

RIGHTS OF INSTITUTIONALIZED PERSONS

CHAPTER 12

There are several legal sources for the rights of institutionalized individuals. First, there are those rights guaranteed to people in Missouri that state what can and cannot be done to people in institutions. Second, the federal government (usually the Department of Health and Human Services) and the Missouri Department of Mental Health, the Department of Health, and the Division of Aging can issue regulations concerning the rights of people in institutions and board and care facilities (including nursing homes).

DEFINITIONS

The following definitions are based on Missouri statutory law and may be useful in understanding the rights of institutionalized persons.

Client - Any person who is placed by the Department of Mental Health in a facility or program licensed and funded by the Department or who is a recipient of services from a regional center for persons with developmental disabilities. § 630.005(4), RSMo.

Developmental disability - A disability:

1. Which is attributable to:
 - a. mental retardation, cerebral palsy, epilepsy, head injury or autism, or a learning disability related to a brain dysfunction; or
 - b. any other mental or physical impairment or combination of mental or physical impairments; and
2. Is manifested before the person attains age twenty-two, and
3. Is likely to continue indefinitely; and
4. Results in substantial functional limitations in two or more of the following areas of major life activities:
 - a. self-care;
 - b. receptive and expressive language development and use;
 - c. learning;
 - d. self-direction;
 - e. capacity for independent living or economic self-sufficiency;
 - f. mobility; and

5. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, habilitation or other services which may be of lifelong or extended duration and are individually planned and coordinated. § 630.005(9), RSMo.

Guardian - A person appointed by a Probate Court to have the custody of a minor or of an incapacitated person. A **limited guardian** is a person whose powers as guardian are limited by the court to certain specified functions. § 475.010(6), RSMo.

Habilitation - A process of treatment, training, care or specialized attention which seeks to enhance and maximize the abilities an individual with mental retardation or a developmental disability to cope with the environment and to live as normally as possible. § 475.010(9), RSMo.

Incapacitated Person - A person who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he is unable to provide himself with food, clothing, shelter, safety, or other care such that physical injury, illness or disease is likely to occur. § 630.005(21), RSMo.

Least Restrictive Environment - A reasonably available setting where care, treatment, habilitation or rehabilitation is particularly suited to the level and quality of services necessary to implement a person's individualized treatment, habilitation or rehabilitation plan and to enable the person to maximize his functioning potential to participate as freely as feasible in normal living activities, giving due consideration to potential harmful effects on the person. For some individuals with mental retardation or a developmental disability, the least restrictive environment may be a facility operated by the Department of Mental Health. § 632.005(9), RSMo.

Likelihood of Serious Physical Harm - "Harmful to own self" may be evidenced by recent threats (verbal or otherwise), by attempts to commit suicide, or by failure or inability to provide for one's own essential human needs (e.g. for food, clothing, shelter, safety, or medical care). "Harmful to other person" may be evidenced by recent overt acts, threats, or behavior which caused harm to another person or which places another person in reasonable fear of being harmed. Harm to property does **not** justify an involuntary commitment unless the behavior is also threatening or harmful to a person. § 630.005(21), RSMo.

Mental Disorder - Any organic (physical cause), mental, or emotional impairment which causes a substantial adverse effect on a person's ability to think, reason, make decisions, take action, or display appropriate emotions and which substantially impairs a person's ability to participate in normal life activities. Mental disorders may include:

- Developmental disability (including mental retardation);
- Simple intoxication caused by substances such as alcohol or drugs;
- Dependence on, or addiction to, alcohol or drugs; or
- Any other disorder not of an actively psychotic nature. § 630.005(22), RSMo.

Mental Health Facility - Any public or private residential facility which can provide evaluation, treatment and inpatient care to persons suffering from a mental disorder or mental illness and which is recognized as such by the Department of Mental Health. No correctional institution or

facility, jail, regional center or mental retardation facility shall be a mental health facility. § 632.005(11), RSMo.

