

State of Louisiana
Louisiana Department of Health
Office of Behavioral Health
Rights of Patient
(LA Revised Statutes 28: Sec 171; 53; 55)

§171. Enumerations of rights guaranteed

A. No patient in a treatment facility pursuant to this Chapter shall be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the state of Louisiana, or the Constitution of the United States solely because of his status as a patient in a treatment facility. These rights, benefits, and privileges include, but are not limited to, civil service status; the right to vote; the right to privacy; rights relating to the granting, renewal, forfeiture, or denial of a license or permit for which the patient is otherwise eligible; and the right to enter contractual relationships and to manage property.

B. No patient in a treatment facility shall be presumed incompetent, nor shall such person be held incompetent except as determined by a court of competent jurisdiction. The determination of incompetence shall be separate from the judicial determination of whether the person is a proper subject for involuntary commitment.

C.(1) The patient in a treatment facility shall be permitted unimpeded, private, and uncensored communication with persons of his choice by mail, telephone, and visitation. These rights may be restricted by the director of the treatment facility if sufficient cause exists and is so documented in the patient's medical records. The patient's legal counsel, as well as his next of kin or responsible party must be notified in writing of any such restrictions and the reasons therefor. When the cause for any restriction ceases to exist, the patient's full rights shall be reinstated. A patient shall have the right to communicate in any manner in private with his attorney at all times.

(2) The director of a treatment facility shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for visits is available. Writing materials, postage, and telephone usage funds shall be provided in reasonable amounts to recipients who are unable to procure such items.

(3) Reasonable times and places for the use of telephones and for visits may be established in writing by the director of any treatment facility. However, the times and places established by the director must allow patients, at a minimum, reasonable daily communication by telephone and visitation. These rights may be restricted by the director of the treatment facility if sufficient cause exists and is so documented in the patient's medical records. The patient's legal counsel, as well as his next of kin or responsible party, must be notified in writing of any such restrictions and the reasons therefor. When the cause for any restriction ceases to exist, the patient's full rights shall be reinstated.

(4)(a) The director of any substance abuse treatment facility may restrict the visitation rights of a patient who is voluntarily admitted to such treatment facility under the provisions of R.S. 28:52, 52.1, 52.2, 52.3, and 52.4 for the initial phase of treatment but no longer than seven days unless good cause exists to extend the restriction and is so documented in the patient's record. This restriction shall not apply to visitation by the patient's attorney, or if he is not represented by counsel, the mental health advocate, or the patient's minister. This restriction shall also not apply to a parent or legal guardian of a patient who is a minor unless the director determines that good cause exists that such restriction shall be in the best interest of the patient and is so documented in the patient's record. When the facility director determines the need to restrict visitation of new patients he shall post notice of such restriction in places prominent to all new admissions, and shall inform each new patient of the restriction prior to the admission of the patient, and the length and duration thereof, and further, that such restriction may be extended on an individual basis as determined to be in the patient's interest by the treatment staff with the concurrence of the medical director.

(b) Nothing herein shall be construed to further restrict other forms of patient communication as permitted in this Section, nor shall this restriction apply to mental health treatment facilities.

D. Seclusion or restraint shall only be used to prevent a patient from physically injuring himself or others. Seclusion or restraint may not be used to punish or discipline a patient or used as a convenience to the staff of the treatment facility. Seclusion or restraint shall be used only in accordance with the following standards:

(1) Seclusion or restraint shall only be used when verbal intervention or less restrictive measures fail. Use of seclusion or restraint shall require documentation in the patient's record of the clinical justification for such use as well as the inadequacy of less restrictive intervention techniques.

(2) Seclusion or restraint shall only be used in an emergency. An emergency occurs when there is either substantial risk of self-destructive behavior, as evidenced by clinically significant threats or attempts to commit suicide or to inflict serious harm to self, or a substantial risk or serious physical assault on another person, as evidenced by dangerous actions or clinically significant threats that the patient has the apparent ability to carry out.

(3) A written order from a physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner acting within the scope of his institutional privileges shall be required for any use of seclusion or restraint. If, however, no physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner is immediately available, a registered nurse who has been trained in management of disturbed behavior may utilize seclusion or restraint. The nurse or the nursing supervisor shall then immediately notify a physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner with institutional authority to order seclusion or restraint and provide him with sufficient information to determine whether seclusion is necessary and whether less restrictive interventions have been tried or considered. The physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner may issue a telephone order for seclusion or restraint, if such order is indicated.

