

Patient Rights
s. 394.459, F.S. Ch. 65E-5.140, FAC

The Florida Mental Health Act, better known as the Baker Act, was passed in 1971 by the Florida Legislature. It dramatically reformed the 97-year old laws by ensuring that persons with mental illnesses were assured of their civil and due process rights when seeking treatment or when examination or treatment was sought involuntarily on their behalf.

The Baker Act guaranteed the following rights:

Individual Dignity: Ensures all constitutional rights and requires that persons be treated in a humane way while transported or treated for mental illness.

Treatment: Prohibits the delay or denial of treatment due to inability to pay and requires prompt physical examination after arrival; requires treatment planning to involve the person; and requires the least restrictive appropriate available treatment be based on the individual needs of each person.

Express and Informed Consent: Encourages people to voluntarily apply for mental health services when competent to do so, to choose their own treatment, and to decide when they want to stop treatment. The law requires that consent be voluntarily given in writing after sufficient explanation to enable the person to make a knowing and willful decision without any coercion.

Quality of Treatment: Requires medical, vocational, social, educational, and rehabilitative services suited to each person's needs to be administered skillfully, safely, and humanely. Use of restraint, seclusion, isolation, emergency treatment orders, physical management techniques, and elevated levels of supervision are regulated. Complaint resolution is required.

Communication, Abuse Reporting, and Visits: Guarantees persons in mental health facilities the right to communicate freely and privately with persons outside the facilities by phone, mail, or visitation. If communication is restricted, written notice must be provided. No restriction of calls to the Abuse Registry or to the person's attorney is permitted under any circumstances.

Care and Custody of Personal Effects: Ensures that persons may keep their own clothing and personal effects, unless they are removed for safety or medical reasons. If removed, a witnessed inventory is required.

Voting in Public Elections: Persons are guaranteed the right to register and to vote in any elections for which they are qualified voters.

Habeas Corpus: Guarantees persons the right to ask the court to review the cause and legality of the person's detention or unjust denial of a legal right or privilege or an authorized procedure.

Treatment and Discharge Planning: Guarantees the opportunity to participate in treatment and discharge planning and to seek treatment from the professional or agency of person's choice upon discharge.

Designation of Representative

Requires that a person admitted to or held in a facility involuntarily be allowed to designate a representative to be advised of the admission, receive all legal notices, and notices of any restriction of rights.

Confidentiality

Assures that a person's clinical record remain confidential and not be disclosed to others without consent, except by court order, to the person's attorney, after a threat of harm to others, and other limited circumstances. A person has the right to waive privacy of his or her admission to a facility.

Access to One's Own Record

Assures that persons have reasonable access to their clinical records unless determined by a physician to be harmful to the person.

Federal Rights

The federal government has established conditions of participation for hospitals that accept Medicare or Medicaid payments to follow regarding Patient's Rights. The rights include:

- A hospital must protect and promote each patient's rights, including informing each person of their rights in advance of providing or

discontinuing care whenever possible. This may include use of interpreters or large print materials.

- Hospitals must establish a process for prompt resolution of grievances, a procedure for submission of written or verbal grievances, and must inform each person whom to contact to file a grievance. This must be approved by the hospital's governing body, which must review and resolve grievances. Persons must be given written notice of the hospital's decision about the grievance, including a contact person, the steps taken to investigate the grievance, the results, and the date of completion.
- Persons must have the right to participate in the development and implementation of his or her plan of care.
- Persons, or their legally authorized substitute decision-makers have the right to make informed decisions about his or her care, including consulting the person's advance directives. Persons have the right to request or refuse treatment.
- Persons have the right to have a person of his or her choice and his or her own physician notified promptly of the hospital admission.
- Person has the right to privacy during personal hygiene activities, during medical/nursing treatments, and when requested, as appropriate. Privacy may be limited only where a person may be at immediate and serious risk of harm to self or others.

- Persons have the right to receive care in a safe setting and to be free from all forms of abuse or harassment.
- Persons have the right to confidentiality of his or her clinical records and to access information contacted in his or her records, within a reasonable time frame. Few limits to this access exist, including that access could be reasonably likely to endanger the life or physical safety of the person or anyone else. Hospitals must actively seek to meet requests to access records as quickly as the record keeping system permits.

Frequently Asked Questions

1. If a person is intoxicated or appears to be developmentally disabled, can they still be considered mentally ill, even though these conditions are exceptions to the definition of mental illness in the Baker Act?

YES. Persons with co-existing disorders are frequently seen in the health care field. However, the mental illness must, in and of itself, be of sufficient seriousness to warrant admission as a person on voluntary or involuntary status. The coincidence of having an additional disorder would not preclude the person from admission.

2. Is the diagnosis of dementia or Alzheimer's Disease included under the definition of "mental illness" in the Baker Act.

Not specifically. However, there are several other disorders that are

specifically exempted from the definition. Other than the named disorders, the definition of mental illness implies that a person must have a serious thought or mood disorder that substantially impairs a person's ability to meet the ordinary demands of living, **regardless of etiology**. -- regardless of the cause of the mental illness.

