

Louisiana Department of Health
Office of Behavioral Health
Rights of Minor Patients
CHC Art. 1409 – Chapter 3

Art. 1409. Rights guaranteed

- A.** Each minor patient has a right to care provided in a dignified and humane manner, and to such privacy as is possible consistent with the minor's treatment plan.
- B.** The confinement of a minor to an institution shall not of itself cause him to lose any of the rights enjoyed by citizens of Louisiana and of the United States. No minor patient shall be deprived of these rights except when the determination is made by an appropriate court.
- C.(1)** The minor patient in a treatment facility shall be permitted unimpeded, private, and uncensored communication with persons of his choice by mail, telephone, and visitation. These rights may be restricted by the director of the treatment facility if sufficient cause exists and is so documented in the minor's medical records. The minor's legal counsel, as well as his next of kin or responsible party, must be notified in writing of any such restrictions and the reasons therefor. When the cause for any restriction ceases to exist, the minor's full rights shall be reinstated. A minor shall have the right to communicate in any manner in private with his attorney at all times.
- (2)** The director of a treatment facility shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for visits is available. Writing materials, postage, and telephone usage funds shall be provided in reasonable amounts to minor patients who are unable to procure such items.
- (3)** Reasonable times and places for the use of telephones and for visits may be established in writing by the director of any treatment facility. However, the times and places established by the director must allow patients, at a minimum, reasonable daily communication by telephone and visitation. These rights may be restricted by the director of the treatment facility if sufficient cause exists and is so documented in the patient's medical records. The patient's legal counsel, as well as his next of kin or responsible party, must be notified in writing of any such restrictions and the reasons therefor. When the cause for any restriction ceases to exist, the patient's full rights shall be reinstated.
- (4)(a)** The director of any substance abuse treatment facility may restrict the visitation rights of a minor who is voluntarily admitted to such treatment facility for substance abuse treatment under provisions of this Title for the initial phase of treatment but no longer than seven days unless good cause exists to extend the restriction and is so documented in the patient's record. This restriction shall not apply to visitation by the minor's attorney, or if he is not represented by counsel, the MHAS attorney or the minor's minister. This restriction shall also not apply to the parent or legal guardian of a minor unless the director determines that good cause exists that such restriction shall be in the best interests of the minor and is so documented in the minor's record. When the facility director determines the need to restrict visitation of new minor patients, he shall post notice of such restriction in places prominent to all new admissions, and shall inform each new patient of the restriction prior to his admission and the length and duration thereof, and further that such restriction may be extended on an individual basis as determined to be in the minor's interest by the treatment staff with the concurrence of the medical director.
- (b)** Nothing herein shall be construed to further restrict other forms of patient communication by and to minor patients as permitted in this Article nor shall this restriction apply to mental health treatment facilities.
- D.** Physical restraints or seclusion shall only be used to prevent a minor patient from physically injuring himself or others. Physical restraints or seclusion may not be used to punish or discipline a patient or used as a convenience to the staff of the treatment facility. Restraint and seclusion shall be used only in accordance with the following standards:
- (1)** Restraint or seclusion shall only be used when verbal intervention or less restrictive measures fail. Use of restraint or seclusion shall require documentation in the patient's record of the clinical justification for such use as well as the inadequacy of less restrictive intervention techniques.
- (2)** A written order from a physician or a psychologist acting within the scope of his institutional privileges shall be required for any use of restraint or seclusion. If, however, no physician or psychologist is immediately available, a registered nurse who has been trained in management of disturbed behavior may utilize restraint or seclusion. The nurse or the nursing supervisor shall then immediately notify a physician or a psychologist with institutional authority to order seclusion and provide him with sufficient information to determine whether restraints or seclusion are necessary and whether less restrictive interventions have been tried or considered. The physician or psychologist may then issue a telephone order for seclusion or restraint, if such order is indicated.
- (3)** Written orders for the use of restraint or seclusion shall be time limited and not more than twelve hours in duration. The written order shall include the date and time of the actual examination of the patient, the date and time that the patient was placed in restraint or seclusion, and the date and time that the order was signed.
- (4)** A renewal order for up to twelve hours of restraint or seclusion may be issued by a physician or a psychologist with institutional authority to order seclusion or restraint after determining that there is no less restrictive means of preventing injury to the patient or others. If any patient is held in restraint or seclusion for twenty-four hours, the physician or psychologist with institutional authority shall conduct an actual examination of the patient and document the reason why the use of seclusion or restraint beyond twenty-four hours is necessary, and the parent, tutor, or caretaker shall be notified by the twenty-sixth hour.
- (5)** Staff who implement written orders for restraints and seclusion shall have documented training in the proper use of the procedure for which the order was written.
- (6)** Periodic monitoring and care of the patient shall be provided by responsible staff. A patient in restraint or seclusion shall be evaluated every fifteen minutes, especially in regard to regular meals, water, and snacks, bathing, the need for motion and exercise, and use of the bathroom, and documentation of these evaluations shall be entered in the patient's record.
- (7)** Patients shall be released from restraint or seclusion as soon as the reasons justifying the use of restraints or seclusion subside. If at any time during the period of restraint or seclusion a registered nurse determines that the emergency which justified the seclusion or restraint has subsided and a physician or psychologist is not immediately available, the patient shall be released. At the end of the period of restraint or seclusion ordered by the physician or psychologist the patient shall be released unless a renewal order is issued.
- (8)** Mechanical restraints shall be designed and used so as not to cause physical injury to the patient and so as to cause the least possible discomfort.
- (9)** Facilities using seclusion or restraint shall have written policies concerning their use. These policies shall include standards and procedures for placing a patient in seclusion or restraint, and for informing him of the reason he was put in seclusion or restraint and the means of terminating such seclusion or restraint.
- (10)** Nothing in this Article shall be construed to expand the scope of practice of psychology as defined in R.S. 37:2351 et seq. to authorize the ordering, administering, or dispensing of medications, or to authorize any practice not permitted under the privileges granted by the institution.
- (11)** The department shall adopt rules and regulations in accordance with the Administrative Procedure Act to govern the use of seclusion and restraint. Such rules and regulations shall respect the minor patient's individual rights, protect the minor patient's health, safety, and welfare, and be the least restrictive of the minor patient's liberty. The department shall adopt rules and regulations to provide for enforcement procedures and penalties applicable to a person who violates the requirements of this Section.
- E.** A patient may be placed alone in a room or other area pursuant to behavior shaping techniques such as "time-out". Such placement may only be used as part of a written treatment plan, shall not be used for the convenience of staff, and may be used only according to the following standards and procedures:
- (1)** Placement alone in a room or other area shall be imposed only when less restrictive measures are inadequate.
- (2)** Placement alone in a room or other area shall only be ordered by a qualified professional trained in behavior-shaping techniques and authorized in accordance with written policies and procedures of the facility to order the use of behavior-shaping techniques.

