

**RIGHTS  
OF  
MENTALLY RETARDED  
OR  
MENTALLY DEFICIENT  
PATIENTS  
UNDER  
MINNESOTA'S  
HOSPITALIZATION  
AND  
COMMITMENT  
ACT**

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St. Paul, Minnesota 55101**



## INTRODUCTION

This leaflet has been prepared to inform patients, relatives and state hospital employees of the rights of mentally retarded or mentally deficient patients guaranteed under the Minnesota Hospitalization and Commitment Act which became effective January 1, 1968. Significant portions of the law concerning these rights at the time of admission, during and after hospitalization are outlined here.

### Minnesota Department of Public Welfare

The Minnesota Department of Public Welfare has the responsibility for the state-operated, supervised, or supported comprehensive community-based mental health-mental retardation program composed of:

- The state mental hospital system
- The county welfare system
- The community programs system, including mental health centers
  - Grants-in-aid to support local community mental health-mental retardation programs
  - Grants-in-aid to support daytime activity centers for the retarded.

The county welfare departments carry basic responsibility for the county mental health-mental retardation programs. The state mental hospitals and facilities serve as resources in a comprehensive mental health-mental retardation program. A patient in a state mental hospital or facility is, at the same time, a client of the county welfare department in the county where he has legal residency.

The county public mental health-mental retardation program calls for the closest possible relationship between the county welfare departments and the state mental hospitals and facilities.

### Definitions

The term "mentally deficient" is applied to a person found to be mentally deficient **by the probate court**. Such commitment in mental deficiency does not commit the person to an institution, but provides that the Commissioner of the State Department of Public Welfare shall be guardian of the person and commits him to the care and custody of the commissioner who may place such a ward in an appropriate home, hospital or institution, or exercise general supervision over him anywhere in the state outside of any institution through any county welfare board.

The term "mentally retarded" **describes** sub-average intellectual and social functioning. It is of use primarily for social planning for the person. This term is used for the hospitalized person for whom there has been no legal action for determination of incompetency.

## **TYPES OF ADMISSION**

The following legal bases for admission to state hospitals apply to the mentally retarded or mentally deficient:

### **Voluntary**

Voluntary hospitalization for the mentally retarded is arranged by the county welfare department and requires written application by the adult retarded person. The person must be able and willing to sign for voluntary admission.

A child under 21 years of age may be admitted as a voluntary patient on the application of his parent or guardian. If the child understands the significance of the application, it is desirable to obtain the child's written application. When the patient reaches the age of 21 years, he must sign an application for voluntary admission.

Voluntary application for a profoundly or severely retarded adult is discouraged. For such a person 21 years of age or older, a guardian should be appointed. The guardian may be a private individual or the commissioner.

### **Department Authorized Admission**

For the individual who has been committed to state guardianship as mentally deficient, the county welfare department providing supervision of that person may apply to the state hospital for the retarded for admission when that is the most appropriate resource to meet the individual's need. The person may be admitted as a "department authorized" admission.

### **Additional Department Authorized Admissions**

The commissioner also may authorize admissions for the following:

- Persons committed to the guardianship of the commissioner as dependent and/or neglected.
- Red Lake Indian children from a reservation under a contract with the U. S. Bureau of Indian Affairs.
- Persons committed to the Youth Conservation Commission.

## **District Court Commitment**

Significant features of the district court commitment of a mentally retarded person are:

- Commitment is directly to a state hospital for safe keeping and treatment.
- The state hospital must retain the patient until the patient has "wholly recovered." Visits outside of the hospital and vacations are prohibited unless authorized by district court.
- The patient is released from a hospital when a certificate is presented to the court in writing by the chief medical officer certifying that the patient is "wholly recovered and that no person will be endangered by his discharge."

This type of legal action is strongly discouraged.

## **ON ENTERING THE HOSPITAL**

### **Notice of Rights**

Voluntary patients are informed in writing before admission of the right to object to admission, leave the hospital and communicate with others. Children or youths under 21 years of age may not leave the hospital without the consent of their parent or guardian who applied for their admission.

The hospital administrator or medical director will assist patients in preparing written requests for discharge.

On admission, all patients and their families shall be informed of the patients' rights during hospitalization.

## **RIGHTS DURING HOSPITALIZATION**

### **Communication**

From the time of admission, all patients have the right to communicate by suitable means and at acceptable hours with a reasonable number of persons; and to meet privately with an attorney, personal physician and at least one family member.

## **Medical Examination**

Voluntary patients must be examined within 48 hours after date of admission. Other patients must be examined as soon **as** possible after admission.

## **Writ of Habeas Corpus**

All patients have the right to the writ of habeas corpus—that is, a legal order directing the hospital medical director and patient to appear in court for a hearing to determine proper or improper hospitalization.

In the case of a committed mentally deficient ward, a request to the county welfare department acting as agent of the Commissioner of the State Department of Public Welfare is a more appropriate procedure. If satisfaction with planning does not result, then a petition for restoration to capacity may be filed with the probate court.

Any person may appeal the decisions of the probate court before the district court. This appeal does not cancel the probate court order until it is reversed or amended by the higher court.

## **Review Board**

Review boards, which evaluate patient admissions and retention, visit the hospital at least once every six months. Voluntary and committed patients have the right to appear before the board, and may request this at any time.

The parent or guardian may, on behalf of the patient, including minors, request that the patient be brought before the review board. The parent or guardian will be notified of the review board meetings. Employees receiving requests for such appearances will notify the hospital medical director. Incoming patients are notified in writing of the date of the board's next visit to the hospital. The board may examine patient medical records and interview patients. Its findings are reported to the Commissioner of the State Department of Public Welfare.

