



DISABILITY
LAW CENTER
O F A L A S K A



YOUR MENTAL HEALTH RIGHTS IN ALASKA

M E M B E R · O F · T H E
N A T I O N A L · D I S A B I L I T Y
R I G H T S · N E T W O R K

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INTRODUCTION

This booklet explains mental health rights while either residing in a mental health facility, voluntarily or involuntarily, or receiving outpatient mental health care. This booklet also provides information about how to self-advocate regarding complaints about care and treatment while either in a mental health facility or as an outpatient. Finally, this booklet contains information regarding advance directives for health care decisions, including mental health care decisions.

If you need more information about the topics covered in this booklet or issues related to an individual with mental illness, such as housing, employment, or service animals, the individual with a mental illness should contact the Disability Law Center to discuss his or her situation.

Disability Defined

A disability is a physical or mental impairment that substantially limits one or more major life activities. A “major life activity” includes activities such as walking, hearing, seeing, breathing, learning, speaking, or working. Disabilities include, but are not limited to, mental illness, hearing, mobility, visual impairments, developmental disabilities, alcoholism, environmental illnesses, chemical sensitivities, and HIV/AIDS. Under federal law, people who use illegal drugs are not included in the definition of disability, but they may be included under Alaska state law.

Federal laws regarding discrimination protect you if you have a disability, or have a history of a disability. The laws protect not only the person with a disability, but also those who are associated with persons with disabilities. For example, it would be unlawful to deny a person housing due to his/her relationship with a person who has a mental illness.

YOUR PERSONAL RIGHTS WHILE IN A MENTAL HEALTH FACILITY

All people have certain basic legal rights, including people who have mental illness and people in mental health facilities. Sometimes these rights can be restricted by a judge or by your doctor. If you are placed in a mental health facility, below is information you need to know about your rights.

A summary of your rights must be given to you and to your parent or guardian within 24 hours of your admission to the facility.

You have the right to:

- Respect and privacy regarding your personal needs and treatment;
- Work within the facility only if your labor is performed voluntarily;
- Meet and communicate with people of your own choosing;
- Private and confidential conversations;
- See visitors every day;
- Place and receive confidential telephone calls;
- Have ready access to letter-writing materials, including stamps, and to send and receive unopened correspondence (except checks controlled by a trustee);
- Keep and spend money for expenses and small purchases;
- Have access to individual storage space for your private use;
- Keep and use personal possessions;
- Wear your own clothes;
- Have your records kept confidential;
- Request and receive access to your own medical and service records;
- Exercise your rights and to submit complaints concerning policies and services;
- Vote, make contracts and wills, own property, marry, have a driver's license, and to manage your own affairs unless a court of law has specifically declared that you are incompetent to exercise any of these rights; and,
- To contact the Disability Law Center of Alaska for information and assistance.

Rights Concerning Care and Treatment

You have the right to:

- Medical, psychosocial, and rehabilitative care, treatment, and planning;
- Receive treatment and services in a setting supportive of your personal liberty;
- Have routine safety checks of your room, bathroom, and shower by a staff member of the same gender as you;
- The prompt development of an individualized treatment plan with thorough reviews of treatment at least every three months;
- Participate in developing all treatment plans. The plans must provide for the least restrictive treatment procedures that may reasonably be expected to benefit you;
- Receive treatment only if you or your legal representative give informed consent in writing;
- Refuse proposed treatment or to withdraw consent, in writing;
- A safe, humane treatment environment which provides you with reasonable protection from harm;
- Receive adequate nutrition, clothing, and health care;
- Be free from physical restraint unless prescribed by a physician, and to be free from such restraint when administered in place of a treatment plan or for the convenience of the staff;
- Be free from mental and physical abuse;
- Consent to being transferred from one facility to another;
- The prompt and periodic discussion of your rights and your clinical progress;
- A written discharge plan which details what your post-discharge needs are and what services should be sought to continue treatment; and,
- You have the right to bring grievances about your treatment, care, or rights to an impartial body within an evaluation facility or designated treatment facility.

YOUR LEGAL RIGHTS UNDER EMERGENCY COMMITMENT

When and Why You May Be Committed Under Emergency Detention

You may be picked up and detained in two ways: either a judge can order a police officer to take you to a mental health facility, or a police officer can detain you and take you to an appropriate mental health facility without a judge's order or warrant. The decision to detain you on an emergency basis must be based on either personal observation or another person's observation of your recent behavior that makes them believe that you are mentally ill and that you pose a substantial and imminent threat to either your safety or someone else's safety. Examples of behavior include attempting suicide, striking another person, or a recent pattern of severe emotional distress.

Where You Must Be Taken

After the police have picked you up, they must take you immediately to the nearest appropriate mental health facility.

You may be placed in the nearest appropriate mental health facility unless there is none available. If there is none available, then you may be placed in an alternative approved facility.

Only in an extreme emergency can you be put in a jail, or any other non-medical facility. If you are put there, you must be kept separate from people charged or convicted of a crime.