(3) The period of placement alone in a room or other area shall not exceed thirty minutes.

(4) The patient shall be observed and supervised by a staff member.

(5) The period of placement alone in a room or other area shall not exceed a total of three hours in any twenty-four hour time period. If the placement alone in a room or other area exceeds a total of three hours in any twenty-four hour time period, it shall then be considered seclusion and shall be governed by the procedures and standards set forth in Paragraph D of this Article.

(6) The date, time, and duration of the placement shall be documented.

(7) In treatment facilities where patients are placed alone in a room or other area as a behavior-shaping technique, there shall be written policies and procedures governing use of such behavior-shaping technique.

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

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

H. The following rules shall govern performance of work by minor patients:

(1) No minor shall be required to perform work of any kind that involves the operation and maintenance of an institution, nor shall privileges or release from an institution be conditioned upon performance of any work, except as follows:

(a) A minor patient may be required to perform vocational training tasks, provided each task is:

(i) Part of the minor's individual treatment plan and has been approved as a program activity by a professional responsible for supervising the program.

(ii) Supervised by a qualified professional.

(iii) Not continued for longer than six months, unless it is specifically reinstated by the minor's treatment plan.

(b) A minor patient may be required to perform without compensation such housekeeping tasks as would be performed by a minor in a natural home, foster home, or group home, provided that nothing in the minor's individual treatment plan forbids such work. In no case, however, may a minor be required to perform housekeeping tasks for more than twelve other people.

(2) A minor may voluntarily engage in work during nonprogram hours, provided that:

(a) The minor's individual treatment plan does not forbid it.

(b) The particular work has been approved by the qualified professional responsible for supervising the implementation of the minor treatment plan.

(c) The particular work is supervised by qualified staff.

(d) The conditions of employment and the compensation are in full compliance with all applicable federal laws.

(3) No minor patient shall be involved in the care, feeding, clothing, training, or supervision of other minors unless the qualified professional responsible for supervising the implementation of the treatment plan certifies in writing in the minor's record that the particular task will not in any way endanger the life or health or be detrimental to the development of the particular children who receive such care or of the minor patient providing it.

I. Under appropriate supervision, each minor patient shall be provided with suitable opportunities for interaction with members of the opposite sex, except where a qualified professional responsible for the formulation of a particular minor's treatment plan writes an order to the contrary and explains the reasons therefor.

J. Every minor patient shall have the right to be discharged from a treatment facility when his condition has changed or improved to the extent that confinement and treatment at the treatment facility are no longer required. The director of the treatment facility shall have the authority to discharge a patient admitted by judicial commitment pursuant to Chapter 9 of this Title without the approval of the court which committed him to the treatment facility. The court shall be advised of any such discharge. The director shall not be legally responsible to any person for the subsequent acts of behavior of a patient discharged by him in good faith.

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

L. Every minor patient shall have the right to request a court hearing pursuant to Article 1411. The purpose of the hearing shall be to determine whether or not he should be discharged from the treatment facility or transferred to a less restrictive and medically suitable treatment facility.

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

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

O. Prefrontal lobotomy shall be prohibited as a treatment solely for medical or emotional illness of a minor patient.

P. No medication shall be administered to a minor patient unless a written order of a physician prescribes it in writing. The physician is responsible for all medications which he has ordered and which are administered to a minor patient. The medication prescribed shall be noted in the minor patient's records. At least monthly, the attending physician shall review the drug regimen of each minor patient under his care. All prescriptions shall be written with a termination date, which shall not exceed thirty days. The minor's records shall state the effects of psychoactive medication on him. Unnecessary or excessive medication shall not be administered to any minor patient. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the minor's treatment program. No medication shall be administered except by persons who have been appropriately trained.

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

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

S. Each minor patient shall have the right to receive prompt and adequate medical treatment for any physical ailments and for the prevention of any illness or disability. Such medical treatment shall meet the standards of medical practice in the community.

T. The institution shall prohibit the mistreatment, neglect, or abuse of any minor child in any way.