§ 27-5-9. Rights of patients

W. Va. Code, § 27-5-9

§ 27-5-9. Rights of patients

Effective: August 12, 2010

Currentness

(a) No person may be deprived of any civil right solely by reason of his or her receipt of services for mental illness, intellectual disability or addiction, nor does the receipt of the services modify or vary any civil right of the person, including, but not limited to, civil service status and appointment, the right to register for and to vote at elections, the right to acquire and to dispose of property, the right to execute instruments or rights relating to the granting, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, but a person who has been adjudged incompetent pursuant to article eleven of this chapter and who has not been restored to legal competency may be deprived of such rights. Involuntary commitment pursuant to this article does not of itself relieve the patient of legal capacity.

(b) Each patient of a mental health facility receiving services from the facility shall receive care and treatment that is suited to his or her needs and administered in a skillful, safe and humane manner with full respect for his or her dignity and personal integrity.

(c) Every patient has the following rights regardless of adjudication of incompetency:

1. Treatment by trained personnel;

2. Careful and periodic psychiatric reevaluation no less frequently than once every three months;

3. Periodic physical examination by a physician no less frequently than once every six months; and

4. Treatment based on appropriate examination and diagnosis by a staff member operating within the scope of his or her professional license.

(d) The chief medical officer shall cause to be developed within the clinical record of each patient a written treatment plan based on initial medical and psychiatric examination not later than seven days after he or she is admitted for treatment. The treatment plan shall be updated periodically, consistent with reevaluation of the patient. Failure to accord the patient the requisite periodic examinations or treatment plan and reevaluations entitles the patient to release.

(e) A clinical record shall be maintained at a mental health facility for each patient treated by the facility. The record shall contain information on all matters relating to the admission, legal status, care and treatment of the patient and shall include all pertinent documents relating to the patient. Specifically, the record shall contain results of periodic examinations, individualized
(f) Every patient, upon his or her admission to a hospital and at any other reasonable time, shall be given a copy of the rights afforded by this section.

(g) The Secretary of the Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to protect the personal rights of patients not inconsistent with this section.

Credits

Editors' Notes

Relevant Additional Resources

Additional Resources listed below contain your search terms.

HISTORICAL AND STATUTORY NOTES

Acts 2007, c. 167, made nonsubstantive gender neutral modifications throughout the section; in subsec. (a), substituted “person may be” for “person shall be”, “nor does the receipt of the” for “nor shall the receipt of such”, and “article does not” for “article shall not”; in subsec. (b), substituted “from the facility” for “therefrom”; in subsec. (c), in the introductory clause, substituted “has the following” for “shall have the following”; in subsec. (d), substituted “entitles” for “shall entitle”; and rewrote subsecs. (e) and (g), which formerly read:

“(e) A clinical record shall be maintained at a mental health facility for each patient treated by the facility. The record shall contain information on all matters relating to the admission, legal status, care and treatment of the patient and shall include all pertinent documents relating to the patient. Specifically, the record shall contain results of periodic examinations, individualized treatment programs, evaluations and reevaluations, orders for treatment, orders for application for mechanical restraint and accident reports, all signed by the personnel involved.

“A patient's clinical record shall be confidential and shall not be released by the department of health or its facilities or employees to any person or agency outside of the department except as follows:

“(1) Pursuant to an order of a court of record.

“(2) To the attorney of the patient, whether or not in connection with pending judicial proceedings.

“(3) With the written consent of the patient or of someone authorized to act on the patient's behalf and of the director to:

“(i) Physicians and providers of health, social or welfare services involved in caring for or rehabilitating the patient, such information to be kept confidential and used solely for the benefit of the patient.
“(ii) Agencies requiring information necessary to make payments to or on behalf of the patient pursuant to contract or in accordance with law. Only such information shall be released to third-party payers as is required to certify that covered services have been provided.

“(iii) Other persons who have obtained such consent.

“No patient record, or part thereof, obtained by any agency or individual shall be released in whole or in part to any other individual or agency, unless authorized by the written consent of the patient or his legal representative.”

“(g) The board of health shall promulgate rules and regulations to protect the personal rights of patients not inconsistent with this section.”


Relevant Notes of Decisions (6)

View all 23
Notes of Decisions listed below contain your search terms.

Separation of powers

It was for Department of Health and not Supreme Court of Appeals to develop an appropriate plan for the entire reorganization of the mental health care delivery system in West Virginia in accordance with legislative standards. Code, 27-5-9. E. H. v. Matin, 1981, 284 S.E.2d 232, 168 W.Va. 248. Constitutional Law 2552; Mental Health 20

Detoxification and alcoholism treatment

Director of the Department of Health has the duty to assure the admission of all persons for detoxification services at community health centers without regard to their ability to pay for such services. Code, 16-1-1, 16-1-10(19), 27-2A-1, 27-5-9. McGraw v. Hansbarger, 1983, 301 S.E.2d 848, 171 W.Va. 758. Chemical Dependents 10

Where a public inebriate, who has been remanded to the custody of the Department of Health as a danger to himself or others, requires inpatient care, such care must be provided. Code, 27-5-9. McGraw v. Hansbarger, 1983, 301 S.E.2d 848, 171 W.Va. 758. Chemical Dependents 11.1

Mental health records

Statute, providing for confidentiality of mental health records, was inapplicable in newspapers' action seeking writ of prohibition to prevent enforcement of court order prohibiting publication of information relating to acts, diagnosis, and treatment of individual who was convicted as an adult of first-degree sexual assault and who was no longer a minor, but was at time of treatment where information released to press was not released by department of health, its agents or employees and document released was not a clinical record. Code, 27-5-9. State ex rel. Register-Herald v. Canterbury, 1994, 449 S.E.2d 272, 192 W.Va. 18. Mental Health 21

Power of court

Order to reopen underlying mandamus action, brought by residents of state mental hospital alleging that they were confined under conditions violating statute setting forth specific enforceable rights for entire population of state's mental hospitals, for
evidentiary hearing to determine whether Department of Health and Human Resources (DHHR) failed to comply with time line it had agreed to in consent order concerning services to individuals with traumatic brain injuries fell within circuit court's inherent powers to reinstate cause which has been dismissed by parties' consent and enter such orders as may be necessary to enforce decrees entered before dismissal. State ex rel. Matin v. Bloom, 2009, 674 S.E.2d 240, 223 W.Va. 379. Mandamus \(\text{175}\); Mental Health \(\text{51.20}\)

Order to reopen underlying mandamus action, brought by residents of state mental hospital alleging that they were confined under conditions violating statute setting forth specific enforceable rights for entire population of state's mental hospitals, for evidentiary hearing to determine whether violations of statute were occurring at hospitals fell within circuit court's power to ensure that Department of Health and Human Resources (DHHR) complied with legislative mandates that patients receive treatment guaranteed them by statute; many of the same issues that were present at time of decision in underlying mandamus action, including overcrowding and mixing of patient populations, continued to be problems, and evidentiary hearing came about for same reason court monitor was installed at beginning of case, i.e., because of possible statutory violations. State ex rel. Matin v. Bloom, 2009, 674 S.E.2d 240, 223 W.Va. 379. Mandamus \(\text{175}\); Mental Health \(\text{51.20}\)

W. Va. Code, § 27-5-9, WV ST § 27-5-9
Current with legislation of the 2022 First Special Session, Regular Session, Second Special Session, Third Special Session, and Fourth Special Session.

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