



YOUR RIGHTS

Rights of Individuals with Mental Illness

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Introduction

This booklet is designed to assist you in understanding your legal, human, and civil rights. Please note: this booklet is intended to provide general information only, and is not intended as legal advice. The information in this booklet comes from both Wyoming and federal law, which includes statutes, administrative rules, and court decisions. Your rights are set forth in the United States and Wyoming Constitutions and various statutes, regulations, and case law. However, you should know that your rights may be limited by court order or for reasons which may be outlined in your individualized treatment plan. For legal advice regarding your rights, you should contact an attorney. The Wyoming State Bar Association operates a lawyer referral service. For lawyer referrals, please contact the Wyoming State Bar office at (307) 632-9061 or cduncil@wyomingbar.org.

What are Legal Rights and Duties?

A right is a power, privilege, or immunity secured to a person by law. A duty is a legal obligation that is owed or due to another individual and that needs to be satisfied. You do not lose your rights just because you have a mental illness, or because you are receiving treatment services from a mental health provider. Rights can protect and support you in your recovery. You are protected by both federal and state laws in the same manner as all citizens. Legal rights help provide you the freedom to be who you want to be and to pursue a satisfying and meaningful life. If you feel that your rights have been violated, know that you have recourse by filing a complaint with appropriate authorities.

You have many fundamental personal rights, including: freedom of speech; freedom of press and association; free exercise of religion; the right to vote; the right to marry and dissolve marriage; the right to choose whether to have offspring; the right to have custody of and direct the upbringing of your child; the right to interstate travel; the right of political association; the right to file a complaint if someone commits a crime against you; and the right to go to court to sue in a civil action. A fundamental right has greater protection than other rights under the law. For example, being able to choose an ice cream flavor at an ice cream stand is a right, but voting for political candidates in an election is a fundamental right. Such fundamental personal rights deserve high levels of judicial scrutiny before being limited by state governmental action or by a state official. You can consult with client advocates, patient representatives, client rights officers, or attorneys about your fundamental rights.

Rights of Individuals Living Independently

You have the right to services that help you to live as independently as possible, and to live, work, exercise, and relax with the most freedom of choice.

It is your right to look the way you want, according to your own unique preferences. This

includes the right to wear your own clothing, jewelry, or make-up. To the same extent as any other citizen, it is your right to read what you want to read including books, magazines, and newspapers without facing any sort of punishment.

You have a right to visit a doctor, community mental health center, medical facility, or other professional as soon as you need treatment services. You have the right to request medical care and treatment in order to help support you and your recovery. You should ask your doctor, nurse, counselor, or case manager if you believe you require medical attention. Staff members who provide you services have a duty to talk with you before actual services are provided about when and where your treatment meeting will be conducted. You can choose whether to have someone such as a friend, family member, or advocate with you at your treatment meeting if you so desire. You also have the right to be part of any decision about whether or not you will take medicine or receive treatment.

You have the right to choose whether to be involved in a religion. You have the right to religious freedom and practice which means that you can believe whatever you want about a particular religion or spirituality in general. Other individuals cannot force you to believe in something you do not want to believe in. In addition, you may express what you believe by praying or by going to places of worship such as churches, temples, synagogues, or mosques.

You have the right to practice the religion or kind of spirituality you choose, or not to practice any religion or spirituality at all. If you exercise your right to practice your religion or spirituality, then you have to practice in a manner that does not take away the rights of other people or otherwise violates the law. If you want to travel to a location to practice your religion or spirituality, you can ask for help getting to that location if you cannot get there on your own.

You have the right to socialize with others and develop meaningful relationships. You can associate, interact, and communicate with individuals of your choice. The exercise of associational rights helps you become a part of the community. For example, you have the right to choose friends, have visitors, and to make and receive telephone calls and letters.

You have the right to vote for public officials if you qualify under the Wyoming Election Code, but you are not required to exercise your voting right. The statute defines a qualified elector as: (a) every citizen of the United States, (b) who is a bona fide resident of Wyoming, (c) who has registered to vote, and (d) will be at least eighteen years of age on the day of the election. A qualified elector is not: (1) a person who is “currently adjudicated mentally incompetent” or (2) a person who has been convicted of a felony with civil or voting rights not restored.

You have the right to ask for help from election officials or poll workers if you do not know how to register or if you need help getting to your voting place on election day. You can request special assistance at the voting place such as someone to read the ballot to you or someone to help you cast your vote at the booth. You also have the right to take a person you choose into the voting booth with you to provide you with technical assistance if you need it.

