission and discharge rights, see MHLAC's flier on [admission and discharge rights](#).

Rights regarding boarding in the ED

People with mental health issues often wait in EDs on Section 12(a) status for extended periods of time, known as ED boarding. For those waiting for a bed in a psychiatric hospital or unit, if there is not a plan in place for them after 24 hours in the ED, additional steps must be taken to facilitate that placement.

Among these steps are the following:

- If a placement has not been identified by **24 hours from a patient's arrival to an ED**, the ED must make a formal Request for Assistance in finding a placement to the Insurance Carrier.
- If a placement has not been identified by **96 hours from a patient's arrival to an ED**, the Insurance Carrier or ED must request assistance from the Department of Mental Health.
- DMH works with ED, Insurance Carriers and Provider Hospitals to ensure up to-date information and clinical assessment is provided in a timely and effective manner until a bed becomes available.

For more information regarding the Expedited Inpatient Psychiatric Admissions process, see <https://www.mass.gov/expedited-psychiatric-inpatient-admissions>

Right to informed consent

You have a right to receive information about any proposed treatment and the opportunity to consent or refuse that treatment, unless you have a guardian with authority to make treatment decisions.

Rights regarding restraint

Hospitals, including EDs, may use restraint and seclusion only in cases of emergency and in compliance with strict standards.

To learn about the rights of adults in EDs, see MHLAC's flier on [restraint rights in hospitals including hospital emergency rooms](#)

Right to privacy

You have the right to be examined and to talk to your doctor in private.⁷

Right to be free from disability discrimination

The ED staff cannot discriminate in providing services based on a disability, including a psychiatric disability. Thus, the services you receive should be consistent with the services others receive. The mere fact of having a psychiatric disability is not the basis for providing different care. For example, you should not be forced to remove your street clothes or remain in a locked room simply because you have a psychiatric disability unless others without psychiatric disabilities are subject to such conditions.

Right to interpreter services

Competent interpreter services must be provided to every person with Limited English Proficiency who seeks or receives emergency care in an ED.⁸

- Limited English Proficiency means that you do not speak English as your first language and have a limited ability to read, speak, write, or understand English.

Right to reasonable requests

You have the right in an ED “to have all reasonable requests responded to promptly and adequately within the capacity of the facility.”⁹ This right has limits – the request must be reasonable and the facility must have the ability to grant the request.

An example of a reasonable request might be to make a telephone call. A hospital may respond that, at a given time, it doesn’t have the capacity to grant the request, but over time such a request may be a reasonable one.

Rights regarding advanced directives and health care proxies

If you have an advanced directive or health care proxy (a form that states what you want done medically in case you are incompetent or unable to tell staff yourself or appoints someone else to make medical decisions for you), bring it with you or have a trusted person who can provide them at your request. In such a document, you can have specified what responses staff should use to help you calm down if you become upset or agitated.

What to do if you believe that your rights have been violated

You may contact:

- A member of the hospital's management team and seek their assistance.
- The hospital's **Patient Advocacy Office**. With their help, you may file a complaint regarding your care. Hospitals are required to promptly investigate all serious complaints filed against its employees and medical staff.¹⁰
- The Division of Health Care Facility Licensure and Certification **of the Department of Public Health** and file a complaint regarding an ongoing or recent problem. Instructions are available at <https://www.mass.gov/how-to/file-a-complaint-regarding-a-hospital> or by calling their 24 hour consumer complaint line at (800) 462-5540 or (617) 753-8150.
- Contact an agency that provides legal advice such as Mental Health Legal Advisors Committee (617-338-2345) or the Disability Law Center (617-723-8455)
- Contact the Committee for Public Counsel Services, if you need a lawyer to defend against a commitment, (617) 482-6212.

ENDNOTES

¹ Mass. Gen. L. ch. 123, § 12(a).

² Mass. Gen. L. ch. 123, § 12(a).

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, § 12(b).

⁶ Mass. Gen. L. ch. 123, § 12(b).

⁷ Mass. Gen. L. ch. 111, § 70E.

⁸ See Title VI of the Civil Rights Act of 1964; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency; Mass. Gen. L. ch.111, § 25J(b); Mass. Gen. L. ch. 23, § 23A(b).

⁹ Mass. Gen. L. ch. 111, § 70E.

¹⁰ 105 CMR 130.330.