

PFA Tips

Involuntary Adult Psychiatric Admissions

Involuntary psychiatric treatment is difficult, both emotionally and procedurally, even when the process goes smoothly. It may be compounded when the individual involved is unable to effectively communicate their wishes to the professionals involved in the process.

What happens when an adult loved one needs in-patient psychiatric care but is unwilling or unable to agree to the treatment?

It is important to know that Guardianship and Medical Power of Attorney cannot be used to involuntarily admit someone for psychiatric treatment. They have no power in this process regardless of whether the person is considered “non-verbal” or perceived as unable to make their own decisions. This is a legal process in which only an Administrative Law Judge (ALJ) has the final decision making authority based on specific criteria and state law.

The Process

1. Emergency Petition (EP)

If a person presents a danger to themselves or others and is unwilling or unable to voluntarily come to a mental health unit, the law requires that an emergency petition be issued in order to bring the individual against their will. In Maryland, a **licensed professional (such as a physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage and family therapist)** who has examined the patient or a **peace officer (such as a sheriff or police officer)** who observes the dangerous behavior may sign the EP. The police are authorized to take the person to the nearest appropriate emergency room (ER) for an evaluation.

In addition, a concerned person (often

a friend or family member) can petition the court for evaluation. If the judge is satisfied that a dangerous situation exists, an EP will be authorized. To file a petition for evaluation, go to the nearest court and request the petition for Emergency Evaluation form (also available online).

2. Physicians’ Certificates

Once an EP is executed, a **peace officer** will take the person to an ER where the person will be **examined by at least two health professionals** (i.e., a physician, psychologist, or psychiatric nurse practitioner) to determine if he/she should be certified for involuntary admission to a psychiatric facility. If the patient meets the criteria, the health professionals will arrange for the patient to be hospitalized by completing two physician’s certificates. (Maryland Code Annotated Health General section 10-616). If the patient is unable or unwilling to voluntarily agree to be admitted, they will be involuntarily admitted and transported to a psychiatric facility by police or ambulance. Once admitted, the patient will be scheduled for a hearing before an **ALJ**.

There are regulatory timelines that should be followed during this process:

- o Within **six hours** after being brought to an ER the patient is to be examined by a physician to determine if they meet the criteria for involuntary admission (Health General section 10-624).
- o The maximum length of stay in the hospital ER is **30 hours** after initial entry (Health General section 10-624).
- o A legally required hearing to determine



if the patient should be involuntarily admitted must occur within **10 days** of the initial confinement. One postponement, by agreement of the parties or for good cause, for no more than seven days, is permitted (Health General section 10-632).

The Hearing

The hearing is held in a private room at the facility where the patient is being treated. A hospital representative and the patient’s attorney will have the opportunity to call witnesses, present the details of the confinement, and present closing arguments. The ALJ will record the hearing and place all witnesses under oath.

The only person legally required to testify at the hearing is the hospital representative (e.g., psychiatrist, psychologist, etc.) that is treating the patient and has examined them at least **48 hours** before the hearing. The hospital will call its witnesses first (often family or caretakers); each will be questioned by the hospital representative and then by the patient’s attorney.

The patient will be assigned a public defender (PD) to represent them at the

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hearing. The role of the PD is to protect the patient's civil liberties. The PD does not represent the parent or caretaker and is not required to speak with them or to call them as a witness; although, they may choose to do so. The patient or their attorney may waive the patient's presence at the hearing.

The ALJ's role is to rule on any issues raised that relate to the process by which the patient was taken into the hospital and confined. The ALJ must consider all evidence and testimony presented at the hearing and order the release of the patient UNLESS the evidence clearly and convincingly demonstrates that the patient:

- 1) has a mental disorder;
- 2) needs in-patient care or treatment;
- 3) presents a danger to themselves or others;
- 4) is unable or unwilling to be voluntarily admitted; and
- 5) has NO less restrictive form of intervention available that is consistent with their welfare and safety needs.

Furthermore, the ALJ must release the patient if a substantial error in the process occurred (such as the absence of an EP, a defective EP, or a violation of regulatory

timelines) and there is no other option available consistent with due process and the protection of the patient's rights (Code of Maryland Regulations (COMAR) 10.21.01.09). If the patient is released due to a substantial error, the patient's physician may file a new EP after the patient has been given the opportunity to leave the inpatient facility (COMAR 10.21.09.10).

A copy of the ALJ's decision is provided to the hospital, the PD, and the patient (or the patient's medical record).

Important Things to Keep in Mind

To the best of your ability, ensure the process is followed in order to reduce the possibility that the patient is released due to a substantial error in the process, which may trigger the entire process to start over again causing more stress to everyone involved.

When in the ER, advocate that the doctors and nurses rule out pain as a potential reason for the behavior, especially if the behavior is atypical for the person. Behavior is a form of communication, and may be indicative of a medical problem and not

necessarily be psychiatric in nature. Be aware that the ER stay may be long (despite regulatory timelines) due to a shortage of in-patient psychiatric beds. Furthermore, while the law requires public access to emergency services per the Emergency Medical Treatment & Labor Act (EMTALA), there is anecdotal evidence that some facilities will pass over patients with autism spectrum disorders (ASD) because of the additional level of care that is often needed. Many psychiatric hospitals do not have staff with specialized training to work with individuals with ASD and other developmental disabilities.

If applicable, advocate to the ER and psychiatric hospital staff that the person has access to their preferred communication method (e.g., pen & paper, iPad, etc.) These items are often removed from patients both in the ER and on the ward for safety considerations. It is imperative that the patient be given every opportunity to communicate on their own behalf. If you are in communication with the PD, they should be informed of the patient's preferred communication method as well.

If you want to testify at the hearing, inform the caseworker, physician, or hospital representative. Neither the hospital nor the PD is required to call you as a witness.

Even if you are not called as a witness, you may want to have a representative at the facility on the day of the hearing. If the patient is released, the hospital and ALJ have no legal obligation to keep you informed or provide transportation for the patient.

Additional Resources

Emergency Evaluation Form for State of Maryland
<https://www.courts.state.md.us/courtforms?forms%5B0%5D=languages%3A59>

Pathfinders for Autism Parent Training: Involuntary Admissions
<http://pathfindersforautism.org/wp-content/uploads/2017/11/Pathfinders-for-Autism-Community-Training.pdf>

National Alliance on Mental Illness (NAMI) – Metropolitan Baltimore
<http://namibaltimore.org/>

National Alliance on Mental Illness (NAMI)
<https://www.nami.org/>

What to do in a Psychiatric Crisis in MD
http://namimd.org/uploaded_files/3/What_to_do_in_a_Psychiatric_Crisis_PDF_for_Web.pdf

Maryland Coalition of Families (MCF)
<http://www.mdcoalition.org/>

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