

FIRST REGULAR SESSION

# HOUSE BILL NO. 1019

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE GREEN.

2091H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 632, RSMo, by adding thereto two new sections relating to mental health patient admission notice requirements.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 632, RSMo, is amended by adding thereto two new sections, to be known as sections 632.130 and 632.135, to read as follows:

**632.130. 1. At the time a patient is voluntarily admitted to a mental health facility, the identity and contact information of a person to be notified in case of an emergency shall be entered in the patient's clinical record.**

**2. (1) At the time a patient is admitted to a mental health facility for involuntary examination or placement or when a petition for involuntary placement is filed, the names, addresses, and telephone numbers of the patient's guardian, or representative if the patient has no guardian, and the patient's attorney shall be entered in the patient's clinical record.**

**(2) If the patient has no guardian, the patient shall be asked to designate a representative. If the patient is unable or unwilling to designate a representative, the facility shall select a representative.**

**(3) The patient shall be consulted with regard to the selection of a representative by the mental health facility and shall have the authority to request that any such representative be replaced.**

**(4) If the mental health facility selects a representative, first preference shall be given to a health care surrogate if one has been previously selected by the patient. If the patient has not previously selected a health care surrogate, the selection, except for good**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 cause documented in the patient's clinical record, shall be made from the following list in  
18 the order of listing:

19 (a) The patient's spouse;

20 (b) An adult child of the patient;

21 (c) A parent of the patient;

22 (d) The adult next of kin of the patient;

23 (e) An adult friend of the patient.

24 (5) No licensed professional providing services to the patient, employee of a facility  
25 providing direct services to the patient, department employee, person providing other  
26 substantial services to the patient in a professional or business capacity, or creditor of the  
27 patient shall be appointed as the patient's representative.

28 3. Notice of a voluntary patient's admission shall be given only at the request of the  
29 patient; except that, in an emergency, notice shall be given as determined by the mental  
30 health facility.

31 4. If notice is required to be given under this section, such notice shall be given to  
32 the patient and the patient's guardian, attorney, and representative.

33 (1) If notice is required to be given to a patient, it shall be given both orally and in  
34 writing in the language and terminology that the patient can understand, and, if needed,  
35 the mental health facility shall provide an interpreter for the patient.

36 (2) Notice to a patient's guardian, attorney, and representative shall be given by  
37 registered or certified mail with the receipts attached to the patient's clinical record. Hand  
38 delivery by a facility employee may be used as an alternative with delivery documented in  
39 the clinical record. If notice is given by an attorney for the department, a certificate of  
40 service shall be sufficient to document service.

41 5. A mental health facility shall give prompt notice of the location of a patient who  
42 is being involuntarily held for examination by telephone or in person within twenty-four  
43 hours of the patient's arrival at the facility unless the patient requests that no notification  
44 be made. Contact attempts shall be documented in the patient's clinical record and shall  
45 begin as soon as reasonably possible after the patient's arrival.

46 6. The written notice of the filing of the petition for involuntary placement shall  
47 contain the following:

48 (1) Notice that the petition has been filed with the circuit court in the county in  
49 which the patient is hospitalized and the address of such court;

50 (2) Notice that the office of the public defender has been appointed to represent the  
51 patient in the proceeding, if the patient is not otherwise represented by an attorney;

52           **(3) The date, time, and place of the hearing and the name of each examining expert**  
53 **and every other person expected to testify in support of continued detention;**

54           **(4) Notice that the patient, the patient’s guardian, or representative may apply for**  
55 **a change of venue for the convenience of the parties or witnesses or because of the**  
56 **condition of the patient; and**

57           **(5) Notice that the patient is entitled to an independent expert examination and, if**  
58 **the patient cannot afford such an examination, that the court will provide for one.**

59           **7. A mental health facility shall provide notice of a patient’s involuntary admission**  
60 **on the next regular business day after the patient’s arrival at the facility.**

61           **8. If a patient is to be transferred from one mental health facility to another, notice**  
62 **shall be given by the facility where the patient is located prior to the transfer.**

**632.135. 1. The chief administrative officer of a mental health facility or his or her**  
2 **designee may petition the circuit court for the appointment of a guardian advocate based**  
3 **upon the opinion of a psychiatrist that the patient is incompetent to consent to treatment.**  
4 **If the court finds that a patient is incompetent to consent to treatment and has not been**  
5 **adjudicated incapacitated and a guardian with the authority to consent to mental health**  
6 **treatment appointed, it shall appoint a guardian advocate. The patient has the right to**  
7 **have an attorney represent him or her at the hearing. If the person is indigent, the court**  
8 **shall appoint the office of the public defender to represent him or her at the hearing. The**  
9 **patient has the right to testify, cross-examine witnesses, and present witnesses. The**  
10 **proceeding shall be recorded either electronically or stenographically, and testimony shall**  
11 **be provided under oath. A guardian advocate shall meet the qualifications of a guardian**  
12 **contained in chapter 475; except that, no professional referred to in section 632.130 or this**  
13 **section, employee of the facility providing direct services to the patient, department of**  
14 **mental health employee, or facility administrator shall be appointed. A person who is**  
15 **appointed as a guardian advocate shall agree to the appointment.**