3. If a federal and a state statute are in conflict, which one takes precedence?

When a federal law and a state law are in conflict, the federal law generally takes precedence. However, if the state law is more stringent, it will generally supercede the corresponding federal law or regulation. Where both laws deal with a subject and are not in conflict, both laws must be followed.

4. Can a person's unit be restricted through facility policies or due to the behavior of a single person?

NO. Any restriction of a person's rights must be based on the individual person's behavior or condition and individually documented in the person's clinical record.

5. Can a parent restrict the communication of his or her child in a receiving facility?

NO. Only the physician or authorized facility staff is permitted to restrict a person's communication, regardless of the age of the person.

6. What should a facility do if a person is abusing their right to communicate with the Abuse Line, the Local Advocacy Committee, the

Advocacy Center for Persons with Disabilities, or their attorney?

The facility can communicate with the entity to which the person is calling and seek direction. The facility cannot, on its own, limit the person's access to communicate with these entities.

7. What should a facility do with personal effects that have been removed from a person and are believed to be dangerous?

Weapons removed from the person should be given back to the representative or a family member rather than to the person. If the person demands the return of such weapons, seek advise of an attorney. If the item removed is an illegal substance, it can be turned over to a law enforcement agency for disposal but the name of the person from whom the substance was removed should not be revealed.

8. Can a person be forced to wear specialized clothing in a receiving facility to designate their status as a suicide or escape risk?

NO. Use of special clothing for identification purposes is a violation of individual dignity. However, if the physician orders special clothing for medical reasons, no such violation would occur.

9. Does a person on voluntary status need to be advised of the right to Habeas Corpus?

YES. The Baker Act requires that all persons "held" in a facility be advised of their right to file a petition for habeas corpus. No distinction is made

regarding the age of the person. Since persons are entitled to file a petition for being unjustly denied a right or privilege granted under the law, this may apply to persons on voluntary as well as involuntary status.

10. What is the facility's responsibility when a person wants to file a petition for a writ of habeas corpus for what appears to be a frivolous matter?

The facility has no discretion to determine what is serious and what is frivolous. In any case, the staff should give the petition form (form 3090 recommended) to the person and offer assistance in completing the form. No matter what form is chosen by the person to file a petition or whether the person accepts the assistance of the staff, the petition must be filed with the clerk of court within one working day.

11. How is the Court expected to respond to a petition for a writ of habeas corpus?

The Florida Supreme Court Commission on Fairness strongly urged all courts to treat petitions for writ of habeas corpus as emergency matters and expeditiously resolve these issues and ensure that the petitioner receives notice of the disposition.

12. What is the role of a designated representative?

A representative is designated when a person is admitted to a facility on an involuntary basis or is transferred from voluntary to involuntary status. The representative is promptly notified of the person's admission and of all

proceedings and restrictions of rights. The Designated Representative receives a copy of the inventory of the person's personal effects, has immediate access to the person, and is authorized to file a petition for a writ of habeas corpus on behalf of the person. The Designated Representative does not have the authority to make any treatment decisions, cannot access or release the person's clinical record without the person's consent, and cannot request the transfer of the person to another facility.

Confidentiality

1. How is a clinical record defined? What is considered a part of the clinical record?

The Baker Act defines the clinical record to mean all parts of the record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by a facility which pertains to the person's hospitalization and treatment.

2. Can information from a psychiatric clinical record be released in response to a subpoena?

NO. A court order is required. In determining whether there is good cause for disclosure, the court must weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom the information pertains.

3. Can a member of a Local Advocacy Council (previously called Human Rights Advocacy Committee) see a clinical record without the person's consent?

YES. A Council member, showing a picture identification, has the authority to visit with any person and to see legal and clinical records in designated receiving and treatment facilities.

4. If a person has declared an intention to harm other persons, does the Baker Act require the administrator to release this information?

NO. The Baker Act authorizes, but doesn't require, the facility administrator to release sufficient information to provide adequate warning to the person threatened with harm by the patient. However, case law suggests a stronger argument for protecting an intended victim.

5. If a person in a receiving or treatment facility confesses to committing a crime, does the facility have a responsibility to inform law enforcement?

NO. The facility has no right to notify law enforcement of a person's acknowledgement of any past crime. This may be a treatment issue, in which the person is encouraged to notify law enforcement on their own accord or the facility may wish to share the information with the person's attorney.

6. Can a facility release information about a person without consent?

NO except the Baker Act specifically permits the parent or next of kin of a person, regardless of age or legal status, who is held in or treated under a mental health facility or program to request and receive information limited to a summary of that person's treatment plan and current physical and mental condition, as long as the release of information is in accordance with the code of ethics of the profession involved in the release. The facility is permitted, but not required, to provide this information when requested and such release of information does not require the person's consent.

