

**YOUR RIGHTS
AS A VERMONTER
DIAGNOSED AS HAVING
A MENTAL ILLNESS**

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Disability Rights Vermont, Inc.
141 Main Street, Suite 7
Montpelier, VT 05602

www.disabilityrightsvt.org



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INTRODUCTION

If you are receiving some type of mental health treatment without a court order and/or have been diagnosed as a person with a mental illness, you do not lose any civil or human rights. Many people incorrectly believe they lose their rights because of a mental illness diagnosis or because they are temporarily involuntarily held for treatment. This booklet is written to provide you with information so that you can know, exercise, and protect YOUR RIGHTS!

You need to know what your rights are in order to exercise them. Exercising your rights means taking action when you believe you are being treated unfairly by anyone, and doing what is necessary to make sure your rights are respected. Knowing, exercising, and protecting your rights is essential to self-advocacy.

For example, you should know that you cannot be sent against your will to a hospital or other designated facility for a mental health emergency exam unless you are diagnosed by a qualified medical provider as having a mental illness and a danger to yourself or others or a Court orders you to be evaluated by a physician at a hospital.

Another example of the importance of knowing your rights as a person with a mental health condition is when someone attempts to coerce you into taking medications you do not want or understand. Unless you are subject to a Court Order of Non-Hospitalization, if someone says to you, “Take your medication or you’ll be sent to a designated hospital,” you should know that this cannot be done unless you are diagnosed as a person with a mental illness and as an imminent danger to yourself or others. Knowing your rights is

one of the first steps in self-advocacy.

This booklet contains a section entitled “Protecting Your Rights” that contains the names and phone numbers of organizations that can help you with self-advocacy if you feel you could use some assistance.

Keep in mind that although you may have been diagnosed as having a mental illness you are not required to seek treatment, to accept treatment, or change how you live.

If you decide to seek treatment or to accept treatment that is offered, whether in a public or private setting, you do not have to continue with it.

Essentially you are free to live your life like anyone else. Even if you find yourself confined or otherwise restricted as a result of a legal proceeding (for example, committed to a hospital for evaluation), you still retain certain rights.

Although this booklet will give you information about your rights, there is far more to protecting and exercising your rights than is found here. This booklet is only one resource, a tool for you to use in your advocacy effort. It is not intended to be a substitute for legal advice. When using this book keep in mind that, like all written material, this book contains information that may change and that the people to whom you are expressing your rights may not know or agree with them. If you believe your rights are being violated and decide you could use some support and assistance with your advocacy, you may wish to contact one or more of the organizations listed under the “Protecting Your Rights” section.

Questions To Ask Professionals:

1. Will you work with me to develop a crisis plan?
2. Do you support the recovery movement?
3. Will you honor Advance Directives?
4. Do you educate your patients about the side effects of medications?
5. What information do you give your patients to make informed decisions?

Ask questions which are relevant to you, to your beliefs, and to your life.

ABOUT SELF-ADVOCACY

Self-advocacy involves helping oneself to access the services, rights, and support systems you choose. Believing in yourself, learning all you can about your situation or issue, and deciding what you want to accomplish, are the beginning of self-advocacy. It is essential that you decide what your needs and priorities are and seek out the help and information you can use to support your efforts.

If you choose treatment, one way of advocating for yourself is to take part in the design and implementation of that treatment. You may want to interview prospective doctors and/or counselors. Ask the professional what their response would be if you went into crisis, what their knowledge of the consumer-run alternatives is, whether they assure informed consent when prescribing medication, and

under what circumstances would they commit you to an institution? These are only a few examples of questions you may want to ask. Ask questions which are important to you. Even if you are receiving a form of financial assistance and are being assigned to a psychiatrist or other professional you still may be able to choose someone else within the mental health organization. To do this you must know why you want a different professional and state it clearly.

Another way to advocate for yourself is to find out about the consumer/survivor movement or to “come out” about your experiences. There is strength in peer support which can help to end isolation. There are many different peer groups meeting across Vermont. For more information on peer groups and other support contact Vermont Psychiatric Survivors at (802) 775-6834.

Another common form of self-advocacy is the process of filing a grievance against an individual or organization. If a grievance must be filed, it is important to do it in writing and to describe the facts of your complaint directly and clearly. Be sure to indicate what you want the outcome to be. If you are grieving against an institution or an organization there may be a formal grievance procedure in place for you to follow. If there is no written grievance procedure you can address your grievance to the supervisor of the individual or group you are grieving against. Always keep a copy for your records. If you do not receive a response you may want to seek help.

At times it is useful to enlist outside advocacy or legal assistance. If you are self-advocating but find yourself blocked or uncertain as to the next step, Disability Rights Vermont may be able to help.

Self-advocacy calls for taking one step at a time. Even when it feels like things are at a standstill you should push forward and not give up. The following ideas may be helpful to your self-advocacy effort:

BELIEVE IN YOURSELF

You are worth the effort it takes to protect your interests and your rights. You can do it.

REALIZE YOU HAVE RIGHTS

You are entitled to equality under the law. Inform yourself by using resources and asking questions. Insist on clear explanations and remember that service providers are public servants who work for you.

DISCUSS YOUR CONCERNS

Talk directly with your service providers, and if you choose, bring along people you trust for support.

GET THE FACTS

Get the facts in writing and problem solve by being informed. Ask for written policies or regulations and hold agencies accountable for the decisions they make.

USE THE CHAIN OF COMMAND

Make sure that a supervisor or someone else with authority has an opportunity to work with you on the problem and resolution. Warning: Do not let the chain of command become an excuse for frustrating your attempts to be treated fairly.

KNOW YOUR APPEAL RIGHTS

If your grievance is not resolved to your satisfaction, consider filing an appeal of that decision within and outside the agency.

BE ASSERTIVE AND PERSISTENT

Keep after what you want and follow up.
Do not be intimidated.

USE YOUR COMMUNICATION SKILLS

Have a plan outlining your concerns. Stay calm and express yourself clearly. Be a listener because what you hear may be significant.

ASK FOR HELP AND OBTAIN INFORMATION

Link up with advocacy organizations such as Disability Rights Vermont or Vermont Psychiatric Survivors for rights information and support. These organizations can be your tools. Use them.

FOLLOW UP

Agencies are accountable for their decisions. Do not give up. You are entitled to know and exercise all your options.

As Karl Smithson stated in My Faith:

“The solution for people with major problems in crisis is not more programs, but personal relationships among people who have the courage to care; who open their hearts to the suffering of others and respond to that pain by sharing it and taking concrete action to get rid of it.”

The primary purpose of empowering the down and out is not to give them a home or food or clothes. To set people on fire and ignite their spirit - to give them back their fighting spirit should be the primary purpose of empowers. For our most prized possession is our fighting spirit.”

TIPS FOR FILING A GRIEVANCE:

1. Choose whether you want your grievance to be oral or written, or both.
2. If you are doing an oral grievance, ask the organization or agency to assist you to put it in writing.
3. Clearly describe the facts of your complaint.
4. What do you want as an outcome? Example: an apology, new case worker, etc.

YOUR RIGHTS IN THE COMMUNITY

You have the same rights as any other citizen guaranteed and protected by federal and state laws, the Bill of Rights, and all other applicable rights documents. You have these rights whether or not you are diagnosed with a mental illness.

WHILE RECEIVING TREATMENT

You have the right to receive available treatment and services that you believe best suit your individual needs.

You have the right to refuse treatment, medication, and any other type of service offered to you by anyone, including mental health professionals. If someone attempts to impose treatment and/or medication on you in a non-emergency situation, and you refuse, a legal proceeding at which

you have the right to legal representation must take place before you can be forced to submit. In case of that situation, a judge will decide whether you are competent to make your own decisions concerning your treatment. If, however, you are behaving in a way that obviously endangers yourself or other people, you risk being admitted to a designated hospital or another designated facility on an emergency basis without a hearing (see Involuntary Admission below). Threatening or attempting to commit suicide or physically assaulting someone else are examples of danger to yourself and others.

Even if you are subject to a Court Order of Non-Hospitalization for treatment, you retain the right to refuse treatment and medications not explicitly ordered by the Court. However, this Order can be revoked if a mental health professional files a request for revocation and a Court approves it after a hearing. If this occurs, you may be returned

to a designated hospital or other designated facility. There is a risk involved when you refuse treatment or medication, but if you are convinced it is a risk you wish to take, you can.