Mental Illness - An impairment of mental processes, caused by hallucinations, delusions, faulty perceptions, or alterations of mood, which interferes with a person's ability to recognize reality and the person's ability to reason, understand, or control his/her actions. This impairment may be demonstrated by instances of grossly impaired behavior. Mental illness is therefore defined differently from mental disorder. § 630.005(23), RSMo.

Mental Retardation - Significantly sub-average general intellectual functioning which:

1. Originates before age eighteen; and
2. Is associated with a significant impairment in adaptive behavior. § 630.005(24), RSMo.

Mental Retardation Facility - A private or department facility, other than a regional center, which admits persons for residential habilitation and other services and which is qualified or licensed as such by the Department of Mental Health. § 633.005(4), RSMo.

Patient - An individual under observation, care, treatment or rehabilitation by any hospital or other mental health facility pursuant to the provisions of Chapter 632. § 632.005(26), RSMo.

Resident - A person receiving residential services from a facility, other than mental health facility, operated, funded or licensed by the Department of Mental Health. § 630.005(30), RSMo.

Residential Facility - Any premises where residential prevention, evaluation, care, treatment, habilitation or rehabilitation is provided for persons affected by mental disorders, mental illness, mental retardation, developmental disabilities or alcohol or drug abuse, except the person's dwelling. § 630.005(31), RSMo.

Treatment - Any effort to accomplish a significant change in the mental or emotional conditions or the behavior of the patient consistent with generally recognized principles or standards in the mental health professions. § 632.005(22), RSMo.

Ward - A minor or an incapacitated person for whom a guardian or limited guardian has been appointed. § 475.010(118), RSMo.

RIGHTS GUARANTEED BY THE UNITED STATES AND MISSOURI CONSTITUTIONS

While the United States and Missouri Constitutions do not specifically address what rights should be accorded to persons with mental health care services needs who are in institutions, through court decisions there have emerged certain rights that are applicable to people generally and to people with disabilities in particular.

General Constitutional Rights - There are several constitutional protections which stem from the Fourteenth Amendment to the United States Constitution and similar provisions in the Missouri Constitution. These are general concepts and include:

Due Process - The life, liberty and property of a person cannot be impaired by the government without proper legal protections. Thus, for example, a person cannot have his physical liberty restricted without a hearing.

Equal Protection - Persons under similar circumstances should be treated similarly by the government. Thus, for example, persons with disabilities cannot be singled out for disparate, negative treatment merely because of those disabilities.

These concepts are very general, yet the legal principles involved in their definitions can be important to a person who is faced with living in an institution. The key point to remember is that these constitutional protections are available to all people to help restrict government power.

Specific Constitutional Rights Recognized by the United States Supreme Court - The United States Supreme Court has not defined a great number of rights that are specifically guaranteed to people in institutions, but those rights that have been recognized are significant and include the following:

1. **Right to Be Free from Deliberate Indifference to Your Medical Care Needs If You Are in Government Operated or Certified Institutions** - This principle means that if you are in an institution where the custodians of that facility control your access to medical care, they must be attentive to your medical care needs.
2. **Right to Pre-Admission Protections Before a Person's "Voluntary Admission" to a Public Mental Health Facility** - This principle means that there must be a pre-admission mechanism in place to assure that a person's "voluntary admission" to a public mental health facility truly is voluntary and informed and that the person is capable of giving his voluntary, informed consent to the admission. If these standards are not met, the facility either must release the person or try to obtain admission through a court reviewed involuntary placement process.
3. **Right Not to be Involuntarily Confined to a Mental Health Facility Unless Certain Minimal Legal Standards Are Met** - These standards include that the state cannot involuntarily confine a non-dangerous person with a mental illness who is capable of living in the community by himself or with the help of others. Before the state can involuntarily confine a person to a mental health facility, it must present to the court "clear and convincing evidence" that the person meets the standards for commitment.

