

Baker Act
Voluntary Admissions
s. 394.4625, F.S. Ch. 65E-5.270, FAC

Intent

The Baker Act encourages the voluntary admission of persons for psychiatric care, but only when they are able to understand the decision and its consequences and are able to fully exercise their rights for themselves. When this is not possible due to the severity of the person's condition, the law requires that the person be extended the due process rights assured under the involuntary provisions.

Criteria

An adult may apply for voluntary admission if found to show evidence of mental illness, to be competent to provide express and informed consent, and to be suitable for treatment.

- **“Mental Illness”** means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in Chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.
- **“Express and Informed Consent”** means consent voluntarily given in writing, by a competent person, after sufficient explanation and disclosure of the subject matter involved to enable the person to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.
- **“Incompetent to Consent to Treatment”** means that a person's judgment is so affected by his or her mental illness that the person lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical or mental health treatment.

Limitations to Voluntary Admission

In general, a person cannot be admitted as “voluntary” unless competent to provide express and informed consent. Hence, persons who cannot provide express and informed consent are admitted only under the heightened protections established for persons on involuntary status. There are other limitations to persons being admitted on a voluntary basis, such as:

- A minor may only be admitted on a voluntary basis if willing and upon application by his or her guardian. All other criteria applicable to adults are also applicable to minors.

- Certain persons must be assessed for their ability to provide express and informed consent to voluntary admission prior to being removed from their residence and transported to a receiving facility. They include persons over 60 years of age with dementia from specified licensed facilities, persons over 60 years of age who are transferred on an emergency basis from a nursing home, and persons for whom health care decisions are currently being made by a health care surrogate or proxy.
- Baker Act receiving facilities may not admit under voluntary status incapacitated persons who have court appointed guardians and may not allow a health care surrogate or proxy of a person on voluntary status to provide consent to treatment.

Disclosure

Prior to giving consent to admission or treatment, the following information must be given to the person or their legally authorized substitute decision-maker:

- The reason for admission;
- The proposed treatment;
- The purpose of the treatment to be provided;
- The common side effects thereof;
- Alternative treatment modalities;
- The approximate length of care, and
- That any consent may be revoked prior to or during the treatment period.

It is important that the person receive this information, but even more important, that they thoroughly understand it and the consequences on their decision-making. This disclosure must be made by a professional who is clinically trained to discuss this information with the person and answer any questions that may arise from the person or others. Any consent to treatment given prior to this disclosure is not valid.

Certification of Competence

Any person admitted on a voluntary basis must be evaluated within 24 hours after arrival at a receiving facility by a physician to document the person's competence to provide express and informed consent for admission. If the person refuses or revokes consent to treatment or is found to be unable to make well-reasoned, willful, and knowing decisions, the person must be discharged or a petition for involuntary placement filed with the circuit court.

Release or Discharge

Persons on voluntary status who request discharge or who refuse or revoke consent to treatment must be discharged from a community-based Baker Act receiving facility

within 24 hours, and from a state treatment facility within 3 working days, unless the facility administrator files a petition for the person's involuntary placement with the circuit court.