

# Commonwealth of Massachusetts - Section 70E: Patients' and Residents' Rights

English - 2/1/2022

Section 70E. As used in this section, "facility" shall mean any hospital, institution for the care of unwed mothers, clinic, infirmary maintained in a town, convalescent or nursing home, rest home, or charitable home for the aged, licensed or subject to licensing by the department; any state hospital operated by the department; any "facility" as defined in section three of chapter one hundred and eleven B; any private, county or municipal facility, department or ward which is licensed or subject to licensing by the department of mental health pursuant to section nineteen of chapter nineteen; or by the department of developmental services pursuant to section fifteen of chapter nineteen B; any "facility" as defined in section one of chapter one hundred and twenty-three; the Soldiers Home in Holyoke, the Soldiers Home in Massachusetts; and any facility set forth in section one of chapter nineteen or section one of chapter nineteen B.

The rights established under this section shall apply to every patient or resident in said facility. Every patient or resident shall receive written notice of the rights established herein upon admittance into such facility, except that if the patient is a member of a health maintenance organization and the facility is owned by or controlled by such organization, such notice shall be provided at the time of enrollment in such organization, and also upon admittance to said facility. In addition, such rights shall be conspicuously posted in said facility.

Every such patient or resident of said facility shall have, in addition to any other rights provided by law, the right to freedom of choice in his selection of a facility, or a physician or health service mode, except in the case of emergency medical treatment or as otherwise provided for by contract, or except in the case of a patient or resident of a facility named in section fourteen A of chapter nineteen; provided, however, that the physician, facility, or health service mode is able to accommodate the patient exercising such right of choice.

Every such patient or resident of said facility in which billing for service is applicable to such patient or resident, upon reasonable request, shall receive from a person designated by the facility an itemized bill reflecting laboratory charges, pharmaceutical charges, and third party credits and shall be allowed to examine an explanation of said bill regardless of the source of payment. This information shall also be made available to the patient's attending physician.

Every patient or resident of a facility shall have the right:

- (a) upon request, to obtain from the facility in charge of his care the name and specialty, if any, of the physician or other person responsible for his care or the coordination of his care;
- (b) to confidentiality of all records and communications to the extent provided by law;
- (c) to have all reasonable requests responded to promptly and adequately within the capacity of the facility;
- (d) upon request, to obtain an explanation as to the relationship, if any, of the facility to any other health care facility or educational institution insofar as said relationship relates to his care or treatment;
- (e) to obtain from a person designated by the facility a copy of any rules or regulations of the facility which apply to his conduct as a patient or resident;
- (f) upon request, to receive from a person designated by the facility any information which the facility has available relative to financial assistance and free health care;
- (g) upon request, to inspect his medical records and to receive a copy thereof in accordance with section seventy, and the fee for said copy shall be determined by the rate of copying expenses, except that no fee shall be charged to any applicant, beneficiary or individual representing said applicant or beneficiary for furnishing a medical record if the record is requested for the purpose of supporting a claim or appeal under any provision of the Social Security Act or federal or state financial needs-based benefit program, and the facility shall furnish a medical record requested pursuant to a claim or appeal under any provision of the Social Security Act or any federal or state financial needs-based benefit program within thirty days of the request; provided, however, that any person for whom no fee shall be charged shall present reasonable documentation at the time of such records request that the purpose of said request is to support a claim or appeal under any provision of the Social Security Act or any federal or state financial needs-based benefit program;
- (h) to refuse to be examined, observed, or treated by students or any other facility staff without jeopardizing access to psychiatric, psychological, or other medical care and attention;
- (i) to refuse to serve as a research subject and to refuse any care or examination when the primary purpose is educational or informational rather than therapeutic;
- (j) to privacy during medical treatment or other rendering of care within the capacity of the facility;
- (k) to prompt life saving treatment in an emergency without discrimination on account of economic status or source of payment and without delaying treatment for purposes of prior discussion of the source of payment unless such delay can be imposed without material risk to his health, and this right shall also extend to those persons not already patients or residents of a facility if said facility has a certified emergency care unit;
- (l) to informed consent to the extent provided by law;
- (m) upon request to receive a copy of an itemized bill or other statement of charges submitted to any third party by the facility for care of the patient or resident and to have a copy of said itemized bill or statement sent to the attending physician of the patient or resident;
- (n) if refused treatment because of economic status or the lack of a source of payment, to prompt and safe transfer to a facility which agrees to receive and treat such patient. Said facility refusing to treat such patient shall be responsible for: ascertaining that the patient may be safely transferred; contacting a facility willing to treat such patient; arranging the transportation; accompanying the patient with necessary and appropriate professional staff to assist in the safety and comfort of the transfer, assure that the receiving facility assumes the necessary care promptly, and provide pertinent medical information about the patient's condition; and maintaining records of the foregoing; and
- (o) if the patient is a female rape victim of childbearing age, to receive medically and factually accurate written information prepared by the commissioner of public health about emergency contraception; to be promptly offered emergency contraception; and to be provided with emergency contraception upon request.