After You Have Been Taken to a Facility

You have the following rights after you have been taken to a facility for emergency commitment:

- You must be examined by a doctor within 24 hours after you were picked up, regardless of the facility in which you are placed.
- You can only be admitted to the facility if the doctor who examines you determines that you are mentally ill and you pose a substantial and imminent threat to yourself or others and emergency detention is the least restrictive way to restrain you from harm.

Upon Admission to the Mental Health Facility

Within 24 hours after you have been admitted to the mental health facility, you must be told, verbally and in writing, in the language you understand best, or if you are hearing or visually impaired, in the way you communicate best, the following rights:

- You must be told where you are and why you have been detained;
- You must be given the right to commit voluntarily;
- You must be told this emergency detention could turn into a longer commitment if an involuntary commitment proceeding is begun;

- You must be allowed to find an attorney of your choice and to talk with your attorney;
- You must be told that anything you say or how you act while you are at the facility may be used by the judge in further proceedings, such as involuntary commitment, to decide if you need to stay in the facility, and how long you need to stay;
- You must be allowed to leave the facility immediately unless the examining doctor finds you are mentally ill and that you pose a substantial and imminent danger to yourself or others and that you cannot be treated in a less restrictive manner;
- You must be told that you may not leave the facility if the examining doctor decides that you are mentally ill and that you pose a substantial and imminent danger to yourself or others and that you cannot be treated in a less restrictive manner; and,
- When you are released from emergency commitment, the facility must arrange, at no charge to you, to take you back to where you were picked up, or to your home, or to another suitable place.

If you are a minor or if you have a guardian, information about these rights must be also given to your parent or guardian.

Rights of People Receiving Voluntary Inpatient Mental Health Services

If you are in a mental health facility because you wanted treatment and signed an agreement to be hospitalized for treatment, you have these special rights:

- The right to ask your treatment team to decide if you need to stay at the facility or if you are ready to leave.
- The right to leave the facility within 48 hours, excepting weekends and holidays, after you sign a written request to leave, unless the hospital files an involuntary commitment application.

Nobody can ask a judge to order you to stay at a facility while you are a voluntary patient, except for two reasons:

- First, the doctor can ask for court-ordered mental health services if he or she thinks you need to be committed. A judge may decide that you need to be committed because you will hurt yourself or others if you are not committed. The judge may also decide that you need to be committed if your doctor believes that you will suffer distress and become unable to take care of yourself if you are not committed.
- Second, the doctor can ask for court-ordered mental health services if you refuse necessary treatment, or if you cannot agree to treatment and your doctor thinks that you need treatment. The judge may commit you if you are likely to hurt yourself or others if you are not committed. The judge may also commit you if your doctor testifies that he or she believes that you will suffer distress and become unable to take care of yourself if you are not committed.

When the hospital decides you are ready to be discharged, you can decide if you want the staff to tell your family the date of your discharge. If you do, the staff will contact your family. If you do not agree that the staff can tell your family you are being discharged, they cannot do so. If you believe one of your rights has been violated, contact your treatment team, the facility's patient's rights officer/representative, the facility's Medical Director, your attorney, any advocacy organization, including the Disability Law Center, the State Ombudsman, the Commissioner of the Department of Health and Social Services, or the court which may have been involved in your hospitalization.

Rights of People Receiving Involuntary Inpatient Mental Health Services

In certain cases, you can ask a judge to decide if it is legal to keep you in a mental health facility or jail against your will. If you should not be kept against your will, you must be immediately discharged from the facility. This might happen if, for instance, the judge thinks you are not likely to hurt yourself or others.

If you are in a mental facility because a court has ordered that you receive an evaluation or treatment, even a judge or a doctor cannot restrict the following rights:

- The right to treatment in the least restrictive appropriate setting. This means you have the right to treatment in a place that restricts your day-to-day life only as much as is necessary to protect you and others around you. It also means that your treatment should interfere little with your thinking, with taking care of personal needs, or with your ability to work;
- The right to a clean, safe, humane treatment environment where you will not be harmed;
- The right to proper mental health and medical treatment;
- The right to an independent evaluation by another doctor of your choice, as long as you pay the cost;
- The right to enough privacy for your personal needs, as long as this does not place you or other people in danger;
- The right to be told about your rights within one day (24 hours) of your admission to the facility. You must be told about these rights both orally and in writing, in the language you understand best. If you are hearing or vision impaired, these rights must be communicated to you in the way you understand best. If you are a minor, or if you have a guardian, information about these rights must also be given to your parent or guardian;
- The right to a written individual treatment plan based on your own needs that describes your diagnosis, problems, and specific needs. It must also contain a description of the short-term and long-term treatment goals, and a projected timetable for their attainment. Individual staff responsibility must be stated, and criteria needed for release to a less restrictive environment must be stated. The plan must be reviewed regularly to make sure it is the best way to help you;
- The right to participate in developing your treatment plan, if you want to participate. If you are under 16 years old, or if you have a guardian, your parent or guardian can also participate in developing your treatment plan;
- The right to information about the medications your doctor has prescribed, including the name of the medication, the dosage and schedule, the benefits expected from that medication, and the side effects and risks of the medication;

- The right to refuse to be a part of a research program or to refuse new, experimental drugs or treatment;
- The right to be informed, in writing, at admissions and discharges of Disability Law Center's address and telephone number;
- The right to send and receive uncensored mail;
- The right to find a lawyer to represent you, and the right to talk with and to write to your lawyer; and,
- The right to have your family notified of your discharge, if you want them to know.