(4) Written orders for the use of seclusion or restraint shall be time limited and not more than twelve hours in duration. The written order shall include the date and time of the actual examination of the patient, the date and time that the patient was placed in seclusion or restraint, and the date and time that the order was signed.

(5) A renewal order for up to twelve hours of seclusion or restraint may be issued by a physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner with institutional authority to order seclusion or restraint after determining that there is no less restrictive means of preventing injury to the patient or others. If any patient is held in seclusion or restraint for twenty-four hours, the physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner with institutional authority shall conduct an actual examination of the patient and document the reason why the use of seclusion or restraint beyond twenty-four hours is necessary, and the next of kin or responsible party shall be notified by the twenty-sixth hour.

(6) Staff who implement written orders for seclusion or restraint shall have documented training in the proper use of the procedure for which the order was written.

(7) Periodic monitoring and care of the patient shall be provided by responsible staff. A patient in seclusion or restraint shall be evaluated every fifteen minutes, especially in regard to regular meals, water, and snacks, bathing, the need for motion and exercise, and use of the bathroom, and documentation of these evaluations shall be entered in the patient's record.

(8) Patients shall be released from seclusion or restraint as soon as the reasons justifying the use of seclusion or restraint subside. If at any time during the period of seclusion or restraint a registered nurse determines that the emergency which justified the seclusion or restraint has subsided and a physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner with institutional authority to order seclusion or restraint is not immediately available, the patient shall be released. At the end of the period of seclusion or restraint ordered by the physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner the patient shall be released unless a renewal order is issued.

(9) Mechanical restraints shall be designed and used so as not to cause physical injury to the patient and so as to cause the least possible discomfort.

(10) Facilities using seclusion or restraint shall have written policies concerning their use in place before they can be used. These policies shall include standards and procedures for placing a patient in seclusion or restraint, and for informing him of the reason he was put in seclusion or restraint and the means of terminating such seclusion or restraint.

(11) Nothing in this Section shall be construed to expand the scope of practice of psychology as defined in R.S. 37:2351 et seq. to authorize the ordering, administering, or dispensing of medications, or to authorize any practice not permitted under the privileges granted by the institution.

(12) The department shall adopt rules and regulations in accordance with the Administrative Procedure Act to govern the use of seclusion and restraint. Such rules and regulations shall respect the patient's individual rights, protect the patient's health, safety, and welfare, and be the least restrictive of the patient's liberty. The department shall adopt rules and regulations to provide for enforcement procedures and penalties applicable to a person who violates the requirements of this Section.

E. A patient may be placed alone in a room or other area pursuant to behavior shaping techniques such as "time-out". Such confinement may only be used as part of a written treatment plan, shall not be used for the convenience of staff, and may be used only according to the following standards and procedures:

(1) Placement alone in a room or other area shall be imposed only when less restrictive measures are inadequate.

- (2) Placement alone in a room or other area shall only be ordered by a qualified professional trained in behavior-shaping techniques and authorized in accordance with the written policies and procedures of the facility to order the use of behavioral-shaping techniques.
- (3) The period of placement alone in a room or other area shall not exceed thirty minutes.
- (4) The patient shall be observed and supervised by a staff member.
- (5) The period of placement alone in a room or other area shall not exceed a total of three hours in any twenty-four-hour time period. If the placement alone in a room or other area exceeds a total of three hours in any twenty-four-hour time period, it shall then be considered seclusion and shall be governed by the procedures and standards set forth in Subsection D of this Section.
- (6) The date, time, and duration of the placement shall be documented.
- (7) In treatment facilities where patients are placed alone in a room or other area as a behavior-shaping technique, there shall be written policies and procedures governing use of such behavior-shaping technique.

F. No patient confined by emergency certificate, judicial commitment, or non-contested status shall receive major surgical procedures or electroshock therapy without the written consent of a court of competent jurisdiction after a hearing. If the director of the treatment facility, in consultation with two physicians, determines that the condition of such a patient is of such a critical nature that it may be life threatening unless major surgical procedures or electroshock therapy are administered, such emergency measures may be performed without the consent otherwise provided for in this Section. No physician shall be liable for a good faith determination that a medical emergency exists.

G. Every patient shall have the right to wear his own clothes; to keep and use his personal possessions, including toilet articles, unless determined by a physician, medical psychologist, or psychiatric mental health nurse practitioner that these are medically inappropriate and the reasons therefor are documented in his medical record. The patient shall also be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases, and to have access to individual storage spaces for his private use. If the patient is financially unable to provide these articles for himself, the treatment facility shall provide a reasonable supply of clothing and toiletries.