You have the right to be informed about your treatment and medications so you can make informed decisions regarding your treatment. This means that you are to be given an explanation of the treatment being offered to you in a manner that you can understand and you should be able to ask questions if you are not sure about what is being said. Information you should be given includes: why a particular medication is being prescribed, what kind of benefits should result from using it, and what adverse or bad effects (side effects) may result from using it.

You should be told why a particular method of treatment is being

recommended, how it will benefit you and how successful it has been for others with similar conditions. Are there other available alternative medications and treatment methods that may benefit you? Are there other providers of mental health services available to you and how do you arrange for these services? Essentially, like a consumer of any product, you want to know everything you can about the product before you buy it.

You have the right to review your treatment plan at any time and to request changes according to your needs and wishes.

You have the right to change your mind about treatment or medication you may have previously agreed to.

You have the right to know all rules or regulations that are connected with any treatment you are considering or are

receiving, particularly those that may affect your living environment.

You have the right to be treated with dignity and respect at all times. In many ways, most of your rights are connected with concepts of dignity and respect. You have the right not to be insulted or harassed. Your rights have been violated if you are prevented from participating in a decision that affects your life because your opinion is not taken seriously, or if you are made to feel humiliated because your ideas are not the same as everyone else's.

If you feel you are not being treated with respect there are ways for you to express your grievance, some of which are listed in this booklet. If you feel that your own efforts are not succeeding you should consider getting some help by contacting one of the groups listed in this booklet or someone else you trust.

SECLUSION AND RESTRAINT

Restraint can be used only in emergency situations when you are in immediate danger of serious bodily harm to yourself or others. Using restraints or seclusion as a punishment or a threat in order to make you do something against your will is called coercion and is illegal. If you are put into restraints or seclusion, within a certain time frame, a designated medical professional must issue a written order for their use. Even when used in an emergency you can challenge their use after the fact. Restraints or seclusion as part of a treatment plan or method of treatment can also be challenged. You should be aware that physical resistance to the use of a restraint or seclusion is often used to justify the methods after their use.

In this type of situation, you should consider contacting one or more of the

organizations listed under “Protecting Your Rights.”

Any time you believe that your rights are being violated or denied you should take action. If you wish to take legal action, you can contact a private attorney, Disability Rights Vermont, or Vermont Legal Aid’s Mental Health Law Project. You can voice your complaint directly to the Department of Mental Health. You can take the initiative.

RECORDS AND YOUR RIGHTS

A record of your treatment is kept by the mental health providers involved with your treatment. These records are confidential and only you have the right to give permission to another person to look at your records. There are some exceptions to this in State and Federal

law, particularly between health care providers involved in your treatment and between providers and payers. If you are unable to act in your own behalf a Court may appoint a guardian to protect your interests and rights including the release or retention of records.

You have the right to see your mental health treatment records upon request and in most instances, to receive a copy from your treatment providers with payment of a copying charge. You have the right to review your records upon request within a reasonable timeframe unless your doctor determines that it would put you or others at risk. Rules regarding copies of records are subject to change and there are often some restrictions particularly with psychiatric records. If you are experiencing difficulty accessing your records you should contact Disability Rights Vermont.

You have the right to request changes to your medical record if you believe that what it says is inaccurate. If your physician disagrees and thinks the record is accurate, you may either provide a written statement to be added to the record or ask your provider to document in the record what part you do not agree with.

You have the right to protect the confidentiality of your records by refusing to give permission or to sign forms that allow others to see your records. All medical or mental health information about you is confidential and service providers may not discuss that information with others without your permission. This includes discussions between your doctor, therapist and other professionals and friends, family, advocates, other residents where you live, or clients/patients where you are receiving treatment.

There are, however, certain legal circumstances that may affect your right to confidentiality. For example, if you become involved in a child custody case where your mental health as a parent is questioned and you wish to pursue the case, you may be required to release certain parts of your mental health records as part of the court proceedings. If you are a witness for the prosecution in a criminal case and you wish to present evidence, the defendant may ask you to present your mental health records in order to call into question your credibility. However, under most circumstances your records are confidential. Often only a judge or his/her appointee will look at these records and then only to decide whether anything contained in them might be helpful to the defendant.

Your records are not confidential in a mental health proceeding for involuntary commitment to a hospital; however,

these records are sealed by the Court and are not allowed to be available to the public. Since the law is generally in a state of change, you should consider consulting an attorney if you have any concerns or questions regarding the confidentiality of your records.

NON-EMERGENCY INVOLUNTARY TREATMENT

When you are living in the community a person can file a petition in the local Superior Court, Family Unit to have you treated involuntarily. You will not be required to accept treatment unless the Court finds that there is a very real possibility you have a significant mental illness and will seriously harm yourself or someone else if the Court does not require you to be evaluated and treated. These cases are prosecuted by the

Vermont Attorney General's office.

If the State does not prove its case, the Court cannot order treatment and is required to dismiss the petition. When the State proves its case, the Court can order you to accept hospitalization or outpatient treatment (this is called an Order of Non-Hospitalization, or ONH).

You have the same rights at a hearing to have you placed on an Order of Non-Hospitalization as you would at a hearing to have you treated in a hospital (see "Civil Commitment").

If you are accused of violating the conditions of your Court Order for outpatient treatment (an ONH) you are entitled to another hearing before you may be placed in a more restrictive setting. At the hearing the Court can dismiss the Order, change the conditions of your Order, or order your admission

to a designated hospital or another designated facility until the Order expires. If treatment providers think you have a mental illness and are an immediate threat to harm yourself or others, they can use a different legal approach to have you hospitalized, called an Application for Emergency Examination, discussed below.

You must be released from custody and involuntary treatment at the end of the Order unless the State has filed an Application for Continued Treatment before the expiration of the original Order and a Court has issued its renewal Order.

REFUSING MEDICATION AND TREATMENT IN THE COMMUNITY

You may not be medicated in the community against your will without a Court Order. Even if you are on an Order of Non-Hospitalization for treatment that

includes medication, it is against the law to hold you down and medicate you. If you refuse medication while on an Order of Non-Hospitalization, the mental health provider must request a Court Order for your medication to be continued and you to be hospitalized if necessary to implement the Court's medication Order.

If you are not committed to a designated hospital or another designated facility, you may not be treated against your will without a Court Order. If an involuntary treatment application is filed, you are entitled to a hearing with full due process rights, including the right to adequate notice, appointed counsel, witnesses, cross-examination of the State's witnesses, testimony on your own behalf, and written findings and conclusions.

Contact one or more of the organizations listed in this booklet to discuss issues of involuntary treatment so you will

be prepared should you face this type of situation. If you are involved in this situation, you may wish to call Vermont Legal Aid's Mental Health Law Project, and/or Disability Rights Vermont.

ADVANCE DIRECTIVES FOR HEALTH CARE

An Advance Directive (AD) is an important legal document that allows a person to make their healthcare preferences known if they are determined to lack capacity to make those decisions when they need to be made. You may appoint your own Agent to make health decisions for you and, with or without an Agent appointed, an AD allows you to give other advance instructions regarding treatment, end-of-life care and the disposition of one's remains.

Once you have chosen your Agent -

remember to choose carefully - discuss your preferences with the person you choose. When you sit down to discuss and write out your AD, making either a video or audio tape of the proceedings is a good idea. An AD can include advance instruction on a wide range of issues, from medication preferences to whom to assign temporary guardianship of your children.

During periods of incapacity, when a doctor determines you are not able to make healthcare decisions, the decisions made by your Agent shall be based on your express instructions, wishes, or beliefs as written in the Advance Directive.

Any adult with capacity (except those for whom a guardian has been appointed) may execute an Advance Directive.

The meaning of capacity, per statute, is “the ability to make and communicate a

decision regarding the issue that needs to be decided.” Capacity is determined by your clinician (physician, osteopathic doctor, advance practice registered nurse, or physician’s assistant). Your clinician will base their capacity determination on whether you have a basic understanding of the diagnosed condition and the benefit, risks, and alternatives to the proposed health care.

In order to appoint an Agent you must have a basic understanding of what it means to have someone else make health care decisions for you, who would be an appropriate person to make those decisions, and then name that person as the person you want to make health care decisions for you.

It is important to note that a person with capacity can execute an Advance Directive even without naming an Agent with the exception of a section entitled

“Waiver of Right of Request or Object to Treatment in the Future” also known as the “Ulysses Clause.”

A Ulysses Clause is a waiver of your right to request or object to a specific type of treatment in the future. It may be used by individuals who want their response to a certain type of treatment in the future to be disregarded or ignored when that type of treatment is offered. It only goes into effect after two clinicians have determined that you lack capacity, and it cannot be revoked unless you have capacity.