Rights That May Only Be Restricted by a Judge

Unless a judge has held a hearing and made a written order restricting your rights, you have the right to:

- Register and vote in elections;
- Buy and sell property and to sign contracts;
- Sue and be sued;
- Have a driver's license and other kinds of permits, privileges, and benefits under the law;
- Have your treatment records kept confidential, unless you sign a release, or get into a lawsuit, or the court orders release of your records;
- Family decisions and relationships, such as the right to marry and have children. Unless a judge has taken custody of your children away from you, you can still decide for your children;
- Give consent or refuse to give consent to treatment with medication. If you refuse to consent to medication and you are in a state hospital, the law says that you cannot be forced to take medication unless the hospital gets a court order, or you are having a medication-related emergency. A medication-related emergency is a situation in which it is immediately necessary to administer medication to a patient to prevent immediate and serious harm to you or someone else because of your actions or threats. The doctor must petition the court to order the medication, and the medication can only be ordered after a hearing. You may be present at the hearing and be represented by an attorney at the hearing, at no cost to you. If the judge orders the medication, you can be required to take it.

The court proceedings that can limit your rights are guardianship, child custody, and mental health commitment proceedings.

If you have made an Advance Directive and included information about medications and preferences in non-emergencies, the judge and doctor must follow your instructions in the Advance Directive.

Rights That May Only Be Restricted by a Doctor or Treatment Team

Your doctor or treatment team may restrict some of your rights while you are receiving involuntary mental health services in a mental health facility.

Only your doctor can order that physical restraints be used on you.

If restraints are ordered, they must be taken off as soon as it is determined that the crisis requiring the restraints has been resolved. Anytime physical restraints are used on you, your doctor must note it in your treatment record.

Unless your doctor says in your records you cannot, you have the right to:

- Wear your own clothes and use your personal belongings;
- Have visitors in the facility, to talk by telephone, or write to people outside the facility. Your letters must not be opened, read, or changed by anyone in the facility unless you want them to be. The doctor can sometimes limit your right to have visitors and to write and talk with other people if the reasons for limiting these rights are put in your treatment record. Even if the doctor sets limits, you may always have confidential conversations (either verbally or in writing) with a lawyer who has agreed to represent you;
- Socialize with others, including the opposite sex; but your doctor may order these activities to be supervised;
- Physical activity and grounds privileges; and,
- When discharged, to a plan for your continued treatment (if you need continued treatment) that covers both your mental health and physical needs. You may refuse the services in this plan, unless a judge says you do not have this right.

RESTRAINT AND SECLUSION RULES AND PATIENT PROTECTIONS

Voluntary Behavior Interventions

During your stay in a mental health facility sometimes you may need assistance controlling your behavior. There are two (2) forms of behavioral interventions that can be used when you feel out-of-control or when your behavior is disruptive; voluntary and involuntary.

1. Voluntary behavioral interventions

Time Out

Time out is voluntary. Staff cannot force you to begin or end time out. You can end your time out whenever you want to. Time out is used only when you feel as if you need a place quiet and away from other people in order to either calm down or prevent you from getting angry or upset. You must ask staff if you can go to a safe place and stay there until you feel ready to interact with others again. If staff tries to block your exit from the time out room or threaten you with restraint, seclusion, or other consequences if you leave the time out room then this is no longer considered time out. Instead, it would be seclusion and the staff must follow the rules regarding seclusion. If your doctor believes that you should not be alone for long amount of time some restrictions can be placed on where you can go for time out.

2. Involuntary behavioral interventions

Seclusion

Seclusion is a place where there are no dangerous objects with which you can hurt yourself. It also has to be a place where you can be watched, and you cannot leave the area until you are no longer dangerous to yourself or others. Your doctor will determine what changes you need to make in your behavior to be released, and he or she must tell you exactly what behaviors you must show to be released. Once you are placed in seclusion, a staff member must check on you at least every 15 minutes. If you are given emergency medications and placed in seclusion, you must be watched continuously to receive help if problems occur from the medications. This continuous observation can be done with a video camera.

Restraint

When restrained, it means that all or part of your body movement is restricted. To restrict the movement of your body, various devices can be used. Examples are: leather restraints on your wrists and ankles tying you to a chair or bed, a vest that can tie you to a chair or bed, a body net that can be wrapped around you, a chair with a tray fastened to it, and other devices designed to keep you from moving. All of the devices that can be used on you must be safe, and should be made in a way to cut down on physical discomfort.

Some people may get worse when treated with seclusion or restraint. Many people who have been physically and/or sexually abused fear being locked up or tied down because of bad memories. If you believe that you have good reason not to have seclusion and/or restraint used as a treatment for you, you must tell your doctor. You need to tell your doctor about the experience or issue that makes you believe you should not be treated with seclusion and restraint. Tell your doctor before a need for seclusion or restraint arises. Sometimes, your doctor may believe that you must be secluded or restrained, even though you think it will make you worse.