- In addition, a person faced with possible involuntary hospitalization for mental health care is entitled to written notice of the proposed hospitalization, an adversary hearing before an independent decision-maker, written findings by the decision-maker, and effective and timely notice of these rights.
4. **Right to Reasonably Safe Conditions of Confinement, Freedom from Unreasonable Bodily Restraints, and Such Minimally Adequate Training as May Be Required By These Interests** - These principles, in a sense, establish a measuring-rod by creating a minimal level for the quality of basic care that must be afforded to every person who is in a mental health or mental retardation facility.
 5. **Right to Refuse Treatment Unless an Impartial Determination is Made that the Patient Is Dangerous and Will Benefit from the Treatment** - The Supreme Court has not determined precisely how this principle is to be implemented in all circumstances. The court held that in a prison setting, a convicted prisoner's right to refuse medication may be overcome by the findings of an impartial administrative body, after a hearing, that the inmate has a serious mental illness, is dangerous, and will benefit from the proposed treatment.

Other Important Constitutional Law Theories - There are certain other legal principles applicable to institutionalized people, which, although not recognized by the United States Supreme Court, have been approved by federal courts, including courts whose authority covers Missouri. These principles include:

1. **Right to Training Reasonably Necessary to Prevent a Person's Pre-existing Self-Care Skills from Deteriorating Because Of His Confinement** - This standard means that an individual with mental illness has a right to such treatment and an individual with a developmental disability has a right to such habilitation as to maintain the skills and abilities that he had when he entered the institution.
2. **Right to Habilitation/Treatment** - This principle provides that a person has a right to such minimally adequate treatment or habilitation that will provide him with a reasonable opportunity to improve his condition and be discharged from the institution. In practice, essential elements to carry out this principle include a humane physical and psychological environment, sufficient numbers of qualified staff, and an individualized treatment/habilitation plan for each person placed in the institution.
3. **Right to Placement in the Least Restrictive Environment** - This precept means that the degree of restriction on the institutionalized person's life cannot be any greater than is required by his individual situation. Thus, placement to an institution, **and within an institution**, must be based on the specific situation of the person, not merely the demands of the legal or mental health care systems.

RIGHTS GRANTED BY FEDERAL STATUTES

There are certain federal laws that provide significant and specific protections to individuals facing institutional care. As with constitutional law principles, however, what the federal law means for each person will vary with the specific situation.

Included among the rights protected by federal statutes are the following:

Non-Discrimination on the Basis of Disability - There cannot be discrimination in the provision of services, through federally funded programs, on the basis that an individual has a disability or is perceived to have a disability. While this does not mean that every person must receive the same type of service, it does mean that equivalent services must be offered to the various individuals in the program. It also means when a program offers services aimed at a population of individuals with disabilities, there cannot be discrimination between classes of individuals with disabilities. [Thus, for example, a program, which serves people with cerebral palsy, cannot exclude a person with cerebral palsy merely because that person also may have a mental illness.]

Free Appropriate Public Education - Schools, through their educational programs, must offer a free appropriate public education (FAPE) to students with disabilities that affect their ability to learn in school. This includes providing related services that will enable the student to participate in his/her educational environment. [Thus, for example, a student with behavior disorders may need to be provided with both a special individualized education program (IEP) and psychotherapy aimed at behavior modification so the student will be able to learn.]

Rights of People in Nursing Homes - Through specific federal law there are a number of protections afforded people who are placed in Medicaid/Medicare funded nursing homes or who are facing placements in such facilities. While most of these protections parallel state statutory rights, certain federal standards are particularly important to people with mental illness, mental disorder, mental retardation, or developmental disabilities. These protections include:

1. Individuals who have mental retardation or a mental illness shall not be placed in nursing homes unless the placement is appropriate for some physical health care need. (In Missouri, therefore, the Division of Aging and the Department of Mental Health are to have a screening process to prevent inappropriate admissions.)
2. Active treatment to help maintain and increase the individual's physical, mental, and psychosocial well-being must be provided for an individual with mental retardation or a mental illness who lives in a nursing home.
3. Psychotropic drugs can be administered to a person in a nursing home only as part of a plan of care aimed at specific behavioral symptoms and an independent consultant must review the administration of these drugs at least annually.
4. Restraints and seclusion can be imposed only to ensure the physical safety of the person in the nursing home, not merely for purposes of discipline or staff convenience.