To include a Ulysses Clause, you must appoint an Agent. You can specify what treatments you are allowing your Agent to consent to or to refuse over your objection. You can state that you either DO or DO NOT desire the specified treatment even over your objection at the time it is offered. Have your Agent agree in writing to accept responsibility

to act OVER YOUR OBJECTION. You must have your physician, osteopathic doctor, advance practice registered nurse, or physician's assistant affirm in writing that you appeared to understand the benefits, risks, and alternatives to the proposed health care being authorized or rejected by you in this provision. You must also have a mental health patient representative, an ombudsman, an attorney licensed to practice in Vermont, or a Probate Court designee affirm in writing that they have explained the nature and effect of this provision to you and that you appeared to understand this explanation and are free from duress or undue influence by others.

To sum up, in an Advance Directive, you may:

- appoint one or more Agents and Alternative Agents that you give authority to make health care

decisions for you and what those decisions may be;

- specify a circumstance or condition, which may be unrelated to your capacity, which, when met, makes the authority of your Agent effective;
- direct the type of health care desired or not desired, which may include specific treatments that you desire or reject when being treated for a mental or physical condition;
- execute the Ulysses Clause provision which permits your Agent to authorize or withhold health care over your own objection in the event you lack capacity;
- direct which life-sustaining treatments are desired or not desired;
- identify those persons whom you do not want to serve as your decision-maker, the people who shall or shall not be consulted or to whom information shall not be shared

- regarding your health care; and
- authorize the release of health care information to named individuals in addition to your Agent, pursuant to HIPAA (the federal law that regulates the confidentiality of medical records).

Form and execution:

An adult with capacity may execute an Advance Directive at any time and an adult with or without capacity may suspend all or any part of their Advance Directive at any time, with the exception of the Ulysses Clause.

In order to legally execute an Advance Directive, it has to be signed and dated by you or by another person in your presence and under your express direction if physically unable to do sign. It must be signed in the presence of 2 or more witnesses at least age 18 years old who cannot be a spouse, reciprocal beneficiary, parent, sibling, child, or

grandchild. They must sign and affirm that you appeared to understand the nature of the document and that you were free from duress or undue influence at the time the Advance Directive was signed.

If you are being admitted to or are a patient or resident in a hospital, nursing home, or residential care home your rights must be explained to you by a qualified individual who must sign a statement affirming that he or she has explained the nature and effect of the AD to you and that you appear to understand this. This person may be one of the following:

- (A) an ombudsman;
- (B) a recognized member of the clergy;
- (C) an attorney licensed to practice in this State;
- (D) a Probate Division of the Superior Court designee;
- (E) a hospital explainer

(F) a mental health patient representative;
(G) a facility designated qualified
“volunteer”;
(H) a clinician, as long as the clinician is
not employed by the nursing home or
residential care facility at the time of the
explanation.

Please feel free to contact Disability
Rights Vermont with any questions or if
you would like assistance to execute your
own Advance Directive for Health Care.

SUMMARY OF RESIDENTS’ RIGHTS IN RESIDENTIAL CARE HOMES

State regulations govern the operation of
residential care homes and are enforced
by the Vermont Department of Aging
and Disabilities, Division of Licensing &
Protection. Resident rights are included
in the regulations. The regulations are

subject to change but your basic rights will essentially remain intact even after revision of the regulations. Contact the Division of Licensing and Protection for up-to-date information with respect to your rights at a residential care home or nursing home.

When you live in a residential care home you do not lose any of your civil or human rights.

You have the right to be treated with consideration, respect and dignity, and you have the right to privacy. Your personal needs must be attended to with discretion. Your personal needs may include such things as a special diet or reasonable accommodations that make the home accessible for you.

You have the right to be free from mental and physical abuse, and free from physical and chemical restraints (medication)

except with your consent, unless Court ordered, and as authorized by a physician. You have the right to be free from physical and chemical restraints imposed for purposes of discipline or convenience. Any use of restraints is subject to specific procedure and medical direction.

You have the right to choose your own personal physician and to obtain a second opinion. You are entitled to be informed about your medical condition and to participate in planning your medical treatment, and you do not have to participate in any experimentation or research. You have the right to refuse care or treatment; this includes the right to discharge yourself from the facility. Your medical records must be treated confidentially and you may refuse or approve their release to anyone outside of the facility.

You have the right to be informed

in writing, prior to or at the time of admission, of services available and charges for those services. (Any rate changes require 30 days' written notice). You must be informed in writing about Medicaid and Medicare eligibility and what is covered under those programs. If a language barrier exists, reasonable accommodations must be made to communicate this information to you.

You have a right to a 30-day advance written notice that you will be evicted or discharged from the residential care home (but only 14 days' notice if you fail to pay rent), except for medical reasons authorized in writing by your physician and agreed to by you, or for emergency situations involving the Licensing Agency. The thirty days must include an entire rental period (for example, if rent is due on the 1st of January and you get a notice on the 2nd, the eviction cannot be effective until the 1st of March, because a

whole rental period will not have passed by February 1st). This does not apply to discharge resulting from a change in the level of your care. You have a right to a 72-hour advance notice if you are going to be moved within the facility. Otherwise, your rights as a tenant are the same as any other tenant's, and are governed by Vermont's landlord-tenant law.

You have the right to retain personal clothing and possessions as space permits, unless to do so would infringe on the rights of others or create a fire or safety hazard.

You have the right to refuse to perform work without pay for the care home operator. If you choose to perform specific tasks that others would be paid to perform, you must receive reasonable compensation. Minimum wage as of this writing in Vermont is \$10.50 an hour. You can volunteer to help out at the home but

cannot be required to do so.

You have the right to have visitors within reasonable visiting hours which shall be posted and available to all residents and visitors. Your spouse may visit and you must be assured a private meeting place. If you and your spouse both live in the facility, you have the right to room together. You have the right to organize family or resident councils and to meet in privacy with staff attending only upon request.

You have the right to associate, communicate and meet privately with persons of your choosing, and the right to participate in social, religious, or community activities of your choice.

You have the right to send and receive personal mail unopened and uncensored, including any SSA checks you may be receiving.

You have the right to use the home's telephone, except when restricted because of excessive toll charges or abuse of the right (such as obscene or threatening calls). Restrictions on telephone use must be in writing and must be explained. You may, at your own expense, maintain a personal telephone in your own room.

You have the right to complain or voice a grievance without interference, coercion or punishment. You have the right to review current and past state and federal survey and inspection reports of the facility and to receive a copy of such reports upon request.

You have the right to manage your personal finances. The operator may manage your finances only if you make a request in writing and then you should receive at least a quarterly report of your financial transactions. You may revoke the

written request at any time. Quite often, as a condition of living in a community care home, you may be asked to sign such a request. If you do not want to turn over this right, and your refusal to agree is not being honored, you may wish to call an advocacy organization for assistance.

Each home must have an established written policy regarding the rights and responsibilities of residents, which must be presented to you prior to or at the time of your admission, in a language you can understand. The home must adhere to its policy.

Each home must have an established grievance procedure available to all residents. The resident grievance procedure must include an explanation of how a resident filing a complaint will be made aware of the Vermont Long Term Care Ombudsman Program and Disability Rights Vermont, and that these agencies

may be contacted as an alternative or in addition to the home's grievance process.

You have the right to return to the first available bed in the facility after being discharged from a hospital provided the facility can meet your medical needs and other residents will not be adversely affected. The facility must hold your bed for at least ten (10) days if you are hospitalized.

PRIVATE PSYCHIATRIC FACILITIES

Admission to private hospitals or other private psychiatric facilities on a voluntary basis is an option you may choose to pursue. You may be asked to sign an agreement to abide by the rules of the facility while you reside there. It is the facility's right to impose reasonable rules. The facility may not, however, infringe on your rights.

Some private facilities are also known as a “designated facility.” This designation allows for certain aspects of involuntary treatment to take place there.

It is your right to express complaints or grievances. Staff may not retaliate against you if you exercise this right. It is illegal for a staff member to try to intimidate you or attempt to prevent you from making a complaint.

It is also your right to leave the facility at any time, unless you are subjected to an involuntary admission or Court Order. Generally, you may not be kept there against your will, and you may not be forced to “agree” to stay against your will unless your doctor determines that you are an imminent risk of harm to yourself or others if you were to leave the hospital. A facility’s typical practice when a patient refuses or no longer wants treatment is to inform you that if you leave you may not

return at all or for a period of time. You may also be discharged “Against Medical Advice” (AMA).

