BASIC RIGHTS AT INPATIENT MENTAL HEALTH FACILITIES IN MASSACHUSETTS

Prepared by the Mental Health Legal Advisors Committee March 2015

While patients at inpatient mental health facilities do not have all the same rights that people have in the community, certain basic rights are protected. Some rights are protected by the U.S. Constitution. Some rights are protected by state law.

Massachusetts General Law Chapter 123, section 23 ("Section 23") protects the right to engage in certain activities in programs and facilities operated by, licensed by or contracted with the Department of Mental Health (DMH). The rights listed in Section 23 should not be denied merely because a person exercises a protected choice, such as refusing medication. Further, these rights should not be denied as punishment.

This flyer describes important rights under the U.S. Constitution and Section 23.

RIGHTS REGARDING MAIL

- The absolute right to **stationery and postage** in reasonable amounts.
- The right to reasonable assistance in writing, addressing and posting letters and other documents.
- 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.

¹ Section 23 was amended in 1997 by the Five Fundamental Rights Act (Chapter 166 of the Acts of 1997) and in 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 reasonable daily access to the outdoors.

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

RIGHTS REGARDING TELEPHONE*

• 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.

Note: The facility's superintendent, director, acting superintendent or acting director may temporarily suspend the right to use the phone if there is a *substantial risk of serious* harm to you or others and less restrictive alternatives would be futile. Any suspension must be documented in your record and may last no longer than the time necessary to prevent the harm.

• You may not be denied the right to speak with your **attorney**.

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 Massachusetts Mental Health Protection and Advocacy Project, the Committee for Public Counsel Services, and the Mental Health Legal Advisors Committee," so that they may "provide free legal services."
- Upon admission and upon request, facilities must provide the name, address and telephone numbers of these legal agencies and must assist you in contacting 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

• The right to reasonable daily access to the outdoors.

Note: The right to access the outdoors is conditioned on the following: 1) weather conditions reasonably permit access; 2) access is in a manner consistent with the person's clinical condition and safety as determined by the treating clinician; and 3) the facility has the ability to safely provide access.

• The statute requires DMH to promulgate regulations defining what shall constitute reasonable access and regulations implementing sufficient precautions to ensure the safety of staff members charged with accompanying patients outdoors.

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 make a note in your treatment record as to why the right was denied.

 Although access to newspapers is not specifically protected by law, denial of them may still be inhumane and something about which you should complain to the Human Rights Officer of the hospital.

WHAT TO DO IF THESE RIGHTS ARE DENIED

If you believe that you were unfairly denied a basic right while at a program or facility operated, contracted for, or licensed by DMH, ask to speak with the Human Rights Officer.

You may also file a written **complaint** with the Person in Charge of the program or facility. You can give your complaint to any facility employee; he or she must forward it to the Person in Charge.

If you are dissatisfied with the response of the Person in Charge and believe that additional fact-finding should occur, you have 10 days to request **reconsideration**.

You also may file an **appeal** to a higher level up to 10 days after receiving a decision. The person to whom the appeal is made depends upon the type of complaint and the type of facility about which the complaint is made.

In most cases, you have the right to a **further appeal**, which must be filed within 10 days of your receiving the *appeal* decision.

If you have questions about the complaint process, contact the Human Rights Officer or the Mental Health Legal Advisors Committee (1-800-342-9092).