

HEALTH AND SAFETY CODE CHAPTER 576. RIGHTS OF PATIENTS

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TITLE 7. MENTAL HEALTH AND MENTAL RETARDATION

SUBTITLE C. TEXAS MENTAL HEALTH CODE

CHAPTER 576. RIGHTS OF PATIENTS

SUBCHAPTER A. GENERAL RIGHTS

Sec. 576.001. RIGHTS UNDER CONSTITUTION AND LAW. (a) A person with mental illness in this state has the rights, benefits, responsibilities, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) Unless a specific law limits a right under a special procedure, a patient has:

- (1) the right to register and vote at an election;
- (2) the right to acquire, use, and dispose of property, including contractual rights;
- (3) the right to sue and be sued;
- (4) all rights relating to the grant, use, and revocation of a license, permit, privilege, or benefit under law;
- (5) the right to religious freedom; and
- (6) all rights relating to domestic relations.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.002. PRESUMPTION OF COMPETENCY. (a) The provision of court-ordered, emergency, or voluntary mental health services to a person is not a determination or adjudication of mental incompetency and does not limit the person's rights as a citizen, or the person's property rights or legal capacity.

(b) There is a rebuttable presumption that a person is mentally competent unless a judicial finding to the contrary is made under the Texas Probate Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1309, Sec. 2, eff. June 16, 2001.

Sec. 576.003. WRIT OF HABEAS CORPUS. This subtitle does not limit a person's right to obtain a writ of habeas corpus.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.004. EFFECT ON GUARDIANSHIP. This subtitle, or an action taken or a determination made under this subtitle, does not affect a guardianship established under law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.005. CONFIDENTIALITY OF RECORDS. Records of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 1007, Sec. 1, eff. June 19, 1993; Acts 1997, 75th Leg., ch. 481, Sec. 1, eff. Sept. 1, 1997.

Sec. 576.0055. DISCLOSURE OF NAME AND BIRTH AND DEATH DATES FOR CERTAIN PURPOSES. (a) In this section, "cemetery organization" and "funeral establishment" have the meanings assigned by Section 711.001.

(b) Notwithstanding any other law, on request by a representative of a cemetery organization or funeral establishment, the administrator of a mental health facility shall release to the representative the name, date of birth, or date of death of a person who was a patient at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release the person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subsection only for the purpose of inscribing the name or date on a grave marker.

Added by Acts 2003, 78th Leg., ch. 174, Sec. 1, eff. May 27, 2003.

Sec. 576.006. RIGHTS SUBJECT TO LIMITATION. (a) A patient in an inpatient mental health facility has the right to:

- (1) receive visitors;
- (2) communicate with a person outside the facility by telephone and by uncensored and sealed mail; and

(3) communicate by telephone and by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to the general rules of the facility. The physician ultimately responsible for the patient's treatment may also restrict a right only to the extent that the restriction is necessary to the patient's welfare or to protect another person but may not restrict the right to communicate with legal counsel, the department, the courts, or the state attorney general.

(c) If a restriction is imposed under this section, the physician ultimately responsible for the patient's treatment shall document the clinical reasons for the restriction and the duration of the restriction in the patient's clinical record. That physician shall inform the patient and, if appropriate, the patient's parent, managing conservator, or guardian of the clinical reasons for the restriction and the duration of the restriction.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.06, eff. Aug. 30, 1993.

Sec. 576.007. NOTIFICATION OF RELEASE. (a) The department or facility shall make a reasonable effort to notify an adult patient's family before the patient is discharged or released from a facility providing voluntary or involuntary mental health services if the patient grants permission for the notification.

(b) The department shall notify each adult patient of the patient's right to have his family notified under this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.008. NOTIFICATION OF PROTECTION AND ADVOCACY SYSTEM. A patient shall be informed in writing, at the time of admission and discharge, of the existence, purpose, telephone number, and address of the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Sec. 10801, et seq.).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.51, eff. Aug. 30,
1993; Acts 1993, 73rd Leg., ch. 705, Sec. 4.06, eff. Aug. 30, 1993.

Sec. 576.009. NOTIFICATION OF RIGHTS. A patient receiving involuntary inpatient mental health services shall be informed of the rights provided by this subtitle:

(1) orally, in simple, nontechnical terms, and in writing that, if possible, is in the person's primary language; or

(2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.07, eff. Aug. 30,
1993.

SUBCHAPTER B. RIGHTS RELATING TO TREATMENT

Sec. 576.021. GENERAL RIGHTS RELATING TO TREATMENT. (a) A patient receiving mental health services under this subtitle has the right to:

(1) appropriate treatment for the patient's mental illness in the least restrictive appropriate setting available;

(2) not receive unnecessary or excessive medication;

(3) refuse to participate in a research program;

(4) an individualized treatment plan and to participate in developing the plan; and

(5) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

(b) Participation in a research program does not affect a right provided by this chapter.