AMA generally is the result of your deciding that you need no further assistance and want to leave but the doctor believes that you are not well enough to leave the facility.

Staff may notify you that if you leave AMA, you risk potential involuntary admission because they believe you meet an involuntary treatment standard of being a threat to yourself or others. In this case there is no difference between pointing out a risk and threatening you with an action. Staff may not use the risk of involuntary treatment as a threat to you if you actually do not meet emergency criteria, this is coercion. Ask what, if anything, staff members will do if you decide to leave AMA. You will then need to decide if the risk, based on the

information you have, is worth it.

You have the right to cancel any agreement about treatment you may have made at the facility. Again, you will need to weigh the risks of canceling with your feelings and beliefs. You have the right to be directly involved with all aspects of your treatment plan and to disagree with any part of it.

CIVIL COMMITMENT

OVERVIEW OF INVOLUNTARY ADMISSION

Vermont's mental health law provides for involuntary admission to any "designated hospital." The hospitals now designated to provide involuntary treatment are: the University of Vermont Medical Center in Burlington, Central Vermont Medical Center in Berlin, Windham Center in

Bellows Falls, the Brattleboro Retreat in Brattleboro and the Rutland Regional Medical Center in Rutland. The State also operates the Vermont Psychiatric Care Hospital in Berlin that is authorized to involuntarily treat patients with psychiatric conditions.

If you are involuntarily admitted to a hospital your rights with regard to the procedure for admitting you are the same no matter which facility you are taken to. Your rights while in the facility are the same no matter which facility you are in. You will have the right to legal representation which in this circumstance will most likely be provided by Vermont Legal Aid's Mental Health Law Project. You also have the right to contact other organizations for assistance such as Disability Rights Vermont.

INVOLUNTARY ADMISSION TO A
DESIGNATED HOSPITAL OR OTHER
DESIGNATED FACILITY

When an involuntary mental health proceeding is filed against you in court the Court will appoint an attorney from the Mental Health Law Project of Vermont Legal Aid to represent you. They will receive the court papers and will get in touch with you, but you can give them a call if you want to talk about your case. If you want to represent yourself or to hire a different attorney you should let your Court-appointed attorney know that this is what you want to do and they will ask the Court for permission to withdraw as your lawyer. The Court will not approve this request unless it is convinced that you are making a knowing waiver of your right to a lawyer.

If you are taken to a hospital against your will, it means that an “interested party” (applicant), such as a family member,

friend, health care professional or law enforcement officer, and a licensed physician who is not the “interested party”, has filed an Application for Emergency Examination to have you taken there, or a judge has issued a warrant for emergency examination based on information given to the judge by a law enforcement officer or mental health professional.

In either case there must be documentation stating why the applicants believe you are mentally ill and dangerous to yourself or others. The applications must show only current information, and explain why the situation is an emergency.

In the case of an application for emergency examination, after an application and doctor’s certificate are completed, any law enforcement officer or mental health professional can take you into “temporary custody” and

transport you to a hospital.

Only mental health professionals or law enforcement officers may apply for emergency admission without a doctor's certificate. To do so they must have reasonable grounds to believe that you are mentally ill and that you present an immediate risk of serious injury to yourself or others based on personal observation.

If a doctor's certificate cannot be obtained, you can be taken into custody while permission is obtained from a judge who must issue a warrant for an emergency examination. Permission must be sought immediately upon taking you into custody. The judge must agree that there is probable cause to believe you are mentally ill, pose a serious threat of harm to yourself or others, and that a doctor's certificate is unobtainable in order for you to continue to be held. If the judge grants the warrant you will be taken to a hospital.

When you are brought to a hospital, either on a warrant for immediate examination or an application for emergency examination, you have many due process rights.

Without a Doctor's Certificate

You are entitled to an exam by a physician as soon as possible after you arrive at the hospital. If the doctor agrees that you need to be admitted against your will, you will be held at the hospital for emergency observation. After that, the same steps will apply to you as apply to those who are admitted with a doctor's certificate, including examination by a psychiatrist within 24 hours after being seen by the initial physician (see below).

If the psychiatrist does not agree that you need admission you must be released immediately and returned to your home or other reasonable place of your choosing.

With a Doctor's Certificate

You have a right to an exam by a psychiatrist as soon as possible but no later than 24 hours after being brought involuntarily to the hospital.

If the psychiatrist does not agree that you need to be admitted you must be released immediately and returned to your home or other reasonable place of your choosing.

If the psychiatrist determines you need to continue to be held against your will an application for involuntary treatment must be filed in the Family Division of the local Superior Court within 72 hours of the psychiatrist's certification. After 72 hours you must be released if an involuntary treatment application has not been filed with the Court.

Your Rights Before a Hearing

Even before your hearing you have a right to appropriate medical and psychiatric treatment but you may refuse treatment as well.

You may not be refused any reasonable means of communication, by telephone or otherwise, in order to tell people of your situation, unless a physician determines and documents specific restrictions are necessary to prevent harm to you or others due to your mental health or other condition.

The hospital must ask you whom you want notified of your hospitalization such as friends, family, or advocates, and must notify those people and tell them how to contact and visit you. It is also your right not to notify anyone or to wait until a later time to do so, however if you have a Guardian, the hospital is required to

inform them of your admission. However, when the Court schedules your hearing it is required to notify your guardian or any person having custody of you (if applicable) and may request testimony of any other person the Court thinks necessary to hear from in order to fairly decide the case.

Probable Cause Hearing and Preliminary Hearing

Under a 2014 law the Court will hold a Probable Cause hearing within three days of the filing of an application for involuntary treatment (AIT, also known as civil commitment). The Court will review the paperwork that was filed initially to obtain the emergency examination and the paperwork filed for the AIT to determine if the patient should be held involuntarily or released pending the Court's decision on the AIT.

In addition to the mandatory Probable Cause hearing discussed above, you are also entitled to a preliminary hearing but you must ask for it within 5 days of your involuntary placement in a hospital. You may request a preliminary hearing by calling the Mental Health Law Project at 1-800-265-2047. This hearing allows you to challenge the facts that were relied on for your admission.

The Court is required to hold the preliminary hearing within 3 working days after it receives your request for a hearing.

At the hearing you are entitled to legal representation. You are also entitled to cross-examine the State's witnesses and to testify on your own behalf. If the Court does not find probable cause to believe that you were mentally ill and dangerous at the time you were held involuntarily, you must be released immediately. If probable cause is found, you will be

returned to the hospital to await your next opportunity to go before a judge.

Hospitalization Hearing

You are entitled to a hearing on the State's application for involuntary treatment within 10 days after the application is received (20 days if an independent psychiatric examination is ordered). In some cases hearings on the AIT may happen faster if you or the State file a motion to expedite the hearing. The Court can speed up the AIT hearing if it finds that you demonstrate a significant risk of causing serious bodily injury to yourself or others as defined in 13 V.S.A. § 1021 even while hospitalized, and clinical interventions have failed to address the risk of harm to the person or others or that you have received involuntary medication during the past two years and, based upon your response to previous and ongoing treatment, there

is good cause to believe that additional time will not result in you establishing a therapeutic relationship with providers or regaining competence.

You or your attorney can ask to delay your hearing, called a continuance, but courts are directed by law to limit continuances on the theory that promptly resolving the AIT issue is in the patient's best interest.

For your hearing you are entitled to representation by an attorney, to obtain an independent psychiatric opinion, to cross-examine the State's witnesses, to present witnesses of your own and to testify on your own behalf. You have the right not to attend your hearing. Because of a recent Vermont Supreme Court decision, mental health hearings are NOT automatically closed to the general public. It is unusual but possible that someone who has a specific interest in your hearing or even a news reporter

may be permitted by the Court to attend. The Court has the power to exclude someone from your hearing and it is up to the Court to decide whether to do this. You may also have anyone there you want within reason.

The State must prove that you are both mentally ill and a danger to yourself or to others. The State must also prove that a designated hospital or another designated facility can provide adequate treatment and that it is the least restrictive setting which can provide treatment.

If the State demonstrates that you are mentally ill and a danger to yourself or others, but fails to convince the Court that only hospitalization will be appropriate for you, the Court may require you to accept treatment outside a hospital (an ONH).

The Court may order an absolute discharge, which means, you must be released immediately and returned to your home.

Finally, the Court may order you committed to a designated hospital or another designated facility for up to 90 days. The Court must give a preference to a hospital nearest to your home, unless you request otherwise or there are compelling reasons not to do so.