When this happens, the doctor must justify why he or she thinks seclusion or restraint is the **only** way to keep you and others safe and must write the reason in your medical record.

Chemical Restraint

It is prohibited in the State of Alaska to use chemicals to restrain you. This means that medications given to sedate you rapidly can only be given with an emergency and under the circumstances described in this handout. These medications are usually given by injection and are emergency medications. If you are secluded or restrained, there should no longer be an emergency, and staff should not use a chemical restraint. If there is ever a situation where the only way to keep you from hurting yourself is to put you in restraint and give you medication, then you have to be watched continually until you are released. To do this, the staff may place a video camera near you to monitor your condition. Chemical restraint cannot be given for nonviolent behaviors.

Chemical Sprays

Chemical sprays, such as tear gas and pepper spray, cannot be used under any circumstances while you are in a mental health facility. It is illegal.

General Rights for Seclusion, Restraint, and Medication Restraint

Restraint, seclusion, and medication restraint can only be used in an emergency or in certain circumstances for medical and dental procedures. An emergency is when there is a possibility of immediate death or serious bodily harm to yourself and/or the possibility of serious physical or emotional harm to others.

Seclusion, restraint, and medication restraint are types of interventions that should only be a last resort, and they are only supposed to last long enough to help you regain control of yourself. The staff that works with you must use other ways to calm you down if possible before they use seclusion or restraint. Once staff restrains or seclude you, they must use the least amount of physical force that is reasonable and necessary for that situation. For you to be placed in seclusion or restraint, a doctor—or a registered nurse, if a doctor is not immediately available--has to initiate the process. Only a doctor can order medication restraint.

Restraint, seclusion, and medication restraint cannot be coercion, punishment, retaliation, for convenience of staff or other individuals, or as a substitute for effective treatment or habilitation.

If you are restrained, secluded, or restrained by medication over two (2) times in any 30-day period, you and your treatment team must have a meeting to review alternative strategies for dealing with behaviors necessitating the use of restraint, seclusion, or medication restraint. If the number of incidents of restraint or seclusion is not reduced, you and your treatment team will consult with the medical director or designee to explore alternative treatment strategies. While you are in restraint, seclusion, or medication restraint, you have all of the same rights that you have at any other time during your hospitalization. Your right to have your personal property can be restricted by your doctor when placed in seclusion or restraint. All personal items that can harm yourself or someone else can be taken away, including your clothing. However, you have the right to have safe clothing issued to you if yours are taken away. Your property must be put up for safekeeping and returned to you once you are out of seclusion or restraint.

While you are in restraint, seclusion, or medication restraint, you have the right to be treated with dignity and respect. You may also go to the bathroom at least once every two hours, have something to drink once every hour, take a bath at least once a day, eat all regularly scheduled meals and snacks, and the environment must be comfortable and well ventilated. If you are put in restraint, you have the right to be able to move your limbs or exercise for five minutes out of every hour. The staff member watching you during seclusion and restraint must check for adequate respiration and circulation, especially if you are in restraint.

Who May Order Restraint, Seclusion, or Chemical Restraint?

Only a doctor can order restraint, seclusion, or medication restraint if a doctor is immediately available. If a doctor is not immediately available, a clinically privileged registered nurse may initiate restraint or seclusion, but not medication restraint. Before a doctor or clinically privileged registered nurse can order restraint, seclusion, or medication restraint, they must view you and your behaviors to determine if the restriction is necessary. A doctor, if not immediately available when restraint or seclusion is started, must approve the restraint or seclusion in person or by phone within an hour after you have been placed in restraint or seclusion. After that, they must evaluate you face-to-face once every 12 hours.

How Long May You Be Restrained or Secluded?

The maximum time you can be restrained or secluded is based on your age. If you are an adult, the time cannot exceed four (4) hours. If you are between the ages of nine and 17 years, the time cannot exceed two (2) hours.

However, if, after this initial period, the doctor or registered nurse does not believe that you are ready to be let out of restraint or seclusion, they can continue the restraint or seclusion up to 12 hours. If you are in restraint or seclusion for 12 hours, and it is decided that you are not ready to be let out, a doctor must evaluate you face-to-face. The doctor then must write a new order in your record and sign it with date and time of the new order.

When May You Be Released from Restraint or Seclusion?

If you are no longer an imminent danger to yourself or others for 15 minutes, the clinically privileged nurse or doctor must evaluate you for release on a 30-minute trial period, even if the maximum time prescribed in the order has not expired. If you fall asleep while you are restrained, then you must be released from restraints. If you fall asleep in seclusion, the door must be unlocked and opened.

Restraint During Medical or Dental Procedures

Seclusion or restraint can also be used for medical or dental care as needed, this includes the use of quarantine if you have a contagious disease. If you need medical care or dental care, and to provide that care for you the doctor must keep you, or a part of your body, from moving, then the doctor can use restraint, but only if using restraint or seclusion is part of the facility's written medical or nursing procedures, and the procedures are recorded in your record. You may be free from any form of restraint not medically necessary. Restraint and seclusion cannot be used during a medical or dental treatment as a means of coercion, discipline, convenience, or retaliation by staff.