(c) A right provided by this section may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 1309, Sec. 3, eff. June 16,
2001.

Sec. 576.022. ADEQUACY OF TREATMENT. (a) The facility administrator of an inpatient mental health facility shall provide adequate medical and psychiatric care and treatment to every patient in accordance with the highest standards accepted in medical practice.

(b) The facility administrator of an inpatient mental health facility may give the patient accepted psychiatric treatment and therapy.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.023. PERIODIC EXAMINATION. The facility administrator is responsible for the examination of each patient of the facility at least once every six months and more frequently as practicable.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.024. USE OF PHYSICAL RESTRAINT. (a) A physical restraint may not be applied to a patient unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.025. ADMINISTRATION OF PSYCHOACTIVE MEDICATION.

(a) A person may not administer a psychoactive medication to a patient receiving voluntary or involuntary mental health services who refuses the administration unless:

(1) the patient is having a medication-related emergency;

(2) the patient is younger than 16 years of age, or the patient is younger than 18 years of age and is a patient admitted for voluntary mental health services under Section 572.002(3)(B), and the patient's parent, managing conservator, or guardian

consents to the administration on behalf of the patient;

(3) the refusing patient's representative authorized by law to consent on behalf of the patient has consented to the administration;

(4) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Section 574.106; or

(5) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

(b) Consent to the administration of psychoactive medication given by a patient or by a person authorized by law to consent on behalf of the patient is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the treating physician or a person designated by the physician provided the following information, in a standard format approved by the department, to the patient and, if applicable, to the patient's representative authorized by law to consent on behalf of the patient:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable health and mental health consequences of not consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication;

(E) the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected; and

(F) the proposed course of the medication;

(3) the patient and, if appropriate, the patient's representative authorized by law to consent on behalf of the patient is informed in writing that consent may be revoked; and

(4) the consent is evidenced in the patient's clinical record by a signed form prescribed by the facility or by a statement of the treating physician or a person designated by the physician

that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c) If the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the patient and, if appropriate, the patient's representative who provided the consent, to review the information and answer any questions.

(d) A patient's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the patient's clinical record.

(e) In prescribing psychoactive medication, a treating physician shall:

(1) prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically; and

(2) administer the smallest therapeutically acceptable dosages of medication for the patient's condition.

(f) If a physician issues an order to administer psychoactive medication to a patient without the patient's consent because the patient is having a medication-related emergency:

(1) the physician shall document in the patient's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and

(2) treatment of the patient with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the patient's personal liberty.

(g) In this section, "medication-related emergency" and "psychoactive medication" have the meanings assigned by Section 574.101.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.09, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 322, Sec. 3, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 1477, Sec. 31, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 35, Sec. 14, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 48, Sec. 2, eff. May 17, 2005.

Acts 2005, 79th Leg., Ch. 717, Sec. 7, eff. June 17, 2005.

Sec. 576.026. INDEPENDENT EVALUATION. (a) A patient receiving inpatient mental health services under this subtitle is entitled to obtain at the patient's cost an independent psychiatric, psychological, or medical examination or evaluation by a psychiatrist, physician, or nonphysician mental health professional chosen by the patient. The facility administrator shall allow the patient to obtain the examination or evaluation at any reasonable time.

(b) If the patient is a minor, the minor and the minor's parent, legal guardian, or managing or possessory conservator is entitled to obtain the examination or evaluation. The cost of the examination or evaluation shall be billed by the professional who performed the examination or evaluation to the person responsible for payment of the minor's treatment as a cost of treatment.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.09, eff. Aug. 30, 1993.

Sec. 576.027. LIST OF MEDICATIONS. (a) The facility administrator of an inpatient mental health facility shall provide to a patient, a person designated by the patient, and the patient's legal guardian or managing conservator, if any, a list of the medications prescribed for administration to the patient while the patient is in the facility. The list must include for each medication:

- (1) the name of the medication;
- (2) the dosage and schedule prescribed for the administration of the medication; and
- (3) the name of the physician who prescribed the medication.

(b) The list must be provided within four hours after the facility administrator receives a written request for the list from the patient, a person designated by the patient, or the patient's legal guardian or managing conservator and on the discharge of the patient. If sufficient time to prepare the list before discharge is not available, the list may be mailed within 24 hours after discharge to the patient, a person designated by the patient, and the patient's legal guardian or managing conservator.

(c) A patient or the patient's legal guardian or managing conservator, if any, may waive the right of any person to receive the list of medications while the patient is participating in a research project if release of the list would jeopardize the results of the project.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.10, eff. Aug. 30, 1993.