

What is an out-of-home program?

- Provides 24-hour care and supervision to children with purpose of providing mental health treatment/habilitation. Examples include psychiatric hospitals, residential treatment facilities, treatment foster care, group homes, non-medical and community-based residential treatment centers.

What are some of the rights children have in out-of-home treatment programs?

- Placed in facility with fewest restrictions necessary to meet treatment needs.
- Access to Disability Rights New Mexico and an attorney of your choice if you are not entitled to a public defender.
- See visitors of your choice on daily basis including “reasonable” access to family members.
- Meet in private at any “reasonable” time with your attorney, guardian ad litem, clergy, CYFD representative, DRNM representative, physician 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 public education within 10 days of admission including special education services.

Can any of these rights be taken away?

- Yes. Some of these rights can be denied or restricted by your clinician for “good cause” or for safety or therapeutic reasons. It must be done on individual basis and facility can’t

- have policy that denies rights to all patients (i.e., Level Policy). Rights can’t be denied as a form of punishment or because facility doesn’t have enough staff.
- 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 the difference between legal right and privilege?

- Law protects rights, while privileges are “earned” and can be taken away as part of a behavior modification program.

What is the difference between Voluntary and Involuntary admission to residential treatment program?

- 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 60 days. Any person 14 years or older can request a voluntary admission. A parent, guardian or legal custodian would have to agree to the admission of a child under age 14. 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?

- 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.
- The court will decide if you will be discharged or make an order based on “clear and convincing evidence” to involuntarily continue your admission. No period of commitment may exceed 60 days.

Can I refuse to take my medications?

- It depends on your age. If you are 14 years and older you may refuse or consent to medications. If you are younger than 14, medications may be given only with consent of your parent, guardian or legal custodian.

What is a Treatment Guardian?

- Person appointed to make treatment decision for you when court has determined you can't.

Restraint and Seclusion

- If you are a danger to yourself or others in the program and no other "less restrictive" way to handle problematic behavior, you could be placed in restraint or seclusion.
- Restraint and seclusion are used only when other less restrictive measures have been considered or tried without success. Can't be used for punishment.
- Only specially trained staff are permitted to use restraints or place a person in seclusion.
- Must be taken out of restraint or seclusion when problem has been resolved or behavior is no longer dangerous.

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

- If you have been treated unfairly or had rights in this brochure improperly denied, call Disability Rights New Mexico and ask to speak with Mental Health Advocate.

The laws of the State of New Mexico guarantee certain legal rights to persons under the age of 18 who are receiving residential mental health treatment.

This brochure is designed to answer questions you may have about your legal rights as a person receiving residential mental health care, and to help you exercise those rights if you choose to do so.

If you have questions that are not addressed by this brochure, you may call an advocate from Disability Rights New Mexico at 1-800-432-4682, or in Las Vegas, at (505) 425-5265, or Las Cruces at (575) 541-1305.

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If other information or more copies of this brochure are needed, you can contact Disability Rights New Mexico at (505) 256-3100 Albuquerque, or toll-free statewide 1-800-432-4682.

Personal Rights of Child in Out-of-Home Treatment Programs



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