Protective and Supportive Devices

Protective and supportive devices cannot be coercion, punishment, retaliation, for convenience of staff or other individuals, as a substitute for effective treatment or habilitation, or in an emergency. They must be part of your treatment plan, and must be reviewed at each treatment plan review. Remember, you are supposed to be included in the meeting where your treatment plan is reviewed.

Protective Devices

Protective devices may keep you from hurting yourself when other, less restrictive interventions will not work. Protective devices include any device you cannot remove. Examples of protective devices are helmets for people with seizures, use of bed rails to prevent people from falling out of bed, and seat belts to prevent people from falling out of wheelchairs.

Using protective devices requires a doctor's order. If you continue to be placed in a protective device after one (1) week, then you and your treatment team must review the continued need for the device. At that meeting, you must be informed of what is being done to help you no longer need the protective device.

Supportive Devices

Supportive devices may help you have better support, like for sitting up or standing up, or to help you develop and maintain normal body functioning. An example of a supportive device is a Posey vest for an individual who cannot support himself or herself when sitting up in a chair. Using supportive devices requires a doctor's order. Before a supportive device can be used, you and your treatment team must talk over the need for the device. During this meeting there has to be an occupational or physical therapist present, or a registered nurse familiar with you and your needs. Your treatment team must document in your treatment plan the purpose for the device, why it needs to be used, and what the team will try to do so the device will not be needed.

YOUR LEGAL RIGHT TO REFUSE MEDICATION

When you can refuse medication?

You can refuse medication if you are in a hospital for psychiatric care (either a state facility or private psychiatric hospital) under an emergency commitment, a voluntary commitment, or under an order of protective custody.

When are you required to take medication?

You can be required to take medication under these circumstances:

- There is an emergency because your recent behavior shows you are likely to hurt yourself or others; or,
- You are under 16 years-of-age and your guardian or parent consents for you; or,
- You are involuntarily committed under a commitment order and a judge decides you are likely to hurt yourself or others, you cannot make this decision for yourself, and the medication is in your best interest and that no less intrusive alternative treatments are available.

Before You Decide to Take Medication

You must be told certain information about the medication before you are given the medication. You must be told this information both orally and in writing, in the language you understand best, or if you are visually or hearing impaired, in the way you communicate best. If you have a guardian or you are under 16-years-old, then your guardian or parent must also be given this information. You must be told:

- What condition is being treated with the medication;
- How the medication will help you;
- What might happen to your mental health if you refuse the medication;
- Any significant side effects and risks you may have if you take the medication;
- How the medication might mix with other drugs in your body;
- Any alternatives to taking the medication and why the doctor thinks they will not work as well for you;
- How long and how often you will take the medication; and,
- If you decide to take the medication, you can change your mind.

If someone other than the prescribing doctor gives you the above information, the prescribing doctor must meet with you personally within two (2) days (excluding weekends and holidays) to answer your questions.

You may also have an independent examination or evaluation by another doctor of your choice at your own cost. If you ask for an independent examination or evaluation, it must be arranged for you by the hospital.

Staff must note in your records whether you agree to take the medication or not, or whether it is given to you under emergency conditions or under a judge's order.

If You Agree to Take Medication

If you consent to take medication, your consent must be voluntary and without feeling pressured to agree. If you have a guardian, your guardian can consent to the medication.

If You Refuse Medication

You cannot be forced to take medication unless it is an emergency. In a non-emergency situation, if you refuse medication, your doctor must apply with the court for an order authorizing the administration of medication. A hearing will be held.

- You must be allowed to attend with an attorney--one will be appointed by the court. You have the right to a court-appointed attorney; if you wish to hire your own lawyer, you may do so.
- The judge will listen to what you and your doctor say, and determine if you lack the capacity to decide about whether to take the medication, and if treatment with the medication is in your best interest and no less intrusive alternative treatments are available.

The judge must consider:

1. your expressed preferences regarding treatment with psychoactive medication;
2. your religious beliefs;
3. the risks and benefits, from the perspective of the patient, of taking psychoactive medication;
4. the consequences to you if the psychoactive medication is not administered;
5. your prognosis if you are treated with psychoactive medication; and
6. alternatives to treatment with psychoactive medication.

After the judge decides, you can appeal the decision.

If You Must Take Medication

If a judge has decided that you must take medication, you have to take it until your commitment order has ended. Your doctor can increase or lower the dosage of your medication, and can give you another medication in the same class without additional approval from the court. However, the class (or classes) of medication you have been ordered to take cannot be changed without a court order. The class (or classes) of medications approved by the court will be attached to the order.

HOW TO MAKE A COMPLAINT ABOUT INPATIENT MENTAL HEALTH SERVICES

If you are receiving inpatient services and you think that your rights have been violated, there are several steps you can take to have your complaint investigated.