Right to an Individualized Habilitation Plan - For those individuals with a developmental disability who are in mental retardation facilities that receive monies through the Developmental Disabilities Assistance and Bill of Rights Act (and all Department of Mental Health mental retardation facilities do receive such monies), there must be an Individualized Habilitation Plan (IHP). This IHP must be developed with the participation of the resident and must address such topics as long-range habilitation goals, short-term habilitation objectives, and methods of achieving goals and objectives.

Certain other federal laws also may be of assistance to individuals residing in institutions, but, again, each specific case will vary with the person's situation.

In addition, there are many federal regulations (available from each individual federal agency and also, in many instances, printed in the Code of Federal Regulations) which may apply to an individual and his case. In most instances these federal rules stem from federal statutes and serve to explain the law rather than to add to it. [For example, people with developmental disabilities who are in intermediate care facilities for individuals with mental retardation (ICF-MR) should be receiving "active habilitation" in programs whose physical plant, staffing patterns, and staff development meet specific criteria.]

RIGHTS CREATED BY STATE STATUTES

All patients, residents, and clients, whether voluntary or involuntary, of a mental health or mental retardation facility licensed, funded, certified or operated by the Missouri Department of Mental Health, as well as involuntary patients in private mental health facilities, have the following rights without limitation to:

1. Prompt and humane evaluation, care, and treatment in accordance with the highest standards accepted in medical practice as available;
2. Have the fact of his admission and all records kept confidential unless authorized by the person or by law to be made available;
3. Be placed and treated in the least restrictive environment;
4. Refuse psychosurgery, § 630.133, RSMo (2000);
5. Safe and sanitary housing;
6. Not participate in non-therapeutic labor;
7. Be treated with dignity;
8. Refuse hazardous treatment or surgery unless court-ordered;
9. Refuse electroshock treatment unless court-ordered [and ECT shall **not** be performed on a person whose diagnosis is solely mental retardation], § 630.130, RSMo (2000);
10. Have a nourishing, well-balanced diet;
11. Be free from verbal and physical abuse;
12. An absolute right to private visits from his attorney, physician, or clergyman at reasonable times;

13. Communicate by sealed mail with his legal counsel and the court, if any, that have jurisdiction over him, and the Department of Mental Health;
14. Refuse compulsory treatment because of his religious objections to medical treatment;
15. Attend or not attend religious services;
16. Refuse to participate in experimental research without his prior written and informed consent;
17. An itemized and detailed explanation of any bill for services that is received from the Department of Mental Health; and
18. Have an impartial administration investigation and review of all alleged violations of the individual's rights that are assured by the Department of Mental Health or Missouri state law. § 630.115, RSMo (2000).

In addition, all patients, residents or clients receiving services from a mental health or mental retardation facility licensed, funded, certified or operated by the Department of Mental Health, whether voluntary or involuntary, and all involuntary patients in private mental health facilities, unless restrictions are necessary for the therapeutic care of the person and have been made a part of the person's clinical record, shall have the right to:

1. Wear his own clothes and keep and use his own personal possessions;
2. Keep and be allowed to spend a reasonable sum of his own money;
3. Communicate by sealed mail with others;
4. Receive visitors of his own choosing at reasonable times;
5. Have reasonable access to a telephone to make or receive confidential telephone calls;
6. Have opportunities for physical exercise and outdoor recreation;
7. Have reasonable, prompt access to newspapers, magazines, radio and television;
8. Have access to his mental health and physical health care records; and
9. Not be discriminated against because of race, sex, creed, marital status, national origin, age, or disability. § 630.110, RSMo (2000).

Furthermore, the fact that a person is receiving an evaluation or care and treatment for a mental disorder, or mental retardation, or due to a mental illness or a developmental disability, does not cause that person to be presumed to be incompetent, to forfeit any legal right or responsibility, or to suffer any legal disability unless specifically prescribed by a court order or by a statute. Thus, all patients, whether involuntary or voluntary, and all residents maintain their civil rights and civil liberties. § 630.120, RSMo (2000).

In addition, by a specific Missouri statute, voluntary patients in mental health facilities have the right to consent to their evaluation, care, treatment, and rehabilitation, including the right not to be medicated without prior voluntary and informed consent. Included within this protection is the voluntary patient's right to say "NO" to all or parts of any proposed treatment plan.