That person has a duty not to direct or coerce you to vote for something or someone you do not want to vote for in a particular election. If you cannot vote on election day, cannot get to the voting place, or choose to vote early, you can use an “absentee ballot” to cast your vote. You can request an “absentee ballot” at your local county clerk’s office and must submit the completed ballot within the required time frame. If you are challenged on election day, then you have the right to fill out a “provisional ballot” which may or may not be counted at a later time depending on whether you are determined to be a qualified elector.

You have the right to make choices in your life such as where you live, who you live with, and how you spend your time. You have the right to live in the community with family, friends, or by yourself. If you choose to live within the community, then you can tell your treatment team that you want to live in the community.

You also have the right to spend your time by working or engaging in activities that are important to you. There are laws that protect you from being treated unfairly at work or from being fired from a job solely because you have a mental illness. You can request help finding a job, or for getting the education or training you need to obtain a job that is suitable to your interests. You also have the right to not be discriminated against during your job search and hiring. You may consult with an attorney or advocate about how to request reasonable accommodations you might need which are individualized to assist you on the job.

You have the right to be free from physical, verbal, financial, or emotional abuse. If another individual hits you, hurts you, threatens you, or touches you in way that makes you feel uncomfortable then doctors, nurses, staff members, and case workers who provide services must inform the police if they know you are being abused. You also have recourse by self-reporting such abuse to appropriate agencies or trusted individuals of your choice.

You have the right to be free from neglect. If you have caregivers, such individuals are obliged to assist you in being safe, warm, and healthy. If you do not have enough food or water, or a safe place to live, then you should ask for assistance from your local mental health center.

The law permits you to decide what medical and/or mental health care you want in the future by writing your decision in a document called an “Advance Directive,” if you create the document while competent. The document must be used if at a later time doctors decide that you are not able to make your own decisions regarding your medical and/or mental health care. This document is used only when you are unable to make your own decisions about medical and/or mental health care. Others cannot force you to create an “Advance Directive,” and you do not have to create such a document if you choose not to do so.

You have the right to request services from governmental agencies. For example, you have the right to apply for public housing through your local housing authority. You must not exceed the current general public housing income and asset eligibility limits to be considered for public housing. Housing discrimination based on your race, color, national origin, religion, sex,

family status, or disability is illegal by law. If you have been trying to buy or rent a home or apartment and you believe your rights have been violated, you can file a fair housing complaint with the Department of Housing and Urban Development (“HUD”).

You have the right to apply for work-related assistance from the Division of Vocational Rehabilitation (“DVR”). You have the right to receive a comprehensive assessment of your rehabilitation needs to help determine eligibility once you have requested services, once you have provided information that helps start the assessment process, and after you have set a date to complete the assessment. If you are a Supplemental Security Income (“SSI”) recipient or Social Security Disability Insurance (“SSDI”) beneficiary, and want to work, you are presumed to be eligible for DVR services. DVR can provide services which are necessary for you to obtain or maintain employment as outlined in your Individualized Plan for Employment (“IPE”).

You have the right to use and enjoy public parks, libraries, transportation systems, and other similar services.

You cannot be excluded from everyday activities, such as buying an item at the store, watching a movie in a theater, eating a meal at a restaurant, exercising at a health club, or having your car serviced just because of the fact that you have a disability. Private businesses that provide goods or services to the public are called “public accommodations.” Nearly all types of “public accommodations” are included under the law, regardless of their size.

If you use a service animal, you have the same rights to enjoy access to and usage of services provided by public accommodations or public facilities as any other individual. Such facilities include restaurants, hotels and motels, airlines, retail stores, taxicabs, theaters, sports and health facilities, hospitals, and medical offices. Service animals are working animals, not pets. There is no requirement for special identification or for you to carry any special certifications. A service animal is exempt from routine pet deposits/charges or “pet section” rules. Please contact Protection & Advocacy System, Inc. (“P&A”) if you need additional information or assistance concerning your service animal.

Rights of Individuals Admitted to a Community Program or Residential Facility

You have the right to appropriate mental health treatment and related services, to an individualized, written, treatment plan upon admission, and to appropriate services upon discharge. You have the right to participate in planning your mental health services, to reasonable explanations regarding your treatment, and to consent to your course of treatment. You have the right to be informed at admission to the Wyoming State Hospital (“WSH”) of the Patient Bill of Rights.