A. Treatment Team

Your treatment team includes the psychiatrist, psychologist, caseworker, nurse, a representative from the direct care staff (aide), and other representatives as necessary. Your treatment team develops, with your participation, your individual treatment plan. Your treatment team also must review your treatment plan periodically. You can talk to your treatment team about your complaint during review of your treatment plan, or at any other time, you feel the need to. If your treatment team cannot help you, ask to talk to the unit director. If you do not feel you received a proper response, contact the facility's Patient Advocate.

B. Patient Advocate

The Patient Advocate is the staff member at each facility responsible for protecting the legal and human rights of individuals receiving services from the facility. The Patient Advocate's job is to assist the patient in bringing grievances or help pursue other redress for complaints concerning care, treatment, and rights. The duties of the Patient Advocate may include:

- Meeting with you to discuss your complaint;
- With your permission, the advocate may rewrite your complaint or add to it to make sure it's complete and clearly written;
- Trying to resolve the problem during the meeting if possible;
- Providing a process for resolving complaints (arranging a special staffing to discuss your complaint with the treatment team);
- Problem-solving and providing individual advocacy services;
- Representing you at facility committee meetings when necessary; and,
- Referring your complaint to the next level for further investigation.

You may make a complaint with the Patient Advocate, or someone may file it on your behalf. You may make it verbally or in writing, but we suggest you follow-up any verbal complaint with a written one.

C. Disability Law Center of Alaska

The Disability Law Center operates independently of any state agency that provides care or treatment. We have legal access to any facility in the State, which provides care or treatment. The authority to investigate incidents of abuse and neglect extends to private residences and facilities and public facilities. To make a complaint of abuse or neglect, or if you believe your rights have been violated while a patient at a mental health facility, you may contact one of our regional offices at the contact information listed below:

Anchorage Office:

3330 Arctic Blvd., Suite 103
Anchorage, Alaska 99503

(907) 565-1002

Fairbanks Office:

1949 Gillam Way Suite H
Fairbanks, Alaska 99701

(907) 456-1070

Juneau Office:

230 South Franklin, Suite 206
Juneau, Alaska 99801

(907) 586-1627

Toll free in Alaska: 1 (800) 478-1234
akpa@dlcak.org email
www.dlcak.org

HOW TO MAKE A COMPLAINT ABOUT OUTPATIENT MENTAL HEALTH SERVICES

If you are receiving treatment for mental illness in an outpatient capacity and you are not satisfied with the care and treatment you are receiving you may ask the facility to address your concerns. Each provider that accepts state funding, including Medicaid and Medicare, must have a complaint process that allows a patient to file a grievance. While the grievance procedure is different for each provider, the following apply to filing a grievance:

1. Try to resolve the matter directly with your provider in person before filing a grievance;
2. If you cannot informally resolve the matter, inquire about the patient grievance process used by the provider;
3. Follow the grievance process and submit your grievance in writing and keep a copy;
4. If you are not satisfied with the provider's response to your grievance, you may appeal the response to the Director of the Division of Behavioral Health. Submit your appeal to the following address in writing:

Director
Division of Behavioral Health
3601 C Street, Ste 934
Anchorage AK 99503

Phone (907) 269-3410
Fax (907) 269-81665

5. If you are not satisfied with the Division of Behavioral Health's response to your grievance, you may submit an appeal to the State of Alaska Americans with Disabilities Act Coordinator at this address:

State of Alaska ADA Coordinator
801 West 10th Avenue, Suite A
Juneau, Alaska 99801-1894

Voice/TTY: (907) 465-6929
Main: (907) 465-2814
Fax: (907) 465-2856
Toll-free Voice/TTY: (800) 478-2815

If, after following these steps, you do not receive a satisfactory response you may contact the Disability Law Center.

ADVANCE DIRECTIVES

AS 13.52.010 effective January 2005

An advance directive enables you to give instructions about your own health care if you are unable to communicate your wishes. It must be signed and validated before you become mentally or physically incapacitated. The advance directive is a legal document that enables you to provide instructions whether to donate organs upon your death, whether to prolong or discontinue artificial means of life support, and what kinds of care, medication, and other, is to be provided.

An advance directive allows you to appoint someone to make health care decisions for you if you cannot communicate your wishes because of mental or physical incapacity. You can also instruct your agent to make sure your wishes are followed. There are special provisions in the law regarding individuals with mental illness.

The legislature intended for all individuals to be treated equally regarding end-of-life decisions. The differences are in whether the treatment is for mental illness or non-mental illness, *not in whether you have a mental illness.*

A health care provider who acts with diligence to ensure the validity of your Advance Health Care Directive, and who acts in good faith and under accepted health care standards is not subject to civil or criminal liability or to discipline for unprofessional conduct for complying with your Directive. A health care provider or institution that violates the law regarding Advance Directives may be liable to you or your estate. It is highly likely that the medical professional will honor your wishes.