Every patient or resident of a facility shall be provided by the physician in the facility the right:

- (a) to informed consent to the extent provided by law;
- (b) to privacy during medical treatment or other rendering of care within the capacity of the facility;
- (c) to refuse to be examined, observed, or treated by students or any other facility staff without jeopardizing access to psychiatric, psychological or other medical care and attention;
- (d) to refuse to serve as a research subject, and to refuse any care or examination when the primary purpose is educational or informational rather than therapeutic;
- (e) to prompt lifesaving treatment in an emergency without discrimination on account of economic status or source of payment and without delaying treatment for purposes of prior discussion of source of payment unless such delay can be imposed without material risk to his health;
- (f) upon request, to obtain an explanation as to the relationship, if any, of the physician to any other health care facility or educational institutions insofar as said relationship relates to his care or treatment, and such explanation shall include said physician's ownership or financial interest, if any, in the facility or other health care facilities insofar as said ownership relates to the care or treatment of said patient or resident;
- (g) upon request to receive an itemized bill including third party reimbursements paid toward said bill, regardless of the sources of payment;
- (h) in the case of a patient suffering from any form of breast cancer, to complete information on all alternative treatments which are medically viable.

Except in cases of emergency surgery, at least ten days before a physician operates on a patient to insert a breast implant, the physician shall inform the patient of the disadvantages and risks associated with breast implantation. The information shall include, but not be limited to, the standardized written summary provided by the department. The patient shall sign a statement provided by the department acknowledging the receipt of said standardized written summary. Nothing herein shall be construed as causing any liability of the department due to any action or omission by said department relative to the information provided pursuant to this paragraph. The department of public health shall:

- (1) develop a standardized written summary, as set forth in this paragraph in layman's language that discloses side effects, warnings, and cautions for a breast implantation operation within three months of the date of enactment of this act;
- (2) update as necessary the standardized written summary;
- (3) distribute the standardized written summary to each hospital, clinic, and physician's office and any other facility that performs breast implants; and
- (4) provide the physician inserting the breast implant with a statement to be signed by the patient acknowledging receipt of the standardized written summary.

Every maternity patient, at the time of pre-admission, shall receive complete information from an admitting hospital on its annual rate of primary caesarian sections, annual rate of repeat caesarian sections, annual rate of total caesarian sections, annual percentage of women who have had a caesarian section who have had a subsequent successful vaginal birth, annual percentage of deliveries in birthing rooms and labor-delivery-recovery or labor-delivery-recovery-postpartum rooms, annual percentage of deliveries by certified nurse-midwives, annual percentage which were continuously externally monitored only, annual percentage which were continuously internally monitored only, annual percentage which were monitored both internally and externally, annual percentages utilizing intravenous, inductions, augmentation, forceps, episiotomies, spinals, epidurals and general anesthesia, and its annual percentage of women breast-feeding upon discharge from said hospital.

Every facility shall require all persons who provide care to victims of sexual assault to be provided with medically and factually accurate written information prepared by the commissioner about emergency contraception. Every female rape victim of childbearing age who presents at a facility after a rape shall promptly be provided with medically and factually accurate written information prepared by the commissioner about emergency contraception. Facilities that provide emergency care shall promptly offer emergency contraception at the facility to each female rape victim of childbearing age, and shall initiate emergency contraception upon her request. For each facility initiating emergency contraception, the administrator, manager or other person in charge thereof shall annually report to the department of public health the number of times emergency contraception is administered to victims of rape under this section. Reports made pursuant to this section shall not identify any individual patient, shall be confidential and shall not be public records as defined by clause twenty-sixth of section 7 of chapter 4. The department of public health shall promulgate regulations to carry out this annual reporting requirement.

A facility shall require all persons, including students, who examine, observe or treat a patient or resident of such facility to wear an identification badge which readily discloses the first name, licensure status, if any, and staff position of the person so examining, observing or treating a patient or resident; provided, however, that for the purposes of this paragraph, the word facility shall not include a community day and residential setting licensed or operated by the department of developmental services.

Any person whose rights under this section are violated may bring, in addition to any other action allowed by law or regulation, a civil action under sections sixty B to sixty E, inclusive, of chapter two hundred and thirty-one.

No provision of this section relating to confidentiality of records shall be construed to prevent any third party reimbursor from inspecting and copying, in the ordinary course of determining eligibility for or entitlement to benefits, any and all records relating to diagnosis, treatment, or other services provided to any person, including a minor or incompetent, for which coverage, benefit or reimbursement is claimed, so long as the policy or certificate under which the claim is made provides that such access to such records is permitted. No provision of this section relating to confidentiality of records shall be construed to prevent access to any such records in connection with any peer review or utilization review procedures applied and implemented in good faith.

No provision herein shall apply to any institution operated by and for persons who rely exclusively upon treatment by spiritual means through prayer for healing, in accordance with the creed or tenets of a church or religious denomination, or patients whose religious beliefs limit the forms and qualities of treatment to which they may submit.

A resident, who requests a hearing pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a nursing facility licensed under section 71 of this chapter, unless a referee determines that the nursing facility has provided sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place.

No provision herein shall be construed as limiting any other right or remedies previously existing at law.