You have the right to make an informed decision about which treatment services you shall

receive as set forth in a “treatment plan.” Medical personnel have a duty to explain how certain medicines and treatments can provide possible benefits or detriments including “side effects” or physical risks (for example, feelings of panic, weight gain, changes in your sexual feelings, drug dependency, or drug interaction effects) to allow you to make an informed decision about treatment. In order to participate in your treatment meeting, you can ask for reasonable accommodations such as a sign language interpreter, an explanation in Braille or on a tape-recording, an interpreter in a familiar language, or extra time to speak.

You have the right to look at your own medical chart and read about what your treating physicians are writing about you. However, you can be prevented from viewing part of your chart if a doctor has already written a note in your chart saying that “for clear treatment reasons” it would be harmful for you to examine that part of your chart. If so, you can designate a third party to look at your medical chart for you.

You have the right to receive services in the least restrictive environment that meets your needs. If you believe that the location where you are receiving treatment does not allow you to be around a sufficient number of persons who do not have disabilities, then you should ask about other locations where you could get more appropriate treatment. You have a right to treatment services without being subjected to discrimination. For instance, no provider can refuse you services strictly because of your disability, race, age, sex, religion, or national origin.

You have a right to say “NO” to drugs, to say “NO” to being hurt, to say “NO” to being forced to be alone, and to say “NO” to being restrained unless it is necessary to keep you from harming yourself or others.

You have the right to refuse medical treatment services or medication at any time. However, this right can be limited if a court of law determines that you are not competent to make informed choices regarding treatment and the need for prescribed psychotropic medication. Wyoming law requires that forced medication of a prescription drug must first be reviewed by a psychiatrist upon admission to an institution, and may be continued if found medically appropriate by the investigation review committee of the institution.

You have a right not to be secluded, unless it is an emergency. For example, you should not be placed in a locked room all by yourself where you cannot get out. You can only be isolated or secluded from others if you are dangerous to yourself or someone else at that moment, and all other interventions have been attempted to prevent you from hurting yourself and/or others. You should be removed from seclusion as soon as you are calm. No one is allowed to punish you if you complain or report if you were isolated or secluded.

You have a right not to be restrained except by law enforcement, unless it is an emergency. Examples of restraint include someone holding you down; tying you down; putting you in a restraint vest or “Ferguson Suit” (straight-jacket); putting you in handcuffs or other kinds of restraints; or any other action that prevents you from moving on your own accord. You can

only be held against your will if you are dangerous to yourself or someone else at that time and place, and alternative interventions have failed to prevent you from hurting yourself or others. Alternative interventions such as verbal de-escalation techniques should always be attempted before any type of physical force is applied. If restraints are used, they must be applied in a safe and correct manner and for no longer than is necessary. You have the right to be free from improperly applied restraints. For example, if a provider uses a particular method or technique of de-escalation and restraint, then that method or technique should be tested, approved, certified, and followed. Remember, seclusion and restraint should not be used as substitutes for treatment.

You have the right to wear your own clothes, unless restricted for safety reasons. It is your right to look the way you want, according to your own unique preferences. You have the right to keep at least some of your money and spend it as you want. You also have the right to keep your own personal property in a place that is accessible. There should be a locked place in a hospital or facility where you can store and secure your personal property. You can ask a staff member to help you find a place for your belongings if you cannot do this on your own. Other patients or residents cannot take control of your personal belongings without your permission.

You have the right to meet and converse with visitors or family members privately, to use the telephone privately to make or receive calls, and to send or receive unopened mail.

You have the right to consult with your attorney or advocate privately as well as the Human Rights Committee if you are admitted to the Wyoming State Hospital. This is part of your right to complain and be heard if you feel that your rights are being violated or that you are being discriminated against. The entity or individual which receives your complaint should answer your complaint. You can ask a case manager, client rights advocate, client representative, or client rights officer for assistance in how to file a complaint. Complaint procedures should be available to you upon request. You can also express your concerns to organizations like P&A that advocate for and help persons with mental illness. A special way to complain is sometimes called a “grievance procedure.” You have the right to exercise your rights without reprisal, including reprisal in the form of denial of any appropriate, available treatment.