The Health Care Decisions Act gives an example of an Advance Health Care Directive and divides the Directive into five parts:

Part I: Durable Power of Attorney for Health Care Decisions

Part II: Instructions for Health Care

Part III: Anatomical Gift at Death

Part IV: Mental Health Treatment

Part V: Primary Physician

You can use the sample provided for in the statute, you can modify it, use parts of it and eliminate others, or you can write your own. However, if you make an advance directive, but do not choose an agent under Part I, the law provides that a surrogate will be appointed to decide what you have not addressed in the directive.

The law is flexible on the form of the advance directive. Any form will be valid as long as the directive complies with Alaska law. There are also requirements for establishing a valid advance directive. Information on validating, changing, or revoking an advance directive will be addressed at the end of this section.

Advance Health Care Directive

The following explains each of the five parts of the sample advance health care directive:

Part I. Durable Power of Attorney for Health Care Decisions

What is it?

- A legal document you use to name another person as your agent to make health care decisions for you if you lose the capacity to make them yourself.
- “Power of Attorney” does not mean that an agent must be an attorney.

Who can be an agent?

- Any person except the owner, operator, or employee of the health care institution where you are receiving care. (However, an owner, operator, or employee of the health care institution at which you are receiving care can be your agent if that person is related by blood, marriage, or adoption.)
- Although almost anyone can be an agent, your agent should be an adult friend or family member who knows you well and whom you trust without reservation. This person may have the power over your life and death should you become incapacitated.

When does it go into effect?

- Unless you specify otherwise, the authority of your agent becomes effective only upon a determination you lack capacity, and the authority ceases to be effective upon a determination you have recovered your capacity
- In all situations *not* involving mental illness, your primary physician determines whether you have lost or recovered capacity to make your own health care decisions. The same rule applies to individuals with mental illness if the cause of your inability to make your decisions is not mental illness.
- With mental illness, when
 - a court makes a determination you no longer have capacity to decide, or
 - in an emergency, your primary physician or other health care provider can make the determination.
- You can indicate on the form if you want your agent’s authority to be effective immediately.

What authority does my agent have?

Your agent has only the authority you give him or her - no more, no less. You cannot give your agent authority you do not have.

However, unless you specifically limit your agent’s authority, your agent will have the right to

- Consent or refuse to consent to any care, treatment, service or procedure affecting a mental or physical condition, including the use of psychotropic medications;
- Select or discharge providers and institutions;
- Approve or disapprove of diagnostic tests, surgical procedures and medications;
- Approve or deny providing, withholding, or withdrawal of artificial nutrition and hydration, and all other forms of health care; and,
- Make an anatomical gift after death.

Your agent does not need court approval to take any of these actions.

Your agent’s authority supersedes that of a guardian.

Is there anything my agent cannot do?

There are actions your agent cannot authorize unless you specifically grant such authority, or it is necessary to preserve your life or to prevent serious impairment of your health. These actions include:

- Abortion;
- Sterilization;
- Psychosurgery (i.e. brain surgery, such as lobotomy); and,
- Removal of bodily organs.

NOTE: You can give the agent authority in these areas if you specifically say so. If this is not addressed, the agent does not have the authority.

Does the agent have any obligation?

Yes. As soon as the agent accepts the nomination, s/he must make health care decisions for you under your instructions.

If there are no instructions, and your wishes are unknown, your agent must decide under your “best interests”. Your agent must consider your religious and other personal values in determining your best interests.

You can limit your agent’s authority by using Parts II, III and IV, or another document that spells out your instructions, conditions, and limitations.

Part II. Instructions for Health Care

If you want to give your agent the full authority described above you do not need to add Parts II, III and IV of the sample advance directive contained in the statute. The Disability Law Center recommends that you review the document before you make that decision.

Part II enables you to control end-of-life decisions including:

- Ending your life;
- Prolonging your life;
- Artificial nutrition and hydration;
- Relief from pain;
- Other wishes; and,
- Conditions or limitations.

Part III. Anatomical Gift at Death

If you wish to allow your agent to decide regarding an anatomical gift at death, you need not complete this part. Your agent has this authority. However, if you desire, you can complete this part, and limit your agent's authority to make an anatomical gift at death. Completing this part allows you to specify which, if any organs, to donate and for what purposes.

Part IV. Mental Health Treatment

If you wish to allow your agent to decide regarding mental health treatment, you need not complete this part. Unless you specifically limit your agent's authority, your agent may consent or refuse to consent to any care, treatment, service, or procedure affecting a mental or physical condition, including the use of psychotropic medications.

This document becomes effective only if you are not competent and cannot make treatment decisions. You are competent unless you are deemed incompetent by:

- A court; or
- Two physicians, one of whom is a psychiatrist; or
- A physician and a mental health clinician.

The Mental Health Treatment section addresses:

- Psychotropic medications. You can consent to some and not others, and specify conditions and limitations;
- Admission to and retention in a facility. You can consent to or refuse one facility or another, and specify conditions and limitations, such as length of time.

You may also express other wishes and instructions to meet your needs and desires. If you want to expressly forbid certain people from having input into decisions about your care, you may do that.

Part V. Primary Physician

This section enables you to request a physician. If that physician is willing, able, and available, the request will be honored.

What happens if I name no agent to act as my Durable Power of Attorney?