Also, a person has a right to be free from physical or chemical restraint, isolation or seclusion unless the head of the facility or the attending physician determines the action to be "imminently necessary" for the protection of the person or others and documents the reasons why in the person's medical charts. § 630.175, RSMo (2000).

Any time someone is admitted to an institution for care, he is entitled to a written explanation of his rights and how he may be discharged, a description of services offered by the facility, and an explanation of grievance procedures. The facility is also to post a listing of rights in residential and activity areas. § 630.125, RSMo (2000).

VOLUNTARY ADMISSION TO A HABILITATION FACILITY

Individuals may be voluntarily admitted to a mental retardation facility if the:

1. Person has a developmental disability;
2. Person needs residential habilitation for his own protection or the protection of others;
3. Habilitation facility offers the best possible program for the person in the least restrictive environment;
4. Admission is considered proper by the facility; and
5. Person is over 18 years of age and requests his admission;
6. Person is under the age of 18 and the parent or legal custodian makes an application for the admission;
7. Person is declared incapacitated by a Probate Court and his guardian authorizes the admission (see below); or
8. Person is under the jurisdiction of a Juvenile Court and is committed by that court to a public or private mental retardation facility.

Residents in mental retardation facilities shall have their placements reviewed at least every 180 days to determine whether the person continues to need residential habilitation in the particular facility or if the person is appropriate for referral for placement in a least restrictive environment.

VOLUNTARY ADMISSION TO A MENTAL HEALTH FACILITY

Any person eighteen (18) years of age or over who applies for admission and is admitted because of symptoms of mental disorder or a mental illness is considered a voluntary patient. Also considered as voluntary patients are:

- A minor (under 18 years) whose parent or legal custodian makes application for the youngster's admission;
- Any person under jurisdiction of a Juvenile Court; or
- Any person who has been declared legally incapacitated and whose guardian has authorized the admission.

Right to Consent to Treatment - A voluntary patient who has admitted himself to a mental health facility has the right to consent to or refuse his proposed care and treatment. The parent or legal custodian of a minor has the right to consent to or refuse the minor's proposed care and treatment. The guardian of a ward has the right to consent to or refuse the ward's proposed care and treatment.

Right to Request Release - A voluntary patient has the right to request his release from in-patient care, either orally or in writing. (However, if the voluntary patient was admitted through the application of a parent or guardian, the person making the application must agree with the request for release.) The voluntary patient will then be released immediately unless the head of the facility or his designee believes that the person is mentally disordered and, as a result, that there is a substantial risk of serious physical harm to the patient or other persons if the patient is released. In this case, if one of the persons enumerated in §632.150 of the Revised Statutes of Missouri completes an application for detention, the patient may be held for a reasonable length of time, not to exceed 96 hours and 2 judicial days (6 days, not counting weekends and holidays), to allow proceedings for involuntary commitment to begin.

Remember, for a person's admission to really be voluntary, the person needs to be fully informed about the meaning and consequences of his action and what options are available to the person and the facility if he does not agree to a "voluntary admission."

INVOLUNTARY COMMITMENT AND DETENTION

In Missouri, there are no provisions for the involuntary civil commitment of a person with a developmental disability unless the person also has a mental illness and, as a result of the mental illness, presents a likelihood of serious physical harm to himself or to others. There are also no provisions for courts to civilly commit people to mental retardation facilities.

However, one must remember that a minor can be admitted by his parent or legal custodian while a person with a legal guardian can be admitted by that guardian even if the person objects. However, in Missouri there are specific procedures to be followed when involuntary commitment to a mental health facility is considered.

The Initial Detention - The law states that a person must be suffering from a mental disorder and present a likelihood of serious physical harm to himself or other persons to be detained in a mental health facility for evaluation and treatment. The initial detention period cannot exceed 96 hours and 2 judicial days (not counting weekends and holidays) unless continued by a court. § 632.305, RSMo (2000).