## **Legal Rights**

Adult patients (except those committed as mentally deficient and others specifically judged incompetent) have all legal rights, including the right to vote, marry, enter into contract, hold a driver's license if eligible, sue and be sued, sign legal documents, sell property and make purchases. Other state laws do permit the hospital to hold and manage the patient's money and personal property for his protection.

Commitment in mental deficiency is an official judgment of legal incompetency.

Court proceedings for the appointment of a financial guardian may be initiated for either voluntary or committed patients to protect their property rights.

The state or county social welfare fund may be utilized for holding funds in trust for wards.

### **General Rights**

Restraints will not be used unless a physician decides that it is necessary to protect the patient or others. Each use and reason will be entered in the patient's medical records.

Patients may correspond freely with the Governor, Commissioner of the State Department of Public Welfare, the court and other official agencies, and may communicate with their physician and attorney without interference or censorship.

Patients may correspond with at least one person outside of the hospital, privately and without censorship. Paper, stamped envelopes and pre-addressed postcards for receipt of letters will be furnished. Correspondence must be mailed promptly; outgoing and incoming mail will not be opened or read. This right may be restricted by the hospital medical director if necessary for the patient's medical welfare. Any limitation will be noted in the patient's records. All mail not delivered to the patient will be returned immediately to the sender.

Patients are entitled to receive all visitors within the hospital's general rules and any limitation authorized by the medical director. The patient's personal physician, clergyman and attorney are permitted to visit at all reasonable times.

All patients have the right to practice their religion. The hospital chaplain will be available for consultation.

A physical and mental examination is required at least annually.

Consent must be obtained from the patient's relatives or guardian for necessary surgical operations. If the family or guardian cannot be located, the hospital medical director may give consent. He also may authorize emergency operations. If the patient is a ward, the consent of the commissioner should be requested when no relative can be located. Consent of the adult voluntary patient must be obtained. If the patient is a minor, consent from his parent or guardian is required.

# **METHODS OF DISCHARGE AND RELEASE**

## **Community Placement**

When a voluntary or a committed patient no longer needs hospitalization, a plan for community placement is developed by the county welfare department in cooperation with the hospital, the patient and his family, and other appropriate persons and agencies. Planning for discharge will include arrangements for suitable clothing and transportation.

Committed patients may be placed in the community through the county welfare department on a trial placement basis which may extend up to a year. The county welfare department shall see that a suitable community plan is formulated and carried out.

In the case of voluntary patients, the county welfare department also is responsible for planning and services. In some cases, direct services may not be needed.

## **Voluntary Patients**

An adult voluntary patient must submit his request to leave in writing to any staff member of the hospital. In the case of a minor, his parent or guardian must submit the request in writing. The hospital must discharge the person within 72 hours (excluding Saturdays, Sundays and legal holidays) unless a petition for commitment has been filed in probate court, either in the county where the patient has legal residence or in the county where the hospital is located. The hospital medical director or any person may file a petition before the 72-hour period ends for commitment to guardianship as mentally deficient if discharge is not in the best interest of the patient, his family or the public. The court may issue a "hold" order until a hearing is scheduled. The patient may request a change of venue to move the hearing to the probate court in his county of residence.

## **Court Judgment of Competency, Need for Hospitalization**

Any interested person can petition for a court order (1) directing that a patient no longer needs hospitalization, or (2) directing that he no longer is mentally deficient, or (3) restoring the patient's legal competency.



After the petition is filed, the court must give ten days' notice of the hearing to the patient, his attorney, the hospital medical director, the county attorney and the commissioner. Any person may oppose the petition.

The court shall appoint two examiners, one of whom must be a physician, and may also appoint a person skilled in the ascertainment of mental deficiency to examine the patient.

The patient has the right to attend the hearing and cross-examine witnesses, including the examiners.

Patients must be represented by an attorney for the hearing. The court will appoint an attorney if the patient or others do not provide legal assistance.

The county attorney shall attend the hearing and oppose the restoration of the patient in the probate court and in the appellate courts if he determines it for the best interest of the public.

Results of the hearing will be sent to the Commissioner of the State Department of Public Welfare, who then will comply with the court order.

## **TRANSFER TO OTHER FACILITIES**

### **Within State Hospital System**

Patients admitted by department authorization may be transferred from a state hospital for the mentally retarded to state facilities for the mentally ill with special units for mentally retarded patients. The county welfare department, and when possible, the patient's family should participate in such planning.

Voluntary patients cannot be transferred except for temporary medical transfers. Consent for such temporary medical transfers must be obtained in writing from the adult retardate or his guardian, or from parents or guardian of a minor patient.

## **AFTERCARE SERVICES**

### **Community Aftercare Services**

Before the patient leaves the hospital, the county welfare department and the hospital shall develop a plan for his aftercare, in cooperation

with his family or relatives whenever possible. Other local agencies, such as the community mental health center, day activity center, public school district, public health nurse, the patient's personal physician, and the vocational rehabilitation office may be contacted. These services may include medical and psychiatric treatment, nursing care, education, vocational training, and other needed assistance. The county welfare department shall supervise and assist the patient in locating employment, housing, suitable leisure-time activities, adequate medical treatment, and provide financial assistance such as old age assistance, aid to the disabled, medical assistance or direct relief for which the patient may be eligible.

## **EPILEPTIC WARDS**

Persons committed to the guardianship of the Commissioner of the State Department of Public Welfare as epileptic may be hospitalized in state hospitals if this is the most appropriate resource to meet their needs. These persons have the same rights as those committed as mentally deficient. A commitment in epilepsy is not a finding of incompetency.