H. Every patient shall have the right to be employed at a useful occupation depending upon his condition and available facilities.

I. Every patient shall have the right to sell the products of his personal skill and labor at the discretion of the director of the treatment facility and to keep or spend the proceeds thereof or to send them to his family.

J. Every patient shall have the right to be discharged from a treatment facility when his condition has changed or improved to the extent that confinement and treatment at the treatment facility are no longer required. The director of the treatment facility shall have the authority to discharge a patient admitted by judicial commitment without the approval of the court which committed him to the treatment facility. The court shall be advised of any such discharge. The director shall not be legally responsible to any person for the subsequent acts or behavior of a patient discharged by him in good faith.

K. Every patient shall have the right to engage a private attorney. If a patient is indigent, he shall be provided an attorney by the mental health advocacy service, if he so requests. The attorneys provided by the mental health advocacy service or appointed by a court shall be interested in and qualified by training and/or experience in the field of mental health statutes and jurisprudence.

L. Every patient shall have the right to request an informal court hearing to be held at the discretion of the court within five days of the receipt of the request by the court. If the court determines that a hearing is appropriate and if the patient is not represented by an attorney of his own or from the mental health advocacy service, the court shall appoint an attorney to represent the patient. The purpose of the hearing shall be to determine whether or not the patient should be discharged from the treatment facility or transferred to a less restrictive and medically suitable treatment facility.

M. No provision hereof shall abridge or diminish the right of any patient to avail himself of the right of habeas corpus at any time.

N. Every patient shall have the right to be visited and examined at his own expense by a physician, psychologist, medical psychologist, or a psychiatric mental health nurse practitioner designated by him or a member of his family or an interested party. The physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner may consult and confer with the medical staff of the treatment facility and have the benefit of all information contained in the patient's medical record.

O. Prefrontal lobotomy shall be prohibited as a treatment solely for mental or emotional illness.

P. No medication may be administered to a patient pursuant to the provisions of this Chapter except upon the order of a physician, medical psychologist, or psychiatric mental health nurse practitioner. The physician, medical psychologist, or psychiatric mental health nurse practitioner is responsible for all medications which he has ordered and which are administered to a patient. A record of medications administered to each patient shall be kept in his medical record including all instances when a patient is administered medication without his consent. Medication shall not be used for nonmedical reasons such as punishment or for convenience of the staff.

Q. A person admitted to a treatment facility has the right to an individualized treatment plan and periodic review to determine his progress. The appropriate staff of the facility shall review the person's progress at least at intervals of thirty days. The staff shall enter into the person's medical record his response to medical treatment, his current mental status, and specific reasons why continued treatment is necessary in the current setting or whether a treatment facility is available which is medically suitable and less restrictive of the patient's liberty.

R. A person admitted to a treatment facility has the right to have available such treatment as is medically appropriate to his condition. Should the treatment facility be unable to provide an active and appropriate medical treatment program, the patient shall be discharged.

S. Any patient known by a director of a treatment facility to be practicing a well-recognized religious method of healing under the care of a duly accredited practitioner thereof shall not be ordered medically treated, unless he is, as a result of a mental disorder, a danger to himself or to others.

Further Conditions of Which Patient is to be informed:

(Pursuant to LA Revised Statutes 28: Sec 53, Sec 55)

Statute 28: Section 53: Subsection I – Emergency Certificate

Every patient admitted by emergency certificate shall be informed in writing at the time of his admission of the procedures of requesting release from the treatment facility, the availability of counsel, information about the mental health advocacy service, the rights enumerated in R.S. 28:171 and the rules and regulations applicable to or concerning his conduct while a patient in the treatment facility. If the person is illiterate or does not read or understand English, appropriate provisions should be made to supply him this information. In addition, a copy of the information mentioned in this Subsection must be posted in any area where patients are confined and treated.

Statute 28: Section 55: Subsection H – Judicial Hearings

Every patient admitted by judicial commitment shall be informed in writing at the time of admission of the procedures for requesting release from the treatment facility, the availability of counsel, information about the mental health advocacy service, the rights enumerated in R.S. 28:171, and the rules and regulations applicable to or concerning his conduct while a patient in the treatment facility. If the person is illiterate or does not read or understand English, appropriate provisions should be made to supply him this information. In addition, a copy of the information listed in this Subsection must be posted in any area where patients are confined and treated.

For information regarding *Rights of Minor Patients*, please review Louisiana Children's Code, Article 1409.