

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.

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 out-of-home treatment 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.

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

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DISABILITY RIGHTS NEW MEXICO

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

What is an out-of-home Treatment or Habilitation Program?

- Provides 24-hour residential 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, and 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.
- “Reasonable” private access to calls including “reasonable” use of long distance.
- Send and receive sealed and uncensored mail and have access to postage stamps and writing material.
- Freedom to participate in religious worship and/or freedom from pressure to do so or to accept religious beliefs. Reasonable accommodation for religious worship and transportation to nearby religious service.
- 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 ailments.

- Freedom from unnecessary or excessive medication.
- Clean, safe and comfortable physical and psychological environment.
- 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 System or 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 rights and privileges?

- 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 a residential treatment program?

- Involuntary means that a person has been committed by the court or brought to the program during an emergency and is unwilling or unable to agree to admission.
- Voluntary means a person has agreed to the admission in an out-of-home treatment program 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 voluntary admission of a child under age 14. Your rights in an out-of-home treatment program will be explained within 7 days of your voluntary admission by your attorney (child 14+) or guardian ad litem (child less than 14). As a voluntary patient, you (child 14+) or legal custodian (child less than 14) can request discharge at any time

by notifying the director, clinician or other staff. It is a good idea to make a request for discharge in writing and keep a copy for yourself, although not necessary. The program may refuse a request for discharge because program determines that 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 (child 14+) or within 7 days of your legal guardian’s request (child under age 14) if a 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 medication?

- 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 decisions for you when the court has determined you can’t.

Restraint and Seclusion

- If you are a danger to yourself or others in the program and there is no other “less restrictive” way to handle your 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.