16           **2. A facility requesting appointment of a guardian advocate shall, prior to the**  
17 **appointment, provide the prospective guardian advocate with information about the duties**  
18 **and responsibilities of guardian advocates, including the information about the ethics of**  
19 **medical decision making. Before asking a guardian advocate to give consent to treatment**  
20 **for a patient, the facility shall provide to the guardian advocate sufficient information so**  
21 **that the guardian advocate can decide whether to give express and informed consent to the**  
22 **treatment, including information that the treatment is essential to the care of the patient**  
23 **and that the treatment does not present an unreasonable risk of serious, hazardous, or**  
24 **irreversible side effects. Before giving consent to treatment, the guardian advocate shall**  
25 **meet and talk with the patient’s physician in person, if at all possible, and by telephone,**

26 if not. The decision of the guardian advocate may be reviewed by the court upon petition  
27 of the patient's attorney, the patient's family, or the facility administrator.

28       **3. Prior to a guardian advocate exercising his or her authority, if at all possible, the**  
29 **guardian advocate shall attend a training course approved by the court. This training**  
30 **course of not less than four hours shall include, at minimum, information about patient**  
31 **rights, psychotropic medications, diagnosis of mental illness, the ethics of medical decision**  
32 **making, and duties of guardian advocates. If a guardian advocate is unable to attend a**  
33 **training course due to being out of state, the court shall provide all necessary training**  
34 **materials and information to the guardian advocate in lieu of attending the training course.**

35       **4. The information to be supplied to prospective guardian advocates prior to their**  
36 **appointment and the training course for guardian advocates shall be developed and**  
37 **completed through a course developed by the department of mental health, approved by**  
38 **the Missouri supreme court, and taught by a court-approved organization.**  
39 **Court-approved organizations may include, but are not limited to, community or junior**  
40 **colleges, guardianship organizations, and local bar associations or the Missouri Bar**  
41 **Association. The court may, in its discretion, waive some or all of the training**  
42 **requirements for guardian advocates or impose additional requirements. The circuit court**  
43 **shall make its decision to appoint on a case-by-case basis and, in making its decision, shall**  
44 **consider the experience and education of the guardian advocate, the duties assigned to the**  
45 **guardian advocate, and the needs of the patient.**

46       **5. In selecting a guardian advocate, the circuit court shall give preference to a**  
47 **health care surrogate, if one has already been designated by the patient. If the patient has**  
48 **not previously selected a health care surrogate, except for good cause documented in the**  
49 **court record, the selection shall be made from the following list in the order of listing:**

- 50       **(1) The patient's spouse;**  
51       **(2) An adult child of the patient;**  
52       **(3) A parent of the patient;**  
53       **(4) The adult next of kin of the patient;**  
54       **(5) An adult friend of the patient;**  
55       **(6) An adult trained and willing to serve as guardian advocate for the patient.**

56       **6. If a guardian with the authority to consent to medical treatment has not already**  
57 **been appointed or if the patient has not already designated a health care surrogate, the**  
58 **court may authorize the guardian advocate to consent to medical treatment, as well as**  
59 **mental health treatment. Unless the guardian advocate has sought and received express**  
60 **court approval in a proceeding separate from the proceeding to determine the competence**  
61 **of the patient to consent to medical treatment, the guardian advocate shall not consent to:**

- 62           **(1) Abortion;**  
63           **(2) Sterilization;**  
64           **(3) Electroconvulsive treatment;**  
65           **(4) Psychosurgery; or**  
66           **(5) Experimental treatments that have not been approved by a federally approved**  
67 **institutional review board in accordance with 45 CFR 46 or 21 CFR 56.**  
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69 **The court shall base its decision on evidence that the treatment or procedure is essential**  
70 **to the care of the patient and that the treatment does not present an unreasonable risk of**  
71 **serious, hazardous, or irreversible side effects. The court shall follow the procedures set**  
72 **forth in subsection 1 of this section.**

73           **7. The guardian advocate shall be discharged when the patient is discharged from**  
74 **an order for involuntary outpatient placement or involuntary inpatient placement or when**  
75 **the patient is transferred from involuntary to voluntary status. The court or a hearing**  
76 **officer shall consider the competence of the patient under subsection 1 of this section and**  
77 **may consider an involuntarily placed patient's competence to consent to treatment at any**  
78 **hearing. Upon sufficient evidence, the court may restore, or the hearing officer may**  
79 **recommend that the court restore, the patient's competence. A copy of the order restoring**  
80 **competence or the certificate of discharge containing the restoration of competence shall**  
81 **be provided to the patient and the guardian advocate.**

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