

SECOND REGULAR SESSION

# HOUSE BILL NO. 1707

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE GREEN.

5201H.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  
2 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,  
2 the identity and contact information of a person to be notified in case of an emergency shall  
3 be entered in the patient's clinical record.**

4 **2. (1) At the time a patient is admitted to a mental health facility for involuntary  
5 examination or placement or when a petition for involuntary placement is filed, the names,  
6 addresses, and telephone numbers of the patient's guardian, or representative if the patient  
7 has no guardian, and the patient's attorney shall be entered in the patient's clinical record.**

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

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

14 **(4) If the mental health facility selects a representative, first preference shall be  
15 given to a health care surrogate if one has been previously selected by the patient. If the  
16 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 the patient's representative**  
55 **may apply for a change of venue for the convenience of the parties or witnesses or because**  
56 **of the 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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