7. Can a Guardian Advocate review the contents of the clinical record?

YES. The Baker Act requires that the Guardian Advocate be given access to the appropriate clinical records of the person and may also authorize the release of information and clinical records to appropriate persons to ensure the continuity of the person's health care or mental health care.

8. Can the Public Defender and State Attorney access the clinical record?

The Public Defender can have access to the clinical record, the person, and the staff in preparing for the involuntary placement hearing. The law doesn't expressly permit this same access to the State Attorney prior to the hearing. In some circuits, the State Attorney has access, while not in others. In any case, the clinical record is always available at the time of the hearing and is, at that time, available to the State Attorney.

The Supreme Court Commission on Fairness has recommended that the access to clinical records by the State Attorney in preparation for the hearing be clarified by the Legislature.

9. Does a person have a right to see their own clinical record?

YES. The Baker Act requires that persons have reasonable access to their clinical records, unless such access is determined by the person's physician to be harmful to the person. Federal law requires that access to one's record be given unless that access is reasonably likely to endanger the life or physical safety of the person or others. Facilities and mental health professionals should make every possible effort to ensure persons have this access. Facilities should have policies and procedures addressing what is "reasonable access", what is "harmful", who makes the decision to permit access, who is authorized to restrict access, how the record will be reviewed to determine if harmful material is included, how the record's integrity will be protected, and if a copy of the record will be provided to the person, if requested.

Express & Informed Consent

1. If a person has an emergency medical condition and cannot or will not provide informed consent to examination and treatment, can the person be Baker Acted in order to authorize these procedures?

NO. The Baker Act is Florida's Mental Health Act and it can't be used to authorize medical intervention, with the exception of the required physical examination of each person within 24

hours of admission to a receiving facility. Other state statutes must be used, including Chapter 395 (hospitals), Chapter 401 (EMS), Chapter 765 (advance directives), Chapter 744 (guardianship), or Chapter 415 (adult protective services).

Mental Health Professionals

1. Do professionals identified in the Baker Act have to be licensed in the state of Florida?

Yes, physicians (including psychiatrists), clinical psychologists, clinical social workers, and psychiatric nurses but be licensed under their respective laws. The only exceptions are for physicians and psychologists who are employed at a veteran's hospital that qualify as a receiving or treatment facility under the Baker Act; this does not include veteran's outpatient clinics.

2. Can an Advanced Registered Nurse Practitioner (ARNP), physician's assistant, or clinical psychologist perform duties permitted under their licensure but required by the Baker Act to be performed by a physician?

NO. The licensure statutes are general laws that lay out the maximum scope of possible practice for specified professionals. The Baker Act is one specific statute under which a professional may practice. The limits of a specific statute take precedence over a general statute. Therefore, if the Baker Act places responsibility for a particular function on a physician, it cannot be delegated to another differently licensed professional. This

applies to all aspects of mandatory examinations, emergency treatment orders, restraint/seclusion orders, certification of competency, and other duties.

3. What rights do professionals named in the Baker Act have?

The Baker Act provides three areas of immunity or protection to facilities and professionals. They are:

a. Any person who acts in good faith in compliance with the provisions of this part is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, or discharge of a person to or from a facility. However, this section does not relieve any person from liability if such person commits negligence [394.459(10)].

b. No professional referred to in this part shall be required to accept persons for treatment of mental, emotional, or behavioral disorders. Such participation shall be voluntary [394.460].

c. Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt from the provisions of s. 119.07(1). Any facility or private mental health practitioner who acts in good faith in releasing information pursuant to this section is not subject to civil or criminal liability for such release [394.4615 (6) &(7)].

Receiving Facilities

1. What rights and responsibilities do receiving facilities have?

All receiving facilities, public or private, are permitted to hold a person on an involuntary basis, assuming that all aspects of law or administrative code required or prohibited of personnel and facilities are in full compliance. Requirements of public and private receiving facilities are basically the same. A facility that has chosen not to seek designation must be sure to transfer any person with a serious mental illness to a designated receiving facility at any time the person cannot provide well-reasoned, willful and knowing decisions about their mental health care since such persons are not eligible for voluntary care.

2. Can a receiving facility limit the age or payer status of persons being presented for voluntary or involuntary admission?

A receiving facility must “accept” all persons brought by law enforcement personnel for involuntary examination. The only exception is when a transportation exception plan has been approved by the Board of County Commissioners and the Secretary of DCF. In addition, to limit persons by age, a receiving facility must have its designation specify such a limitation to children, elders, or other special population.

3. Does the person have a right to request a transfer from one receiving facility to another?

YES. A person or their guardian or guardian advocate can request the transfer of the person between public and private receiving facilities. The facility to which the person would be transferred must approve the transfer in advance. In the case of a transfer from a private to a public receiving facility, the cost of the transfer is the responsibility of the transferring facility. A public facility must respond within 2 working days after the receipt of the transfer request, except from a hospital that has treated a person’s emergency medical condition where the person must be transferred within 12 hours. In any transfer situation, the federal EMTALA/COBRA law prevails where a conflict with state law exists.