Appeals

You have the right to appeal an Order committing you to a designated hospital or another designated facility or for any other treatment. The appeal must be filed within 30 days of the Court's Order. The appeal is heard by the Vermont Supreme Court. You should be aware that the appeal process usually takes a long time (eight months to two years) and you

should discuss with a qualified attorney the benefits of an appeal before you pursue one.

Habeas Corpus

You have the right, either on your own, or through your attorney, to challenge the legality of your detention at a designated hospital. A petition for writ of habeas corpus generally challenges procedural irregularities which could invalidate the hospital's authority to hold you.

Under current Vermont law, it may be very difficult to succeed on a habeas petition if you have already been committed by a Court. Therefore, the best time to challenge the procedures which led to your hospitalization is soon after you were admitted and sometime before your commitment hearing.

Applications for Continued Treatment

If the hospital staff believes you need treatment beyond the initial commitment of 90 days the State must apply to the Court before expiration of the initial commitment Order for a continuation of treatment, or release you. You have the same rights that you have at your initial commitment hearing.

If the State does not prove you need continued hospitalization you must be released immediately.

If the State convinces a Court that you still need treatment in a hospital, the Court will order commitment for up to an additional year. If the State did not prove that the hospital is the least restrictive setting for you the Court can release you on an Order of Non-Hospitalization, also for a period of up to (1) one year.

Applications for Discharge

At any time 90 days after the State's application for continued treatment has been granted you have the right to apply for discharge. Your hearing rights are the same as when you were committed.

If the Court agrees with you, you must be discharged. If the Court agrees with the State your application for discharge will be denied and you cannot apply for discharge again for 6 months.

Conditional Discharges

The Head of a designated hospital or another designated facility may release you at any time on a conditional discharge. The Court cannot order a conditional discharge. Conditional discharges, while still part of Vermont law, are very rarely used in recent history. Usually conditions of discharge are

negotiated with you, your advocate and your treatment team.

Any conditional discharge longer than 60 days must be accompanied by a specific reason for its imposition. A conditional discharge can extend no longer than 6 months. Often the discharge states that it will be in effect for 90 days, renewable for 90 days.

If you do not abide by the conditions, or if you appear to become dangerous, revocation of your discharge may be sought by request to the head of the designated facility from which you have been released.

Orders of Non-Hospitalization

At any hearing for involuntary hospitalization the State must prove you need treatment in a hospital. If the Court finds that you do require treatment

it must consider the least restrictive alternative for that treatment. This means treatment outside a hospital and usually at a community mental health center. The Court will then issue an Order of Non-Hospitalization (ONH). The Order will require that you abide by a particular treatment plan, usually including medication and counseling, for a period of up to 90 days, which is the same amount of time for which you might have been hospitalized.

If the State believes your Order of Non-Hospitalization ought to be extended beyond 90 days it must apply to the Court in an Application for Continued Treatment (see above). The State must return to court and you may exercise all your due process rights (full hearing, attorney, cross-examination, etc.) to oppose the extension. If the State succeeds the Court may place you on an Order of Non-Hospitalization for

up to one year. The State must file an application for continued treatment at the end of each year you are subject to the Order and each time must prove to the Court that you continue to need the Order. If the State does not file an application before your Order expires, then you are automatically released from the Order. You may also file an application for discharge from the Order as described above (see “Applications for Discharge”).

During the period of your Order of Non-Hospitalization, if the people designated to treat you believe you are not following the Order or believe that the Order is no longer adequate to meet your treatment needs, they may go back to the court and ask that you be returned to the hospital. Before returning you to the hospital the Court must hold a hearing and you will be appointed an attorney to represent you. The State must prove that you are in violation of the Order of

Non-Hospitalization or that the Order is no longer providing you with adequate treatment. If the State is requesting that you be returned to the hospital it must also prove that hospitalization is the only adequate place for you to go at the time. The Court has the option of keeping the same Order in place (and not returning you to the hospital), changing the conditions of the Order so that it is adequate to meet your treatment needs, or ordering your return to the hospital. The Court can return you to the hospital for the period of time remaining on your Order. For example, if 4 months had passed since an Order for 1 year had been issued by the Court then, the Court could Order you hospitalized for the remaining 8 months.

We recommend you contact Vermont Legal Aid's Mental Health Law Project if you are having problems with your Order of Non-Hospitalization.

SUMMARY OF INPATIENT RIGHTS AT VERMONT HOSPITALS AND OTHER DESIGNATED FACILITIES

If you are sent to a hospital involuntarily you have a right to a hearing and legal representation. Vermont Legal Aid's Mental Health Law Project is automatically appointed as counsel for individuals hospitalized involuntarily or placed on an ONH. You have the right to hire a private attorney if you choose. You have the right to consult with your attorney in private.

You have the right to confidentiality. Under Vermont law, your admission to a designated hospital or another designated facility must remain confidential. Your admission and your records cannot be discussed with anyone outside of the hospital without a release signed by you or your Court-appointed guardian, if you have one (see "Guardianship" below). Your case must

be discussed discreetly by all parties involved. Also, your case cannot be discussed with other patients without your consent. However, your medical records relating to an alleged mental illness are not confidential in any later civil commitment proceeding.

You have the right to refuse medication. You can refuse any medication prescribed for you by your doctor. You can exercise this right unless a Court has ordered you accept non-emergency medication after a due process hearing or your behavior poses an immediate danger to yourself or others. Only if such an emergency exists and no less restrictive alternatives are available can you be given medication involuntarily without a Court Order.

You have the right to be fully informed by your attending physician as to the nature of any procedures or treatment, the medical risks, the probable duration of

incapacitation, if any, and any alternatives available to you. You have the right to know the name(s) of the person responsible for treating you and to have enough information to make informed decisions about your treatment.

You have the right to request that your doctor prescribe a specific kind of medication although your doctor is not obligated to do so. If the doctor refuses you may request a second opinion. Again, you may refuse to take the medication.

You have the right to adequate treatment. Adequate treatment includes humane and respectful physical, emotional, and psychological care. You must be treated with respect and consideration at all times, and your personal dignity must be maintained under all circumstances.

You have the right to participate in the

development of any treatment goals or plans and to request specific treatment. Insist on discussing any and all aspects of your treatment with everyone involved. You have the right to know the names and professional status of all individuals providing treatment to you, particularly your attending physician, and the professional relationship among individuals who are treating you. You have the right to expect continuity of care while in the hospital and the right to be informed of any continuing health care requirements upon discharge.

You have the right to be fully informed at all times as to the status of your treatment. You must be provided with complete and current information in clear, understandable language. You are entitled to an interpreter (sign or foreign language) if a language barrier presents a continuing problem to understanding your care and treatment.

You have the right to refuse treatment. If you do not agree with some aspect of your treatment, such as medication, a particular counselor or method of counseling, or participation in some form of activity, you may refuse. The hospital must obtain a Court Order to treat you if you have refused.

You do not have to participate in any experimentation. The gathering of data for research purposes is voluntary and, if you choose to participate, you must give your informed consent.

You have the right, upon request, to have a person of your own sex present during certain portions of a physical examination, treatment, or procedure which is being performed by a person of the opposite sex, and the right not to remain disrobed any longer than is required for accomplishing any medical procedure.

You have the right to wear appropriate personal clothing and religious or other symbolic items as long as they do not unduly interfere with your treatment or the safety of you or others on the unit. The hospital must respond to your reasonable requests regarding such concerns as special dietary needs or room changes.

You have the right to receive an itemized, detailed and understandable explanation of charges, regardless of the source of payment. You must be informed as to what hospital rules and regulations apply to you as a patient.

You have the right to expect unrestricted access to communication. This includes the right to send and receive mail or email, to communicate privately by phone, and to have visitors during posted visiting hours. If for any reason there is a decision by your providers to restrict such access as a component of your care, you

must be included in any such decision making process.

You have the right of access to your medical records. If you want to look at any part of your chart during your hospitalization, you may be asked to put the request in writing to your doctor. A member of your treatment team will review your chart with you. Unless a medical provider reasonably feels that reviewing your records might be harmful to you (cause you to attempt suicide or become violent, for example), you are entitled to see them.

You have the right to file a grievance.

If you believe your rights are being violated or if you have a complaint about your treatment at the hospital, you can file a grievance with hospital staff. Each designated hospital has its own grievance procedure that is approved by

the Department of Mental Health. You have a right to appeal an unfavorable response to any grievance you file and to be informed and assisted regarding your appeal rights.

