

What is a residential treatment program?

- Means when an individual resides on the premises of a mental health facility, hospital, clinic, institution or supervisory residence or nursing home for diagnosis, evaluation, care or treatment to change mental or emotional condition or behavior of individual.

What are some of the rights people have in residential treatment programs?

- Know your rights.
- Participate in legal process any time you believe your rights have been taken away or limited illegally or without good cause.
- Speak to attorney at any time and be represented by an attorney at all court proceedings.
- See visitors of your choice on daily basis during visiting hours.
- Meet in private at any “reasonable” time with your attorney, clergy, physician, social worker or a psychologist.
- Make and receive confidential telephone calls including “reasonable” use of long distance.
- Send and receive sealed and uncensored mail and have access to postage stamps and writing material.

- Participate in religious worship; freedom from pressure not to do so or accept religious beliefs.
- Clean and comfortable bed and secure storage for personal belongings.
- Reasonable privacy in sleeping and personal hygiene practices.
- Daily physical and outdoor exercise including access to recreational areas and equipment.
- Appetizing, nourishing, well-balanced and varied diet.
- Prompt and adequate medical attention for physical ailment.
- Clean, safe and comfortable physical and psychological environment.
- Freedom from unnecessary or excessive medication.
- Involvement in preparation of treatment plan to meet your needs.
- Free from seclusion or restraint except when necessary to prevent injury to yourself or others, or if behavior causes substantial interference with treatment unit.
- All information in medical records is confidential; including fact that you are receiving or have ever received mental health services.

- Refuse or consent to treatment including medication. You must understand all information given to you about the proposed treatment. Your consent must be voluntary and not obtained through force or threatening you in any way. You have the right to withdraw your consent at any time. If licensed physician believes that giving you psychotropic medication is necessary to protect you from serious harm, it can be given to you on emergency basis without your consent. Physician must write report in your medical file explaining why emergency medications had to be administered without your consent and was the least drastic means of protecting you from serious harm.
- Access your medical records and make copies. You may add information to your records to clarify or correct anything you feel is inaccurate. Your request to read your records may be denied because your physician or other mental health professional believes, and has noted in your records, that reading records would be harmful to you. If denied access to your records, you have the right to petition court for an order allowing you to read entire record.

Can any of these rights be restricted?

- Some of these rights can be denied or restricted by your clinician for “good cause” or for safety or therapeutic reasons.

- If rights are denied or restricted, your clinician must document in your medical record the reason and how long rights will be denied. The right must be restored when the reason for denial no longer exists.

What is difference between Voluntary versus Involuntary?

- Involuntary means that a person has been committed by the court or brought to the program during an emergency and unwilling or unable to agree to admission.
- Voluntary means a person has agreed to the admission for up to 30 days. As a voluntary patient you can request discharge at any time by notifying the director, clinician or other staff. It is a good idea to make your request for discharge in writing and keep a copy for yourself although not necessary. The program may refuse your request because you need and probably will benefit from continued treatment. The program must file a petition for a Commitment Hearing to hold you against your will.

What is a Commitment Hearing?

- The court will decide if you will be discharged or make an order based on “clear and convincing evidence” to involuntarily continue your admission.

- Hearing must be held within 5 days of your request to be released if you are voluntary patient. For an involuntary patient the hearing will be held within 7 days of admission. You will be represented by an attorney to present evidence and cross-examine witnesses.

What is a Treatment Guardian?

- Any interested person can petition court for appointment of treatment guardian when a person is believed to be incapable of making own mental health treatment decisions. A hearing must be held within 3 court days of filed petition.
- Court may appointment treatment guardian if court finds by “clear and convincing evidence” that person is not capable of making own treatment decision.
- Appointment is for a limited time of up to one year.
- Treatment guardian must consult with individual regarding opinions and decisions about any proposed treatments including medications.
- May appeal decision of treatment guardian by filing petition with court within 3 calendar days of receiving notice of treatment guardian’s decision.

Who do I contact if my rights have been improperly denied?

- If a person thinks that any rights in brochure have been improperly denied or restricted, call Disability Rights New Mexico and ask to speak with Mental Health Advocate.

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In May of 1986, Congress passed legislation requiring each state to provide protection and advocacy services to persons receiving mental health services in residential facilities. In New Mexico Disability Rights New Mexico (DRNM) provides these services. DRNM is an independent, non-profit agency that has been providing advocacy services to persons in New Mexico with disabilities since 1979.

Mental health advocates at DRNM investigate complaints regarding incidents of abuse or neglect of persons receiving mental health services in hospitals, community residential programs, nursing homes, boarding homes, jails, prisons and forensic settings, or within three months of discharge from such a facility. In addition to physical abuse, mental cruelty, or failure to provide a safe and humane environment, complaints regarding inappropriate or inadequate treatment services can also be reviewed and/or investigated. DRNM can assist with issues such as the right to refuse treatment or the exercise of personal rights within a residential treatment program.

As an advocacy agency, DRNM is committed to protecting the rights of recipients of mental health services and following their wishes whenever reasonable and possible. While it is DRNM’s policy to use informal methods of negotiation and problem solving first, the agency has the authority to take legal action on behalf of clients.

Personal Rights of Adults Receiving Residential Treatment Services



Disability Rights New Mexico

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