Except with mental health treatment, if your primary physician determines that you lack capacity and you have no agent or a guardian, a surrogate may act for you.

With mental health treatment, a surrogate may decide regarding mental health treatment if there is no agent or guardian available and:

- Mental health treatment is needed on an emergency basis; and,
- The patient has been determined to lack capacity by:
 - two physicians, one of whom is a psychiatrist; or,
 - a physician and a professional mental health clinician.

If a close relative or friend does not step forward as surrogate, the law assigns a priority to family members as follows, in descending order of priority:

- Spouse, unless legally separated;
- Adult child;
- Parent;
- An adult sibling.

A health care decision made by a surrogate is effective without court approval.

You may disqualify any other person from acting as your surrogate while you have capacity.

You can do this by executing a valid advance directive.

A surrogate may not be an owner, operator, or employee of the health care facility where you are a patient unless related to you by blood, marriage, or adoption.

How do I execute a valid advance directive?

An advance directive must be:

- In writing;
- Signed by you; and,
- Witnessed in one of the two following manners:

- signed by at least two individuals known by you. Both must have either watched you sign the document, or witnessed your acknowledgment you signed it, OR
- acknowledged before a notary public at a place in this state.

NOTE: The agent cannot also be a witness.

How can I change or revoke an advance directive?

Except with mental illness, you may revoke the designation of an agent only by a signed writing or by informing the supervising health care provider; you may revoke all or part of an advance directive in any manner that communicates the intent to revoke.

With mental illness, you may revoke all or part of an advance directive if you do not lack capacity and are competent. The agent retains authority if the advance health care directive remains valid. For revocation, a determination you lack capacity can only be made by:

- By a court in a guardianship proceeding; or,
- By two physicians, one of whom is a psychiatrist; or,
- By a physician and a professional mental health clinician; or,
- By a court under Title 47 holding, you are gravely disabled.

With divorce, annulment, separation, or dissolution of marriage the authority of a spouse named as agent is automatically revoked unless otherwise specified in the decree or the advance directive.

Who has to follow the Advance Directive?

- Any supervising health care provider aware of the existence of or any changes to, an advance directive must promptly record it in your health care record.
- Health care providers, institutions, and facilities must comply with your instructions.

What if my instructions are against a provider's policies?

If a provider will not comply with your instructions because of conscience or the policies of the facility, the provider must advise you or your agent or surrogate immediately, provide continuing care, and assist with transfer arrangements to a facility that can comply with your wishes

Are there any other circumstances where a provider does not have to do as I request?

Yes. A provider need not comply with your wishes if:

- The request is for ineffective health care; or,
- It is against accepted health care standards.

Is there any way to stop the effect of an Advance Health Care Directive?

Yes. You, your agent, guardian, surrogate, or health care provider can petition the superior court to enjoin or direct a health care decision or order other relief. This might occur if someone wants to challenge your competency at the time of making the Directive.

Recommendations

1. Your Directive will be easier to enforce if you can prove you were competent when you prepared and signed it. To prove you were competent:
 - Visit your mental health provider on the same day you prepare the Directive;
 - Have your provider make a note in your record that you are competent to make and to communicate your health treatment decisions, including mental health treatment;
 - Obtain a copy of that record and keep it with your Directive; and,
 - When you give your Directive to your doctor, agent, and anyone else, make sure a copy of that medical record is attached.
2. Utilize the notary form of validation. You may also want to have it properly witnessed before having it notarized. If you do this, it will be easier to enforce in court if someone challenges your competency when you made it.
3. When preparing the form, ask for help in making it complete and clear. Your designated agent, family, friends, and other peer advocates may help you prepare the form. Your caseworker or other mental health treatment provider may also have valuable input about how to clarify your wishes to other providers. If someone else has reviewed it, ask if it is clear and understandable.
4. Make your preferences specific, and include types of treatment not already on the form, for example:
 - When listing drugs, list dosages and manufacturers;
 - When listing preferred providers, include addresses and phone numbers;
 - When listing preferred institutions, include addresses and phone numbers;
 - List types of therapy you feel are most effective for you, including diet, exercise, cognitive behavior therapy, psychotherapy, group therapy, etc. State how often and by what provider, or what kind of provider (e.g., doctor, nurse, social worker, case manager, etc.);
 - Distinguish between different treatments for different circumstances if that is important.

5. When you choose your agent, choose someone who:
 - Knows you well and for a long time;
 - Respects your values and preferences;
 - Can be contacted easily when needed;
 - Can communicate effectively with providers; and,
 - Can explain your preferences and why they are important to you.
6. Give copies of your Directive to your primary physician and mental health providers, including doctors, therapists, caseworkers, agent, family members, and friends.
7. Keep a card in your wallet stating that you have an Advance Health Care Directive. List the name and phone numbers of the doctors and others with copies of these documents.
8. Keep a list of the names of all the people with a copy of your Advance Health Care Directive. If you revoke or change these documents, you will know who should get copies of the revocation or changes made.

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All laws are subject to change by legislation and by court decisions. This information is not intended to be legal advice. It is a Public Education resource. Readers should use the guide for information, and then ask question about their own individual needs.



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