A summary of the hospital's obligations, written in clear language, must be given to you upon admission and also must be visibly posted on the unit. Failure to comply with any of these provisions may constitute a basis for disciplinary action against the hospital or a physician.

EMERGENCY INVOLUNTARY TREATMENT RIGHTS

When you are a patient at a designated hospital or another designated facility you have the right to refuse treatment and/or medication. However, in an emergency, you may be secluded, restrained and/or medicated against your will. An

emergency means a significant change in a patient's condition or behavior resulting in the imminent threat of serious bodily harm to the patient or others so that action is immediately necessary to protect the patient or others.

Even in an emergency you are entitled to receive the least amount of seclusion, restraint or medication necessary to prevent harm to yourself or others. The hospital staff and treating psychiatrist are required to file a certificate of need justifying the emergency involuntary treatment. The hospital, the Department of Mental Health, and DRVT, as Vermont's Mental Health Ombudsman, will all be given copies of the emergency involuntary treatment documents to review for quality assurance.

You can also contact Disability Rights Vermont if you would like to have help in understanding why you were the subject

of emergency involuntary treatment, or if you wish to file a grievance about such treatment. You can also file a grievance on your own at any time you are in the hospital or soon thereafter.

NON-EMERGENCY INVOLUNTARY MEDICATION RIGHTS

Hearing Rights

You retain the right to refuse medication even if you are committed to a designated hospital or another designated facility. If your doctor decides you need medication but you refuse, and the State believes it can prove you are not competent to make treatment decisions, a Court may be asked to order you be medicated against your wishes. If the State does ask the Court to make such an Order, you are entitled to a hearing with full due process rights,

including the right to adequate notice, appointed counsel, witnesses, cross-examination of the State’s witnesses, and testimony on your own behalf.

After a hearing on the State’s Petition for Non-Emergency Involuntary Medication, the Court must issue a written decision, which you are entitled to receive. Once you have an opportunity to review it with your attorney, you have a right to appeal the Order for non-emergency involuntary medication.

If you appeal the Court’s medication Order, you may ask the Court to “stay” or stop the Order from going into effect until after your appeal is resolved. If the Court does not grant a stay you can be medicated while you are pursuing your appeal.

Medication Review

If a request to medicate you against your will on a non-emergency basis has been granted your treatment provider is required to reassess your competence to decide whether or not to accept the medication each week the Order is in effect. The results of this assessment must be placed in your chart. If your treatment provider determines you are competent you have the right to refuse medication and the provider must contact your attorney to notify them that the Order is no longer in effect. Ask your treating physician at the hospital if you want to see the results of your competency assessment. If you have problems seeing your assessment, contact Vermont Legal Aid's Mental Health Law Project or Disability Rights Vermont.

RIGHTS IN THE CORRECTIONAL SYSTEM

If you are in a Vermont correctional facility, you have all the rights that other mental health clients have with some exceptions. For example, if you have been placed in a designated hospital or another designated facility for a portion of your incarceration and the Court determines at a hearing that you do not need to be there, you would be returned to a correctional facility rather than being released.

Sometimes the Department of Corrections will agree to furlough conditions that are similar to a conditional discharge or an Order of Non-Hospitalization. If you violate your furlough conditions you are usually returned to the correctional facility.

If a psychiatric emergency occurs while you are in correctional facility you can be sent to a designated hospital or another

designated facility on an Application for Emergency Examination. As with anyone in this situation, once the AIT is filed in court, you will be contacted by Vermont Legal Aid's Mental Health Law Project for representation, and you have the same hearing rights.

Sometimes, an individual in a correctional facility will request treatment at a designated hospital or another designated facility. The Department of Corrections has an agreement with Department of Mental Health to provide treatment at a designated hospital in some circumstances.

As an individual in the corrections system but placed in a psychiatric facility, you may refuse treatment (except in an emergency situation). The hospital authorities may elect not to oppose your right to refuse medication, but they have the option of returning you directly to the

correctional facility without a hearing.

You do have the right to receive mental health services in the correctional facility where you are detained. Mental health treatment within correctional facilities is provided by individuals whose services are contracted by the Department of Corrections. Therefore, although you have the right to request mental health services, you do not have the opportunity to request a specific community mental health treatment provider. While in the correctional facility you should be able to obtain mental health treatment through the medical service contractor of the prison. If you are unable to obtain assistance, contact Disability Rights Vermont, or the Vermont Defender General's Prisoners' Rights Office at 828-3194, and request their assistance.

Observation/Competency Evaluations

Individuals charged with crimes must be competent to stand trial. Generally, this means you must have the ability to communicate with your attorney, to understand the charges against you, and to assist in your own defense.

If there is a question about your competency the Court can Order a pretrial evaluation. That evaluation can take place in the community, in a correctional facility, a designated hospital, or another designated facility.

When your evaluation occurs at a designated hospital you can be held there for up to (60) sixty days and are not entitled to leave the unit except by permission of the Court. In this case, you are still represented by your Public Defender or private criminal defense attorney. However, if you have questions

or concerns, Vermont Legal Aid’s Mental Health Law Project or Disability Rights Vermont can assist you.

Criminal Commitments (“4822 Hearings”)

If you have been found not competent to stand trial, the Court must conduct a hearing to determine if you need treatment. Your legal rights at that hearing are the same as those of clients admitted involuntarily to a designated hospital or another designated facility.

Commitment to the hospital is not automatic. The Court must determine whether appropriate treatment is available in the community and may place you on an Order of Non-Hospitalization or not order any treatment at all.

If you are committed to a designated hospital or another designated facility, the Order can be for no more than 90

days. You may, like other patients, file an application for discharge at the end of the 90 day period.

At the end of the 90 day period the hospital must either return you to prison or file an application for continued treatment. You are entitled to the same rights as any other patient at the initial hospitalization hearing.

GUARDIANSHIP

You or any responsible adult with a direct interest in you, such as a relative, friend, or physician, can file a petition for appointment of a legal guardian.

The petition is filed with a Probate Division of your local Superior Court and asks that the Court determine your competence to make decisions in specific

areas of your life. Should the Court decide that you are unable to manage either your personal, medical or your financial affairs, a guardian will be appointed to manage these things and make decisions for you.

Should the Court decide that you are capable of managing some aspects of your personal, medical or financial affairs, but not all, a “limited guardian” will be appointed. A guardian might be appointed to oversee your medical care, or your finances, for example. Any competent individual, at least 18 years of age, which the Court finds best qualified, can be appointed as your guardian. But if you reside in a residential care home, employees or operators of the home cannot be appointed your guardian. As you will see below, you may legally oppose the appointment of any guardian if you do not feel you need one and you may oppose the appointment of a particular person as guardian. Courts

almost always prefer to appoint a person you feel most comfortable with as guardian, unless there are important reasons not to.

When a guardianship petition is filed you have the right to legal representation. The Court must inform you of where you can get legal representation if you cannot afford it.

You have the right to review the petitions and all relevant documents with your attorney and to be informed about what to expect at the hearing.

You have the right to have the hearing conducted in a safe setting which will not harm your mental or physical health, to testify on your own behalf, to introduce evidence, and to present your witnesses and cross-examine any opposing witnesses.

You have the right to appeal the Court's decision.

Should the Court appoint a limited or total guardian, you retain all legal and civil rights except those specifically granted to the guardian. Any action taken by a guardian on your behalf must be in a manner which is least restrictive of your personal freedom. An appointed guardian does not have the authority to have you placed in a designated hospital or another designated facility, or residential care home, without following the same procedure that any other interested party would have to follow. If you are admitted to a designated hospital, or another designated facility, your guardian will be notified.

Should the Court decide that you are not in need of a guardian, the petition will be dismissed and all records of the proceeding will be sealed.

GUARDIAN AD LITEM

If you become involved in a court action and your ability to communicate your own best interests is called into question, the Court can appoint a guardian ad litem for you. A guardian ad litem (“guardian for the litigation”) is a volunteer appointed by the Probate Judge to promote and protect your best interests. The guardian ad litem only acts on your behalf during of the proceeding and may be asked by the Court to provide their opinion as to what outcome would be best for you.

An inability to communicate effectively might be the result of a physical condition (e.g., Alzheimer’s disease, traumatic injury) or certain phases of mental illness (e.g., psychotic episode, disorientation as a result of acute depression). The guardian ad litem’s duty is to act as an independent advisor and advocate in order to safeguard your best interests

and legal rights. Anyone involved with the case may inquire into your ability to communicate—a judge, you, your lawyer, or another party to the action.