Court Hearing Procedures - Any adult can file an application with the Probate Court to detain another person. This application must allege under oath factual statements concerning the mental disorder and the behavior(s) showing that there is likelihood of serious physical harm to self or others if this person is not admitted to a mental health center for a 96 hours evaluation and treatment. Upon review of the evidence and finding of probable cause, the judge may order that the person be taken into custody and transported to a mental health facility. The potential client may or may not, at the court's discretion, be allowed to testify at his hearing. § 632.305, RSMo (2000).

Emergency Detention - A person can be involuntarily detained in a mental health facility without first obtaining court approval if the likelihood of serious physical harm is imminent. In this case, a peace officer or physician will decide if there is reasonable cause for an emergency detention and will file the application for initial detention and evaluation at the mental health facility upon admission. § 632.305, RSMo (2000).

Within 3 hours of arrival at a mental health facility the detained client must:

- Be seen by a mental health professional or registered professional nurse;
- Be given a copy of the application for initial detention and evaluation;
- Be given the name of the attorney appointed to represent him if the patient does not have an attorney and be provided assistance in contacting that attorney; and
- Be given a copy of his rights.

Within 18 hours of arrival at a mental health facility, a licensed physician must examine the client.

Within 4 days of his arrival at a mental health facility, unless sooner released, that client shall have his statutory rights explained to him at a personal meeting with the Mental Health Coordinator. Prior to the end of the 96 hour and 2 judicial day period, a court hearing will be held to determine if the patient is suffering from a mental illness and as a result thereof continues to present a likelihood of serious physical harm to self or others unless the patient signs in as a voluntary patient or is discharged from the facility. If the court sustains the petition alleging mental illness and likelihood of serious physical harm, an additional period of up to 21 days of detention and treatment on an involuntary basis will be ordered. § 632.320, RSMo (2000).

Continuation of Involuntary Commitment - An involuntary commitment may be extended for an additional 21 days if a petition is filed in the proper probate court within the initial 96-hour period. The petition must set forth that there is reasonable cause to believe that the individual has a mental illness and because of his/her illness may cause serious harm to himself/herself or others. § 632.330, RSMo (2000). Missouri statutory law sets forth what else must be included in the

petition. A hearing will be held to determine whether the individual will continue to reside in the facility. Missouri statutory law allows for further detention past the 21 days. The court may extend the commitment for an additional 90 days if a petition is filed within the first 17 days of the 21-day commitment. Likewise, the court may extend the commitment for an additional year if a petition is filed during the 90-day commitment period. §§ 632.340 and 632.355, RSMo (2000).

Persons who are not found to be mentally ill and harmful to themselves or others cannot be committed involuntarily for further care and treatment. This person will be released from the mental health facility unless the person admits himself on a voluntary basis.

A person who is held in a mental health facility involuntarily has the following additional rights during detention and at the judicial hearings to:

- Be represented by an attorney;
- Present evidence on his own behalf;
- Cross-examine witnesses who testify against him;
- Remain silent;
- View and copy all documents in his court file;
- Have the hearing open or closed to the public;
- Be present, unless the court determines otherwise;
- Refuse medication (except life saving treatment) at least 24 hours prior to the hearing;
- Request a jury trial; and
- Request that the trial be held in his county of residence. § 632.335, RSMo (2000).

Judicial Review - Any person who is detained pursuant to any order of civil detention shall be entitled to apply for a writ of habeas corpus for his release. Furthermore, appeals from court orders may be made to the appropriate appellate court. In addition, persons detained for 90 days or one-year involuntary commitment periods shall be entitled to ask the committing court for a re-examination of the order for detention. § 632.400, RSMo (2000).

Evaluation of Involuntary Committed Patients - Individuals committed for one year shall be evaluated by the head of the mental health facility every 180 days. A copy of the evaluation will be provided to the court, to the patient, and to the individual's attorney. The court may upon its own motion, or shall upon motion of the individual, conduct a hearing on the need for continued detention and involuntary treatment. As a result of the hearing, the court may order the individual's discharge, placement in the least restrictive environment, or continued treatment in the mental health facility. § 632.375, RSMo (2000).