You have the right to have personal information about you kept confidential. Such information includes your diagnosis, treatment, and information that is in your medical chart. Persons not contributing to your treatment regimen can have access to your information only if you allow it in writing. A guardian may have access to your medical and personal information. You also have the right to accept or decline being in a video or movie or to having your voice tape-recorded. Anyone who wants to video or tape-record you cannot do so unless you say it is permissible to do so. However, facilities may run security cameras and videotape in public places or common areas but may not videotape private areas such as your bedroom without your express permission. An exception may exist if you are detained in a forensic unit, discussed below.

You have the right to referral to other mental health professionals upon discharge from the Wyoming State Hospital. If you have been discharged from the Wyoming State Hospital or another in-patient facility, then you have the right to appropriate discharge planning to help you live as independently as possible in the community.

Your rights are protected by the Constitution and other laws. In limited circumstances your rights can be limited for health and safety reasons. If you were involved with the criminal justice system and a court committed you to a hospital under a “forensic status” label such as a “Forensic Commitment,” “Not Guilty by Reason of Mental Illness,” “Incompetent to Stand Trial,” “on a Competency Restoration,” “Unrestorable to Competency,” or “on a Jail Transfer,” you continue to retain your rights, but the court can place limitations on your rights. Furthermore, you can have your rights limited if a court orders your hospitalization or assigns you to a specific hospital such as the Wyoming State Hospital. However, you always have the right to file a complaint, and to have a lawyer present at any hearing related to such a proceeding. You may also ask to talk with a person called the “Patient Rights Advocate” to learn more about your rights.

Rights of Individuals under Guardianship

If a judge appoints a guardian for you, then your guardian may restrict some of your rights if and when there is a compelling health or safety reason for doing so. In exercising authority on your behalf, your guardian must act in your best interests by making decisions that protect your rights. You have the right to the least restrictive and most appropriate guardianship suitable to your circumstances. This includes the right to the least restrictive and most appropriate residential, educational, and employment environments. You also have the right to be free from inappropriate physical or chemical restraints.

If an involuntary petition for guardianship is filed against you, you have the right to: 1) notice of the filing of the petition; 2) an opportunity for a hearing; 3) be present at any hearing regarding the proposed guardianship; 4) have a “guardian ad litem” appointed, and have counsel appointed upon order of the court. The term “guardian ad litem or GAL” means a person appointed by the court to represent your best interests only during the course of litigation concerning the guardianship. In addition, you may demand a jury trial or appeal a guardianship proceeding as provided by the Wyoming Rules of Civil Procedure. A guardianship proceeding implicates a total loss of liberty, and therefore full constitutional due process protections should be provided. This means that you are entitled to a clear presumption of capacity until proven otherwise.

The appointment of a guardian for you does not constitute an adjudication that you lack the testamentary capacity to create a will. You also retain title to all your property under a guardianship. However, your property is subject to the control of the court for the purposes of

administration, sale, or other disposition as provided by law. There is a proceeding called a conservatorship in which a court could appoint someone to administer your property.

Your guardian must: 1) determine and arrange for the least restrictive and most appropriate and available residence for you; 2) facilitate your education, social, and other activities; 3) make healthcare decisions for you; 4) take reasonable care of your personal property; 5) commence protective proceedings if necessary to protect your property; 6) apply to your current needs for support, care, and education as much of the money or property paid or delivered to the guardian as may be appropriate; 7) exercise due care to conserve excess funds for your future needs; 8) request the court to modify the guardian's range of duties if your changed circumstances require such modification; and 9) following your death, arrange for the final disposition of your remains according to the known wishes of you and your family. In addition, your guardian may consent to your marriage.

Your guardian can also perform certain actions but only with approval of the court and after notice, hearing, and the appointment of a guardian ad litem. Under such circumstances your guardian may: 1) commit you to a mental health facility; 2) consent to the following treatments for you: (A) electro-shock treatments; (B) psychosurgery; (C) sterilization; (D) other long-term or permanent contraception; 3) give up your minor children for adoption, provided: (A) notice of any hearing was given to you and the legal or supposed father; and (B) you attended the hearing if the court so ordered; 4) execute any appropriate advance healthcare directives, including healthcare powers of attorney and living wills. Psychosurgery is a term used to describe a certain type of brain surgery performed in treating chronic mental illnesses.

Some rights may not be limited by your guardian or by court order. For example, federal law gives you the right to contact P&A, and this right cannot be restricted. Your guardian cannot force you to vote for a particular candidate in an election. Your guardian cannot change your religious beliefs or choose friends for you. You also have the right to meet and talk with a case manager, an advocate, or other support persons without the presence of your guardian. You should provide your guardian with specific instructions about your personal beliefs, values, and wishes. You can include statements about where you would prefer to live; what religion or church you prefer; wishes regarding the use of medications; extraordinary lifesaving measures; and naming certain individuals you do or do not want involved in making decisions on your behalf.