Before a Court may appoint a guardian ad litem in your case, it must find that you are not competent to advocate in your own best interest. You have the right to request the appointment of a guardian ad litem and you also have the right to contest a Court's proposed appointment. The mere fact that you may have been diagnosed as having a mental health condition or a developmental disability or that you may be institutionalized does not mean that you are so unable to communicate that a guardian ad litem should be appointed for you. If you think you do not need a guardian ad litem, tell your attorney and tell the Court. You may have to do some convincing. Even after an appointment you may protest and, if your guardian ad litem disagrees with you,

she or he has a duty to make that belief known to the Court.

It is important to remember that it is the Court's duty to permit you the maximum freedom consistent with your abilities, throughout any legal proceedings.

REPRESENTATIVE PAYEE

If you are receiving Social Security benefits (SSDI or SSI), and Social Security officials believe that you are incapable of properly maintaining your finances, a representative payee may be appointed. A representative payee is usually a friend or relative appointed to manage your financial affairs. Representative payees must account for all expenditures made on your behalf to the Social Security Administration and to you.

Application for appointment of a representative payee is made through the Social Security office. Normally your physician would submit a statement that you are incapable of managing your financial affairs although it is not legally necessary.

If a representative payee is appointed and you notify Social Security that you do not feel you need one, Social Security may request an evaluation from your current physician to determine if you are capable of managing your own finances. You may also request that a different payee be appointed if you do not believe your finances are being properly maintained by your present payee. If you have a payee, but decide you no longer want one, you may apply to the Social Security Administration to be your own payee. The simplest way to accomplish this is to obtain written confirmation (on an official SSA form) from a physician that you no

longer need a representative payee.

If you have concerns about your representative payee, you can contact the Social Security Fraud Reporting Line at 1-800-269-0971.

AMERICANS WITH DISABILITIES ACT OF 1990

The federal Americans with Disabilities Act provides civil rights protection for people with disabilities with regard to employment, public accommodations, transportation, state and local government services and telecommunications.

Employment

Employers may not discriminate against an individual with a disability

who is otherwise qualified for the job. Employers can ask about your ability to perform a job but cannot ask if you have a disability nor can they subject you to tests which screen out people with disabilities. They must provide “reasonable accommodation” such as modified schedules, special equipment, job restructuring and other aids to people with disabilities so long as these accommodations do not cause “undue hardship” on the employer. You can bring complaints of employment discrimination to the Civil Rights Unit of the Vermont Attorney General’s office, the federal Equal Employment Opportunity Commission, or a private attorney. Remedies include back pay, Court Orders to stop the discrimination, and legal fees.

Public Accommodations

Any public service such as a hotel, restaurant, store, bank, doctor’s

office, school or day care, may not discriminate against a person with a disability. Reasonable changes in policy, practice and procedure must be made, as well as provision of auxiliary aids or services, in order to avoid discrimination unless “undue burden” would result. Physical barriers must be removed or alternative methods of providing service must be offered if readily achievable. New construction and alterations to facilities must be accessible. You may bring a private lawsuit to stop public accommodation discrimination, or you can file a complaint with the U.S. Attorney General or with the Vermont Human Rights Commission.

Transportation

You must be provided with comparable transportation services if you cannot use fixed route bus services, unless “undue burden” would result. New buses ordered

after August 26, 1990 must be accessible. All trains must have one accessible car per train by August 26, 1995. You may file complaints regarding inaccessible transportation with the Department of Transportation, the U.S. Attorney General's office, the Vermont Human Rights Commission, or bring a private lawsuit.

State and Local Governments

All government facilities, services and communications have to be accessible. You may file complaints regarding access to governmental services with the U.S. Attorney General's office, the Vermont Human Rights Commission, or bring a private lawsuit.

Telecommunications

Telephone companies must offer telephone relay services to people using telecommunication devices for

the deaf (TDDs) or similar devices. You may file a complaint with the Federal Communications Commission, or bring a private lawsuit.

State Laws

There are also state laws that provide protection for people with disabilities with regard to employment and public accommodations. If you feel you have been discriminated against because of your disability, or perceived disability, you can file a complaint with the Civil Rights Division of the Vermont Attorney General's Office, or Vermont's Human Rights Commission listed under "Protecting Your Rights."

If you feel your rights under the Americans with Disabilities Act are being violated, you can contact Disability Rights Vermont for assistance.

THE FAIR HOUSING AMENDMENTS ACT OF 1988

The Fair Housing Amendments Act (FHAA) guarantees that individuals with disabilities (which include psychiatric as well as physical disabilities) have the right to housing on the same basis as anyone else who applies for rental or home ownership.

When you apply for housing you can only be asked questions that are related to the tenancy and you must be asked the same questions as any other applicant.

You cannot be denied housing because of a physical disability if you can be reasonably accommodated. “Reasonably accommodated” means, for example, the addition of ramps, wider doors for wheel chairs, and grab bars in bathrooms and showers. You may have to pay for these additions but you cannot be denied

housing because they don't exist when you apply for housing.

Once you have applied for rental housing or home ownership, your lease and/or mortgage must be the same as those available to non-disabled persons. In other words, the landlord cannot add special conditions because of your disability. You cannot be evicted except under the same terms and conditions as other tenants. If your tenancy would constitute a threat to health, safety or property, you may be evicted. However, if the risk can be reduced or eliminated by reasonable accommodation, this must be done.

You should know that the FHAA defines disability in terms of real or perceived disability or a history of treatment for a disability. Even if at the time you apply for housing you are no longer disabled but the landlord learns you had been at one time in a designated hospital or another

designated facility, this information cannot be used to deny you housing. So long as you can meet the tenancy requirements applied to all tenants you have a right to that housing.

If you have any questions about the FHAA or feel you have been discriminated against, you can contact the Vermont Human Rights Commission listed under “Protecting Your Rights.”

HOUSING CONTINGENCY FUND

In an effort to ensure that former hospital patients have access to adequate housing, the Department of Mental Health has established a housing contingency fund. Every community mental health center has funds specifically for their clients who need assistance with housing.

These funds can be used in several ways. For example, it can be used to pay a security deposit, to pay the difference between the actual rent and the amount you can pay, and to pay the share of the rent a roommate would normally pay after they have moved out and while you are looking for a new roommate, or to pay rent to keep your apartment while you are in a hospital or crisis treatment program.

If you have any questions regarding your eligibility for these funds, or have been denied requested assistance by your local community mental health agency, contact the Department of Mental Health 1-888-212-4677.

ABOUT DISABILITY RIGHTS VERMONT

Disability Rights Vermont, or DRVT, is part of the national Protection and Advocacy System put in place by the United States Congress to insure that people with disabilities had access to legal advocacy in order to protect their rights. DRVT works under a variety of federal grants and statutory authorization that allows us to assist people with any kind of disability, including mental health, developmental and physical disabilities.

DRVT is an independent, non-profit organization dedicated to responding to problems, issues, and complaints brought to it by people with disabilities. DRVT is client centered, and directed by a Board of Directors. DRVT's mission is to promote the equality, dignity, and self-determination of people with disabilities. DRVT is the designated Mental Health Care Ombudsman for the State of Vermont.

DRVT provides advocacy assistance to individuals, including legal assistance, to people with disabilities throughout the state. DRVT also advocates at a systems level, including legislative advocacy to promote positive systemic responses to issues affecting people with disabilities. Although there are limits to what DRVT can provide, as well as eligibility criteria people need to meet to obtain assistance, DRVT staff try to help people who are not eligible for DRVT's services by offering information and referrals when possible.

DRVT also provides information to people regarding their rights, such as this booklet, as well as outreach and education activities intended to assist people with their self-advocacy efforts. If you are in an abusive situation, believe that your rights are being violated, or know someone with this type of problem, you should consider contacting DRVT by calling 1-800-834-7890.

PROTECTING YOUR RIGHTS - RESOURCES

If you are experiencing any difficulty with your treatment, and/or treatment providers, you have the right to protect yourself through grievance procedures within each mental health service program.

You have the right to access and communicate privately with any rights protection service or advocacy group. The following list includes several organizations that may be helpful to you.