Release of Involuntary Patients - An involuntary patient shall be discharged before the end of the commitment period if, in the opinion of the head of the mental health facility or his designee, the patient is no longer mentally ill or, although mentally ill, the patient does not present a likelihood of serious physical harm to self or others. § 632.390, RSMo (2000).

VOLUNTARY ADMISSION BY LEGAL GUARDIAN TO A MENTAL HEALTH/RETARDATION FACILITY

If a person has been declared “incapacitated” by a Probate Court and a guardian has been appointed, the guardian has the legal power to sign that person, or ward, into a mental health or mental retardation facility. A limited guardian who is appointed specifically to oversee the ward’s mental health care has the same power. This admission is considered voluntary even if the ward objects.

No guardian shall place his ward in a mental health or mental retardation facility for more than 30 days for any reason without petitioning the Probate Court and receiving an order to do so.

However, if the guardian can prove to the court that placement in such a facility is “appropriate and in the best interests of the ward,” the court may approve the admission. The court's order can provide for an indefinite confinement at the mental health or mental retardation facility.

When the guardian or limited guardian petitions the court for inpatient placement of the ward in a mental health or mental retardation facility, a physician’s statement setting forth the factual basis for the need for inpatient care must be attached to the petition.

After reviewing the application and supporting physician’s statement, the court, without introducing any further evidence, may issue an order authorizing the guardian to admit the ward to the mental health or mental retardation facility.

However, at the court’s discretion, an attorney may be appointed to represent the ward. The attorney is required to meet with the ward. The attorney may request a hearing on the application and that request shall be granted. However, if no hearing is requested, the court may rule on the application without a hearing.

Proceedings for the admission of a ward to a mental health or a mental retardation facility may be combined with the hearing on the issue of incapacity itself.

Also, under Missouri law, the guardian, not the ward, is the person whose consent is needed for treatment or habilitation, including medication. Thus, even if the ward disagrees with the medication, the guardian’s consent has priority. However, if Electro Convulsive Therapy (ECT) is proposed for the ward, the guardian must obtain a specific court order authorizing the ECT.

PLACEMENT IN A NURSING OR BOARDING HOME

Missouri and the federal government have specific guidelines for placing persons from mental retardation or mental health facilities operated by the Department of Mental Health into nursing or boarding homes. Missouri guidelines are codified in Chapter 630 of the Revised Statutes of Missouri. These standards cover persons who are residing voluntarily or involuntarily in institutions. The decision to place someone in a boarding or nursing home may be made if, after consulting with the person and/or the person's parents/guardian, the head of the facility believes:

1. The placement is in the best interest of the person;
2. It is the least restrictive alternative for providing care and habilitation/treatment for the person;
3. The placement has been investigated and it is determined that the person will receive the individual degree of care and active habilitation/treatment that is required for that person; and
4. The placement will maintain relationships the person has with his family, guardian and friends so they will be able to visit him.
5. If the person was admitted to the Department of Mental Health by an accepted plea of not guilty by reason of mental disease or defect, the security the facility provides to protect public safety will be assessed.

When these conditions have been met to the satisfaction of the head of the facility, he puts his reasons for believing the proposed placement is proper in writing and gives them to the person and his parents/guardian. If the person voluntarily admitted himself to the facility, then his consent to the placement must be obtained. If the person was placed in the facility by a parent/guardian, then the consent of the parent/guardian must be obtained. (If the person was committed by a court order, no court permission is needed unless the person is a forensic patient. See Chapter 13, **Services for Forensic Clients**.)

Occasionally, a person or his parent or guardian opposes the placement of the person into a nursing or boarding home, even though the head of the institution believes that such a placement would be in the person's best interest. In such a case, the head of the institution may initiate a hearing procedure so that a neutral review board can determine whether the proposed placement is appropriate.

At this hearing, it is up to the head of the facility to demonstrate that the proposed placement is appropriate. State employees may testify or otherwise provide information or evidence with regard to a proposed placement but there cannot be retaliation against them for their testimony. Until the review board reaches a decision, the person cannot be discharged or transferred unless he presents a likelihood of serious physical harm to himself or others or the transfer or discharge is necessary to provide emergency medical care to the person. The Board may appeal the decision of the review board to a Circuit Court within 30 days after notice of the final decision.

