

908 KAR 3:010. Patient's rights.

RELATES TO: KRS Chapters 202A, 202B

STATUTORY AUTHORITY: KRS 194.050, 202A.191, 202A.196, 202B.060, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, created the Cabinet for Health and Family Services and placed the Department for Behavioral Health, Developmental and Intellectual Disabilities within the cabinet. KRS Chapters 202A and 202B, relating to the hospitalization of an individual with mental illness, developmental or intellectual disabilities, direct that the Secretary for the Cabinet for Health and Family Services shall adopt rules and administrative regulations which insure proper administration and enforcement of these chapters. The function of this administrative regulation is to describe the rights of an individual with mental illness, developmental or intellectual disabilities patients and to establish rules for the use of seclusion, restraint, and treatment under emergency situations, in the treatment of these patients.

Section 1. Definitions. For purposes of this administrative regulation, the following definitions shall apply:

- (1) "Individual treatment plan" means a written document which is a part of each patient's medical record and which must contain, but is not limited to:
 - (a) A statement of the diagnosis of the patient;
 - (b) The short and long-range objectives of care and treatment;
 - (c) The methods of treatment to be employed;
 - (d) The names of persons responsible for preparing and implementing the plan.
- (2) "Substantive changes" means those changes which reflect distinct changes in goals of treatment, methods to be employed and the names of persons primarily responsible for overall review or implementation of the individual treatment plan:
 - (a) Changes in the amount, frequency of administration, or specific type of medication shall not be considered substantive changes unless the changes involve introduction of new classes of medication including antipsychotic or anticonvulsant drugs;
 - (b) Changes in the frequency, duration, place or supervision of daily activities shall not be considered substantive changes unless the changes exclude participation in the activities previously identified in the treatment plan or initiation of new activities which could not be reasonably anticipated on the basis of short and long-term treatment goals.
- (3) "Emergency situation" means the presence of a situation in which a patient's behavior in the present environment is such that it presents an immediate and substantial danger or threat of immediate or substantial danger to that person or to others.
 - (a) Behavior included in this definition extends to verbal threats or abuse toward other patients which creates a substantial risk that other patients may react in a manner which poses an immediate substantial danger or threat of immediate substantial danger to themselves or others, or which will interfere in a substantial manner with the realistic opportunity of other patients to improve their own level of functioning through care and treatments in a hospital or residential treatment center;
 - (b) Substantial deviation from an individual treatment plan which is formulated with the mutual consent of the staff and the patient or which is approved pursuant to a court hearing, or the overt or repetitious violation of rules and procedures of the hospital or residential treatment center by the patient which presents an immediate and substantial danger to that person or to others may also be considered as an emergency situation, provided the patient has previously been fully informed as to the content of the patient's individual treatment plan and as to the rules and procedures which may be applicable to the patient's behavior.

(4) "Restraint" means the application of any physical device, the application of physical body pressure by another in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to an individual with mental illness, developmental or intellectual disabilities resident with the sole or primary purpose of controlling or limiting the physical activities of the patient or resident.

(5) "Seclusion" means the confinement of a an individual with mental illness, developmental or intellectual disabilities patient alone in a locked room.

(6) "Authorized representative" means the patient's attorney, guardian of a disabled adult, parent or guardian of a juvenile, or an individual authorized in writing by the patient to act in the patient's behalf.

Section 2. Right to be Adequately Informed. Each patient shall be adequately informed as to the patient's individual treatment plan.

(1) A written individual treatment plan shall be prepared and entered into the medical record of each patient. The treatment plan shall be subject to periodic review and shall be modified in the event of substantive changes;

(2) Each patient and the patient's authorized representative shall have access to a written copy of the patient's individual treatment plan;

(3) Upon written request, each patient and the patient's authorized representative shall also be provided access to the patient's entire medical record. In the event that full access to the medical record is refused, the patient shall be given a response in writing documenting the reasons for such refusal;

(4) In the case of minors or other persons who appear incapable of reading or understanding a written treatment plan, a summary of pertinent features of the treatment plan may be presented orally, and the responses of parents, guardians or other members of the immediate family shall be entered into the medical record if these persons can be located.

Section 3. Right to Assist in Treatment Plan. Each patient shall have the right to assist in the planning of the treatment program.

(1) Each patient shall be informed of the contents of the patient's individual treatment plan and the verbal, written or behavioral responses to this information shall be entered in the medical records. If possible, the responses of a patient to the patient's treatment plan shall be used to review and modify its contents including, but not limited to, the objectives and methods of treatment to be employed;

(2) In the cases of minors and other patients who appear incapable of reading or understanding their treatment plans, the responses of parents, guardians, or other members of the immediate family shall be entered into the medical records if these persons can be located.

Section 4. Right to Refuse Treatment.

(1) Patients may, under certain conditions, refuse treatment offered to them by the hospital. The refusal shall be clearly documented in the medical records.

(a) All patients, whether admitted voluntarily, or committed on an involuntary basis as the result of a hearing held pursuant to KRS Chapter 202A or 202B, have the right to refuse treatment. A patient who refuses treatment may be forcibly treated only pursuant to a court order after a de novo review as set forth in KRS 202A.196.

