## CAN A PERSON WITH A MENTAL HEALTH CONDITION BE MEDICATED WITHOUT HIS OR HER CONSENT?

An individual who resides in the **community** cannot be medicated without his or her informed consent. Such consent must be **voluntary**, which means that clients cannot be coerced into taking medications based on the threat of being thrown out of their housing or having their disability checks withheld.

An individual receiving mental health services in an **inpatient** (hospital) setting also has the **right to make an informed, voluntary decision** regarding medications, except when very specific limited circumstances have been documented and appropriate procedures are followed to protect that person's civil rights.

## WHY IS INFORMED CONSENT IMPORTANT?

Involving an individual in his or her medication decision is an important part of treatment planning. Encouraging the individual's active involvement in this process helps empower the person and increases the prospects for long term sustained recovery. On the other hand, imposing medications and treatment can stifle self-esteem and create hostility toward the treatment. State statutes specifically require that a person be involved in treatment and discharge planning in addition to mandating informed consent to medication**.**

## WHAT DOES IT MEAN TO GET INFORMED CONSENT?

When a physician believes that medication should be included as part of a person's treatment, the physician is expected to make every effort to develop a good rapport with the person and explain how the medication fits into his or her treatment plan. In addition, the physician must explain to the person the reason for the medications, the advantages and disadvantages of the proposed treatment, medically acceptable alternative treatments, the risks associated with the proposed treatment and the alternatives. The physician must answer all of the questions raised by the patient.

## WHAT IF THE PHYSICIAN WANTS TO MEDICATE WITHOUT CONSENT?

If the physician believes that medication is the least intrusive beneficial treatment, the physician can start the legal process to medicate the person without consent by seeking a second opinion. When the physician seeks a second opinion, the patient must be informed that he or she has the right to an advocate.

If the two physicians agree to move forward with the involuntary medication procedure, the head of the hospital must make an independent decision that it is necessary to proceed with involuntary medication.

## IS THE HOSPITAL REQUIRED TO GO TO COURT TO MEDICATE WITHOUT CONSENT?

No, there are two procedures the hospital can use to medicate persons without informed consent: (1) an internal hearing or, (2) a petition to the Probate Court:

**Internal Hearing:** The internal hearing requires an independent hearing officer, and a process in which the patient has an opportunity to have an advocate and present witnesses. In order to authorize involuntary medication, the hearing officer must find either:

* The person is incapable of informed consent and is rapidly deteriorating and medication is medically appropriate and does not violate an advance directive;

**OR**

* The person is capable of informed consent but is refusing medically appropriate medication and the patient poses a direct threat of harm to self or others and without medication such threat will continue unabated, and there is no less intrusive beneficial treatment.

The hospital is not allowed to medicate the patient until a written decision is issued, which should happen within three days. The internal hearing can only order involuntary medication for a maximum of thirty days. If the patient disagrees with the decision, he or she can request an expedited hearing before the Probate Court. The hospital can involuntarily medicate a person for fifteen days or until the Probate Court issues a decision, whichever is sooner.

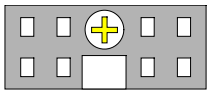
**Probate Court:** The hospital can also go directly to the Probate Court to have a conservator with specific authority to consent to medications appointed for a patient incapable of informed consent. Conservators do not have this authority unless it is specifically granted by the Court. An attorney is appointed by the Court to represent the patient at the hearing. If the petition is granted, the conservator's authority is good for only 120 days, but it may be extended by the Court for an additional 120 days if the patient is continuously hospitalized during that period.

If the patient is capable of informed consent and poses a direct threat of harm, the Court can authorize the physician to medicate the person for up to 120 days. This cannot be extended without repeating the full procedure.

## WHAT ARE THE RESPONSIBILITIES OF THE CONSERVATOR?

The conservator is specifically required by state law to review the medical records and meet with both the patient and his or her physician in the hospital before making a decision about the medication. In making that decision, the conservator must consider the risks and benefits; the individual's religious views and preferences, and the prognosis with and without medications.

## WHAT HAPPENS IF THERE IS AN EMERGENCY?



The state statute authorizes the administration of medication to an individual in an inpatient setting on an emergency basis **(without consent)** only when a supervisory nurse or physician has personally observed a patient and determined that (1) the person's condition is extremely critical and presents an immediate risk to the patient's well-being and (2) obtaining informed consent would result in a medically harmful delay to the patient. This means that the delay involved in getting informed consent would result in serious mental or physical injury to the patient or produce a mental state that would be grossly detrimental to the person's physical or mental well being.

*The information in this flyer is effective as of June 2016*

## PROTECT YOUR RIGHTS

There are a lot of misperceptions about the rights of persons with mental health conditions. For example, many people think that a person with a mental health condition must take any medication in any dosage that the doctor prescribes regardless of what he or she thinks is best.

However, that is not the case. In fact, persons diagnosed with a mental illness have the same basic rights as persons with other illnesses. This means they have the right to make their own voluntary, informed choices about treatment, including medications, except in the case of certain emergencies or when a legal process has specifically delegated that right to someone else.

The purpose of this flyer is to provide a basic overview of the state statute that governs consent to medication. It is not intended to give legal advice, nor is it meant to give the reader every detail about the laws related to informed consent to medication. If you have questions about this law, or about a specific situation that involves informed consent to medications, please contact the Connecticut Legal Rights Project.

**For more assistance contact Connecticut Legal Rights Project, Inc.**
**Toll Free 1-877-402-2299**
**TTY 860-262-5066**
**www.clrp.org**

CONNECTICUT LEGAL RIGHTS PROJECT, INC.

# MEDICATIONS

*LEGAL REPRESENTATION FOR PEOPLE WITH MENTAL HEALTH CONDITIONS*