The guardianship will end if: 1) there is a determination by the court that your guardian is not acting in your best interest. In such a case, the court shall appoint another guardian; 2) there is a determination by the court that the guardianship is no longer necessary for any other reason. At any time, not less than six months after the appointment of a guardian, you may petition the court claiming that you are no longer a proper subject of the guardianship and ask that the guardianship be terminated. If you have specific questions about guardianship or which rights can be curbed under a guardianship order, then please contact P&A.

If you have questions, please contact:

Protection & Advocacy System, Inc. (“P&A”)

Cheyenne

(307) 635-7817 - Voice or TDD

1-800-654-7972 (Assistance Requests Only)

Lander

(307) 332-8268 – Voice or TDD

1-877-670-8366 (Assistance Requests Only)

Other Places Where You Can Get Information and/or Support for Your Recovery

Wyoming Mental Health Division

tel: (307) 777-2432

web: <http://wdh.state.wy.us/mentalhealth/index.html>

Wyoming Division of Vocational Rehabilitation (“DVR”)

tel: (307) 777-7386

web: <http://www.wyomingworkforce.org/how/vr.aspx>

Wyoming Department of Family Services (“DFS”)

tel: (307) 777-7561

web: <http://dfsweb.state.wy.us/>

UPLIFT

tel: (307) 778-8686 or 1-888-875-4383

web: <http://www.upliftwy.org/>

Mental Health Ombudsman Program

tel: (307) 632-5519

Wyoming Division of Victim Services

tel: (307) 777-7200

web: <http://vssi.state.wy.us/>

Wyoming's National Alliance on Mental Illness ("NAMI")

tel: 1-888-882-4968

web: http://www.nami.org/MSTemplate.cfm?Site=NAMI_Wyoming

Department of Housing and Urban Development ("HUD")

Casper Field Office

tel: (307) 261-6250

web: <http://www.hud.gov/>

Wyoming State Bar

tel: (307) 632-9061

web: <http://www.wyomingbar.org/>

e-mail: cduncil@wyomingbar.org

National Domestic Violence Hotline

tel: 1-800-799-7233

Suicide Prevention Hotline

tel: 1-800-784-2433

web: <http://www.hopeline.com/>

National Sexually Transmitted Diseases/AIDS Hotline

tel: 1-800-227-8922

Social Security Administration

tel: 1-800-772-1213

web: www.ssa.gov

List of Commonly Used Acronyms in the Booklet:

DVR-Division of Vocational Rehabilitation
GAL-Guardian Ad Litem
HUD-Department of Housing and Urban Development
IPE-Individualized Plan for Employment
P&A-Protection & Advocacy System, Inc.
SSDI-Social Security Disability Insurance
SSI-Supplemental Security Income
WSH-Wyoming State Hospital

Other Relevant Acronyms not Mentioned in the Booklet:

AC-Advisory Council
ADA-Americans with Disabilities Act
C.F.R.-Code of Federal Regulations
CIL-Council on Independent Living
CMHS-Center for Mental Health Services
DDD-Division of Developmental Disabilities, State Department of Health
DFS-Department of Family Services
DOH-Department of Health
DOJ-Department of Justice
DSM-IV-TR-Diagnostic & Statistical Manual (of Mental Disorders, 4th Edition Revised)
ED-Emotionally Disturbed / Emotional Disorder / Emotionally Disordered

EEOC-Equal Employment Opportunity Commission

FMLA-Family and Medical Leave Act

HHS-U.S. Department of Health and Human Services

IDEA-Individuals with Disabilities Education Improvement Act of 2004

ILR-Independent Living Rehabilitation

IPC-Individualized Plan of Care

MI-Mental Illness

MR-Mental Retardation

NAMI-National Alliance for the Mentally Ill

OCR-Office of Civil Rights

PAIMI-Protection & Advocacy for Individuals with Mental Illness

SAMHSA-Substance Abuse and Mental Health Services Administration

§504-Accessibility Section of the Rehabilitation Act of 1973

SPED-Special Education

SSA-Social Security Administration

UPLIFT, Inc.-Unified Parents Lifting Kids for Tomorrow

WDE-Wyoming Department of Education

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