(b) If no court findings exist to support the implementation of a specific treatment plan which is unacceptable to the patient, the treatment may be implemented or continued only in an emergency situation documented in the medical records of the patient. The hospital or residential treatment center shall seek to develop an alternative plan of treatment acceptable to both the hospital or residential treatment center and the patient

or secure a court order sanctioning forced treatment. If the hospital or residential treatment center and a voluntarily admitted patient cannot agree on an acceptable alternative plan of treatment, the hospital or residential treatment center may discharge the patient or pursue other remedies under law as may be necessary. If the hospital or residential treatment center prior to obtaining a judicial order for forced treatment determines that an emergency exists and that the patient presents an immediate and substantial danger or threat of immediate and substantial danger to self or others, the hospital or residential treatment center may intervene in the least intrusive manner possible while simultaneously seeking a de novo review.

(2) Refusal to participate in the treatment plan shall be clearly documented in the medical record and shall be honored unless an emergency situation exists or the activity has been reviewed and approved in a court hearing.

(3) In the absence of an emergency situation, the patient shall not be subjected to loss of any other privileges which the patient has at the time of refusal unless such privileges are clearly documented in the individual treatment plan as being contingent upon participation in that area where participation has been refused.

(4) If the emergency situation persists for a period of more than seventy-two (72) hours, the treatment team shall evaluate the treatment plan and make changes necessary to meet the needs of the patient. If the patient refuses the revised treatment program, emergency treatment may continue as long as the emergency continues to be documented in the patient's record and the treatment review committee shall be informed and shall proceed according to law.

Section 5. Right to Personal Effects.

(1) Each patient shall have the right to maintain, keep, and use personal effects, items or money except in the following instances:

- (a) Retention of the item would be contrary to the patient's individual treatment plan;
- (b) Retention of the item poses a threat of subjecting the patient or others to substantial physical harm;
- (c) Retention of the item would subject it to a substantial risk of loss, theft or destruction by the patient or other persons;
- (d) Retention of the item would substantially impair the opportunity of the patient or other patients to benefit from care and treatment in the hospital; or
- (e) Retention of the item is contrary to rules and administrative regulations of the hospital which are reasonably related to the health and safety of the patient or other patients, except that the rules and administrative regulations shall be waived when possession of the item is a part of the patient's individual written treatment plan.

(2) After written notice to a discharged patient, hospitals and residential treatment centers may dispose of all unclaimed personal items 180 days after discharge. Any proceeds from the sale of the items shall be used for the benefit of persons residing at the hospital or residential treatment center.

Section 6. Right to Receive Visitors.

(1) All patients shall have the right to meet with friends and relatives. This right shall not be waived except in the following instances:

- (a) Exercise of the right would be inconsistent with the written provisions of the individual treatment plan, or
- (b) An emergency situation exists.

(2) Each hospital or residential treatment center shall establish and post conspicuously rules governing visitors and visiting hours.

(3) All patients shall also have the right to refuse to meet with friends or relatives except that the right may be waived if the meetings are prescribed in the patient's individual treatment plan.

- (4) Patients shall have the right to meet their authorized representative during nonvisitation hours, if suitable arrangements are made in advance with the hospital or residential treatment centers.

Section 7. Right to Receive Compensation for Work Done. Each patient shall have the right to receive payment for work performed on behalf of the hospital.

- (1) All patients shall be provided compensation as designated by appropriate federal and state statutes and regulations for work performed at a hospital or residential treatment center where the work is of consequential economic benefit to the hospital or residential treatment center, any person, agency, or organization outside the hospital or the Commonwealth of Kentucky.

- (2) The patient shall have the absolute right to refuse to perform any work except activities of immediate and direct benefit to the patient and the patient's personal comfort.

Section 8. Right to De Novo Review. Involuntarily committed patients may be provided electroshock therapy or psychosurgery only pursuant to a court order after a de novo review as set forth in KRS 202A.196.

Section 9. Use of Seclusion and Restraint. The use of seclusion and other mechanical restraints in hospitals or residential treatment facilities shall be limited and shall be carried out only with appropriate precautions.

- (1) Seclusion and other mechanical restraints used for the sole or principal purpose of controlling behavior which is the result of mental illness shall be instituted only when part of an individual treatment plan or in an emergency situation.

- (2) If use of seclusion or restraints is warranted under this section, the following rules shall apply:

- (a) The medical records shall document the conditions which prevail at the time of the use of these treatments and shall include the order of a licensed physician prescribing or justifying the treatment;

- (b) Mentally ill persons placed in seclusion or subjected to the use of mechanical restraints other than to prevent or treat self-inflicted injury or to treat a concomitant medical or surgical disorder shall be individually observed and the need for continuing restraints or seclusion determined by a hospital or residential treatment facility employee at least every fifteen (15) minutes. In addition, the patient shall be seen daily by a physician and the reasons for continued use of this treatment procedure shall be documented in the medical records;

- (c) The patients shall be permitted access to toilet facilities at least every two (2) hours and to bathing facilities every forty-eight (48) hours;

- (3) No order by a licensed physician for seclusion or use of mechanical restraints shall be effective longer than twenty-four (24) hours after the treatment is implemented, and must be renewed if the treatment continues to be necessary, except where the treatment is prescribed to prevent or treat self-inflicted injury or a concomitant medical or surgical disorder; provided that any renewal order shall state the necessity for the continued treatment.

- (4) In no circumstances shall restraints or seclusion be used principally or solely for the treatment of mental illness except as part of the documented individual treatment plan or in response to a documented emergency unless the treatment has received a review and approval by the court.

(Recodified from 902 KAR 12:020, 3-7-1989; 18 Ky.R. 1685; eff. 1-10-1992; TAm eff. 11-3-2004; TAm eff. 4-27-2016; Crt eff. 12-18-2019.)