INFORMATION AND REFERRAL

Vermont 2-1-1 211
*health and human services information
and referral services*

Governor's Information & Referral Line
information and referral for State agencies

.....802-828-3345
.....802-828-3333 (Main Line)

Americans with Disabilities Act

General ADA Information1-800-949-4232

LEGAL SERVICES

Disability Law Project.....1-800-889-2047

Have Justice Will Travel

family court/domestic violence

.....802-685-7809
.....877-496-8100 (Toll Free)

Lawyer Referral Service.....1-800-639-7036

legal referrals

Mental Health Law Project....1-800-265-0660

.....802-241-3222

Prisoner's Rights Office802-828-3194

*legal services and rights protection for
people in prison*

South Royalton Legal Clinic

income-based free legal services

.....(802) 831-1500

Vermont Legal Aid

income-based free legal services in non-criminal matters, most offices staff the Senior Citizens Law Project, the Disability Law Project and the Poverty Law Project

.....1-800-889-2047 (TTY)

.....802-863-5620 (Main Line)

Disability Rights Vermont, Inc.

.....1-800-834-7890

advocacy for people diagnosed with a mental illness or individuals with a disability, responding to complaints of abuse, neglect and violation of civil rights

ADVOCACY SERVICES

Community of Vermont Elders (COVE)

senior citizen advocacy organization that does community organizing, lobbying, and

*provides public education on health care,
affordable medication, family leave, long-
term care, utilities, and nursing home issues*
.....802-229-4731
.....1-888-865-2683

Client Assistance Program

.....1-800-889-2047
vocational rehabilitation client advocacy

Friends of Recovery1-800-769-2798

recovery from drug and alcohol addiction

Green Mountain Self Advocates

*self-advocacy group for people with
developmental disabilities*
.....1-800-564-9990

National Alliance on Mental Illness

*support, education and advocacy for
families friends and individuals with
serious mental illness.....*1-800-639-6480
.....802-876-7949

Vermont Association for Mental Health and Addiction Recovery.....802-223-6263

citizens' organization that promotes mental health and mental health services

Vermont Center for Independent Living

peer advocacy for people with disabilities

.....1-800-639-1522

.....802-229-0501

Vermont Coalition for Disability Rights

28 member coalition advocating public policy and legislation pertinent to people with disabilities ... via VCIL 1-800-639-1522

Vermont Psychiatric Survivors

peer support, assistance, information and referral for people with a diagnosis of mental illness.....802-775-6834

INVESTIGATIVE AND PROTECTIVE SERVICES

Adult Protective Services (APS)

investigates abuse, neglect or exploitation

of elders and people with disabilities
.....1-800-564-1612
.....802-241-0480 (Main Line)
.....888-700-5330 (Facility Complaint)

Deaf Victims Advocacy Services

*advocacy and support for deaf persons
who are victims of crimes-www.dvas.org*

Long Term Health Care Ombudsman

*complaint investigation and assistance
for people living in nursing homes or
community care homes (part of Vermont
Legal Aid).....1-800-889-2047
.....1-800-917-7787 (Toll Free)*

**Vermont Department of Disabilities,
Aging and Independent Living,
Division of Licensing and Protection**

*investigates complaints of abuse, neglect or
exploitation of vulnerable adults in hospitals,
residential care homes, nursing homes and
other licensed facilities1-802-241-0480*

DESIGNATED MENTAL HEALTH AGENCIES

Addison County

Counseling services of Addison County

..... 802-388-6751

Bennington County

**United Counseling Service of Bennington
County.....802-442-5491**

Chittenden County

Howard Center for Human Services

.....802-488-6000

Caledonia, Essex & Orleans Counties

NE Kingdom Human Services, Inc.

.....1-800-649-0118

.....1-800-696-4979 (Toll Free)

Franklin & Grand Isle Counties

Northwestern Counseling & Support

Services.....1-800-834-7793

.....802-524-6554

Lamoille County

Lamoille County Mental Health Services

.....802-888-5026

Orange County

Clara Martin Center - Randolph

.....802-728-4466

Rutland County

Rutland Mental Health Services

.....802-775-2381

Washington County

Washington County Mental Health

.....802-229-0591

Windham & Windsor Counties

Health Care & Rehabilitation Services

.....802-886-4500

DISCRIMINATION

American Civil Liberties Union Vermont
addresses constitutional rights issues of

all citizens.....802-223-6304

Attorney General - Civil Rights Unit

.....1-888-745-9195

.....802-828-3665 (TTY)

.....802-828 -3657

Vermont Tenants

housing discrimination.....802-864-0099

Department of Justice, Civil Rights Div.

ADA Requirements Affecting Public

Accommodations and State and Local

Government Services.....202-514-4609

Equal Employment Opportunity

Commission..... 1-800-669-4000

.....1-800-669-6820 (TTY)

PABSS at Disability Rights Vermont

assistance for people with disabilities

who are receiving social security

benefits and who are facing barriers to

employment.....1-800-834-7890

Vermont Human Rights Commission

*investigates complaints of
discrimination regarding housing, public
accommodations and employment*

.....1-800-416-2010

DROP-IN CENTERS AND CLUBHOUSES

Another Way.....802-229-0920

Montpelier Drop-In Center

Evergreen House

Clubhouse in Middlebury

.....802-388-3468

.....802-388-6751 (Main Office)

Our Place802-463-2217

*Bellows Falls Drop In Center and
Community Kitchen*

Westview House802-488-6023

Clubhouse in Burlington

HEALTHCARE ISSUES

Office of Healthcare Advocate

health insurance questions and complaints
.....1-800-917-7787
.....1-888-884-1955 (TTY)

**Office of Professional Regulation
(at the Secretary of State)**

complaints against Psychologists, Mental Health Counselors, Dentists, Doctors of Osteopathy, Optometrists, Physical Therapists, Social Workers, Nurses, and Chiropractors1-800-439-8683
.....802-828-1505
..... 1-888-287-5000 (Toll Free)

Vermont Board of Medical Practice

*complaints against any Licensed Physicians, Psychiatrists, Physicians Assistants, Podiatrists.....*802-657-4220

Vermont Health Access....1-855-899-9600

CHILDREN AND FAMILIES

Vermont Communication Support Project
*communication assistance in family
court proceedings for people with
disabilities*.....802-244-8867
.....1-888-686-8277 (Toll Free)

**Vermont Department of Children and
Families, Economic Services Division**
.....1-800-479-6151

Vermont Family Network
*special education information and
assistance*.....1-800-800-4005

**Vermont Federation for Families for
Children’s Mental Health**
.....1-800-639-6071

Prevent Child Abuse Vermont
.....802-229-5724

STATE AGENCIES AND SERVICES

Attorney General802-828-3171

Vermont Agency of Human Services

.....802-241-0430

.....802-241-0440 (Main Line)

**Vermont Department of Disabilities,
Aging and Independent Living**

.....802-241-2401

**Vermont Department of Health,
Division of Mental Health**

*governs the designated hospitals, and
regional mental health agencies and
various programs.....*802-241-0430

.....802-241-0090 (Main Line)

Vermont Developmental Disabilities

Council.....1-888-317-2006

.....802-828-1310

Vermont Health Department

.....802-863-7200

Vermont State Legislature

(Sergeant-at-Arms)1-800-322-5616

ADDITIONAL RESOURCES

Alzheimer’s Association

.....1-800-272-3900

ARC- Rutland Area

*developmental disability newsletter,
group events, adult self-advocacy group,
Representative Payee program*

.....802-775-1370

Brain Injury Association of Vermont

.....802-244-6850

.....877-856-1772 (Toll Free)

Committee on Temporary Shelter (COTS)

.....802-862-5418

**Consumer Assistance Program of the
Attorney General's Office**

.....1-800-649-2424

Division of Vocational Rehabilitation

employment rehabilitation, benefits

counseling1-877-534-3224

**Enable Loan Program of the Vermont
State Housing Authority**

funds for making your home accessible

.....1-800-820-5119

.....1-800-798-3118 (TTY)

Outright Vermont.....1-802-865-9677

Burlington Gay, Lesbian, Bisexual Youth

Group for 22 and under

Social Security Administration

.....1-800-772-1213

Vermont Association for the Blind

.....877-350-8838

.....1-800-639-5861 (Main Line)

Vermont CARES.....1-800-649-2437

HIV/Aids service organization

Vermont Commission on Women

.....1-800-881-1561

Vermont Fuel Assistance

low income heating assistance

.....1-800-479-6151

Vermont Telecommunications Relay

Service.....1-800-253-0191

Vermont Network Against Domestic

Violence and Sexual Assault

.....802-223-1302

Domestic Violence Hotline.1-800-228-7395

Sexual Assault Hotline.....1-800-489-7273

Vermont Psychiatric Association

part of Vermont Medical Society

.....802-223-7898

Veteran's Affairs1-888-666-9844

.....1-866-687-8387(Toll Free)

