



What Are My Discharge Rights from a 24-Hour Mental Health Facility?

You have the right to actively participate in your treatment:

- You (or your legal guardian) and the internal advocate have the **right to attend** and actively participate in creating your **treatment plan**. This plan must be reviewed by staff at least once every three months and you have a right to review your plan at any time.
- Your treatment plan must include a written **discharge plan**. This must give you information on how and where to receive treatment, food, housing, employment, etc., in the community after your release.

You have the right to know your legal status:

- Your rights can depend on whether or not you are a “voluntary” or “involuntary” patient. If you are unsure, ask your internal advocate or your social worker.

Voluntary Patients without Guardians:

- A “voluntary” patient means that you willfully chose to admit yourself into the facility for treatment.
- In general, voluntary patients shall be released at their own request.
- At *any* time the doctor or judge determines that you no longer need treatment from the hospital, you must be released.
- However, once admitted, there is a **process** to being discharged. You **cannot** simply walk out or leave whenever you choose.
- Discharge Process:

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- Your discharge request must be in **writing**. Request the discharge form from the facility. Ask for **help** if you need assistance filling it out.
- The hospital may hold you for up to 72 hours, during which time one of three things may happen:
 1. ***The hospital agrees with your request***: you get to leave.
 2. ***The hospital thinks you should stay***: the hospital can file a statement with the court asking to commit you to the hospital involuntarily (see below). You will be given notice of this court hearing.
 3. ***The hospital does nothing***: you must be released.

Voluntary Patients with a Guardian:

- You can also be a voluntary patient if your legal guardian chose to admit you into the facility for treatment.
- If your guardian voluntarily admits you to a facility for treatment, you must be given a **judicial hearing** within 10 days of arriving at the hospital. The court will decide whether or not you are actually in need of treatment at the facility. You must both: (1) have a mental illness and (2) be a danger to yourself or others.
- In general, voluntary patients with a guardian shall be released at the request of their legal guardian.
- At *any* time the doctor or judge determines that you no longer need treatment from the hospital, you must be released.
- However, once admitted, there is a **process** to being discharged. You **cannot** simply walk out or leave whenever you choose.
- Discharge Process:
 - Your guardian must provide a **written** discharge request.
 - The hospital then has up to 72 hours, during which time they may:
 1. **Agree** with your guardian's request and discharge you; or
 2. **Refuse** your guardian's request and continue to keep you. If your guardian insists that your release is in your best interest and the hospital refuses, your guardian may ask the court for a hearing for your discharge.

Involuntary Patients:

- The biggest difference between a “voluntary” patient and an “involuntary” patient is that an involuntary patient is kept at the hospital against his/her wishes.
- You must be given an initial **judicial hearing** within 10 days of being taken into custody for mental health treatment. You must be represented by an **attorney**. If you can't afford one, one will be appointed to you. You have the **right to appear** at this hearing, but you may waive this right if the court agrees.
- If the court finds that you need treatment, they may order an initial commitment for up to 90 days.
- Before the end of this initial 90-day commitment period, you must have a **rehearing**. If the court finds that you still need treatment, they may continue your inpatient commitment for up to 180 days.
- Before the end of this second 180-day commitment period, you must have a **second rehearing**. At this and any later rehearings, the court may continue your inpatient commitment for up to 365-day periods.
- You have the **right to appeal** a final determination of the court.

Two Exceptions:

- **Not guilty by reason of insanity:** If you are automatically committed to a facility because you were found “not guilty by reason of insanity” at a criminal trial, your initial judicial hearing after being committed must take place within 50 days.
 - The **hearing** and **rehearing** procedures for “not guilty by reason of insanity” are the same as the commitment procedures above; however, the **burden of proof** has been shifted to you. In order to be discharged, you must prove to the court that you either (1) no longer have a mental illness, or (2) are no longer dangerous. You will only be discharged when the court thinks you have met your burden for either of these.
- **Incapable to proceed:** If you are automatically committed to a facility because you were found “incapable to proceed” before a criminal trial, you cannot leave the hospital until a judge determines that you are now capable of proceeding. Even if your doctor recommends discharge, you still must have a hearing before a judge. If you are discharged, you will most likely return to jail to wait for your trial.

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Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

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