Once a person is placed in a nursing or boarding home by the institution, the Department of Mental Health has a responsibility to provide or arrange for follow-up care, including:

1. Inspections at least quarterly and visits to the program in which the person has been placed; and
2. Assurances that the person is receiving care, habilitation/treatment, and services, including medical care, consistent with his needs and condition.

After a person has been placed in the community, the Department of Mental Health has a responsibility for a period of 4 months following the initial placement to inspect, evaluate and review the progress of the community placement for the individual at least once a month.

As noted above, an individual's rights in a placement licensed, certified or funded by the Department of Mental Health are the same as those in facilities operated by the agency as well as those rights guaranteed by the Missouri Omnibus Nursing Home Law.

CONCLUSION

Please remember that the information provided in this handbook is very general and a person should not rely upon this handbook exclusively to determine his rights or present his questions and grievances. In all individual cases it is recommended that advocacy or legal assistance be sought to aid in the person's particular case.

If there is a concern about a possible violation of a person's rights, especially in a possible abuse/neglect situation, contact Missouri Protection and Advocacy Services. Also, if the violation takes place at a program operated, license, certified, or funded by the Department of Mental Health, file a complaint with the Client Rights Monitor, Department of Mental Health, 1706 E. Elm, P.O. Box 687, Jefferson City, Missouri 65102 (573-751-3944), as well as the head of the facility where the violation took place.

In addition, under Missouri law certain other state agencies have an obligation to investigate situations of abuse or neglect for certain "special populations." For example, the Missouri Division of Family Services serves as the state agency for investigations of allegations of child abuse or neglect (i.e., minors under age 18). The toll-free telephone number is 1-800-392-3738.

Another "special population" which receives protection are people age 60 and older who are thought to be at risk of serious physical harm. Incidents of suspected abuse or neglect of an older adult which rise to the level of "risk of serious physical harm" should be reported to the Missouri Department of Social Services toll-free telephone number, 1-800-392-0210.

In addition, special protection is extended to individuals with mental and physical disabilities between the ages of 18 and 59 who are thought to be unable to adequately protect their own interests or meet their essential human needs. Situations where there is reasonable cause to believe that the individual presents a likelihood of suffering serious physical harm and may need protective services should be reported to the Missouri Division of Aging for a determination of whether the situation merits protective services. The toll-free number for reporting is 1-800-392-0210.

Finally, in certain instances, clients of the Department of Mental Health may have protections afforded under Missouri's Omnibus Nursing Home Law. Thus, Department of Mental Health clients who are in facilities licensed by the Department have the additional rights guaranteed under Missouri's nursing home laws. For example, married clients shall be assured of privacy for visits by the spouse, and if the clients are both residents of the facility, they are permitted to share a room together. The client is also free to participate in social, religious or community groups, unless contraindicated for reasons that are documented in the client's medical record by the attending physician.

Furthermore, through the Omnibus Nursing Home Act, people in intermediate care facilities, residential care facilities, and skilled nursing care facilities, no matter who pays for their placement and whether or not they are Department of Mental Health, Department of Social Services, or private pay individuals, have their rights guaranteed under the Act. Included within these rights is the right to file a grievance with the facility for a complaint concerning treatment, conditions, or personal rights and the right to file a complaint with the Department of Social Services if that grievance is not resolved within the facility. The person may also file a complaint with the Attorney General's office concerning an alleged violation of the person's rights.

Finally, as with federal statutes, there are numerous state rules, regulations, and Department of Mental Health Operating Regulations which help explain and apply various state laws. These policies, for example, may provide guidelines to Department of Mental Health staff who want to place a person in seclusion or restraint. These guidelines may also explain the rules of privacy concerning a person's records and how access to those confidential records may be obtained. Copies of these various rules and regulations should be available from the appropriate state agency or from the facility itself. People should not hesitate to ask for copies. Copies of Missouri rules may also be obtained by consulting the Code of State Regulations.