

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 475
HOUSE BILL 373

AN ACT TO AMEND CHAPTER 122 OF THE GENERAL STATUTES RELATING TO
THE RIGHTS OF PATIENTS AT TREATMENT FACILITIES FOR THE MENTALLY
ILL AND RETARDED.

The General Assembly of North Carolina enacts:

Section 1. Chapter 122 of the General Statutes is hereby amended by adding the following sections immediately following G.S. 122-45, to be numbered G.S. 122-45.1, G.S. 122-45.2, G.S. 122-45.3, G.S. 122-45.4, G.S. 122-45.5, G.S. 122-45.6, and G.S. 122-45.7, and to read as follows:

"§ 122-45.1. Declaration of policy on patients' rights. — It is the policy of North Carolina to insure to each patient of a treatment facility basic human rights. These rights include the right to dignity, privacy, and humane care. It is further the policy of the State that each treatment facility shall insure to each patient the right to live as normally as possible while receiving care and treatment.

"§ 122-45.2. Patients' rights. — (a) Each patient of a treatment facility shall at all times retain the right to:

- (1) Send and receive sealed mail, and have access to writing material, postage, and staff assistance when necessary;
- (2) Contact and consult with legal counsel and private physicians of his choice at his expense.

(b) Except as provided in (d) below, each patient of a treatment facility shall at all times retain the right to:

- (1) Make and receive confidential telephone calls, provided that all long distance calls shall be paid for by the patient at the time of making the call or made collect to the receiving party;
- (2) Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after the hour of 6:00 p.m.;
- (3) Make visits outside the institution unless such patient was committed to a treatment facility under Article 11 of Chapter 122 of the General Statutes;
- (4) Be out of doors daily and have access to facilities and equipment for physical exercise several times a week;
- (5) Keep and use his own clothing and personal possessions;
- (6) Communicate and meet under appropriate supervision with persons of his own choice, upon the consent of such persons;
- (7) Participate in religious worship;
- (8) Keep and spend a reasonable sum of his own money;
- (9) Retain a motor vehicle driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes;
- (10) Have access to individual storage space for the patient's private use.

(c) Each patient of a treatment facility shall retain the right to exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter into

contractual relationships, register and vote, and marry and obtain a divorce, unless such patient has been adjudicated incompetent under the provisions of Chapter 35 of the General Statutes and has not been restored to legal capacity; provided, however, that this act shall not be construed as validating the act of any patient who was at the time of the act in fact incompetent.

(d) No right enumerated in section (b) above may be limited or restricted without a written statement in the patient's treatment or habilitation plan which indicates the detailed reason for such a restriction or limitation. No restriction of rights shall be made except by mental health or mental retardation professionals responsible for the formulation of the patient's treatment or habilitation plan. In each instance of restriction of rights, the patient and the patient's next of kin or guardian, and the Secretary of Human Resources, shall be given written notice of the restriction and the detailed reason therefor. A written restriction shall be effective for a period not to exceed 30 days and shall be renewed only by a written statement entered by a mental health or mental retardation professional in the patient's treatment or habilitation plan which indicates the detailed reason for such renewal of the restriction. In each instance of renewal of a restriction, the patient and the patient's next of kin or guardian, and the Secretary of Human Resources, shall be given written notice of the renewal of the restriction and the reason therefor.

"§ 122-45.3. Use of physical restraints or seclusion. — Physical restraints or seclusion of a patient shall be employed only when necessary to prevent danger of abuse or injury to himself or others, or as a measure of therapeutic treatment. All instances of such restraints or seclusions and the detailed reasons therefor shall be recorded in the patient's habilitation or treatment plan. Each patient who is restrained or secluded shall be observed frequently and a written notation of such observation shall be made in the patient's treatment record.

"§ 122-45.4. Use of corporal punishment. — Corporal punishment shall not be inflicted upon any patient.

"§ 122-45.5. Declaration of policy on right to treatment. — Each patient shall have the right to treatment including medical care and habilitation, regardless of age, degree of retardation or mental illness. Each patient has the right to an individualized written treatment or habilitation plan setting forth a program which will develop or restore his capabilities.

"§ 122-45.6. Right to treatment. — Each institutionalized patient shall have the right to receive appropriate medical treatment for mental and physical ailments and for the prevention of illness or disability. Each patient shall have an individual treatment or habilitation plan formulated by the treatment facility's mental health or mental retardation professionals and implemented no later than 14 days after the patient's admission or, in the case of out-patient care and treatment, no later than 14 days after the patient is accepted for such care and treatment. Each plan shall state the patient's history, the results of examination following admission or acceptance for out-patient care and treatment, diagnosis, prognosis, and the estimated time length for treatment or habilitation. Each patient who has been institutionalized in a State hospital shall have an individualized written post-institutionalization plan setting forth a program of recommended vocational counseling and out-patient care. A copy of such plan shall be furnished to the patient or guardian and, if authorized by the patient, to his next of kin or attorney. This plan is to be developed by mental health or mental retardation professionals as soon as possible after admission but no later than 30 days following admission.

Each patient shall have a right to be free from unnecessary or excessive medication with drugs. Such medication shall not be used as punishment or discipline. No medication shall be administered except upon a written order of a qualified physician. Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery, other than emergency surgery, shall not be given without the express and informed written consent of the patient if patently competent, otherwise of the patient and guardian as hereinafter defined, unless the patient has been adjudicated an incompetent under Chapter 35 of the General Statutes and has not been restored to legal capacity, in which case express and informed written

consent of his guardian or trustee appointed pursuant to Chapter 35 of the General Statutes must be obtained. Such consent may be withdrawn at any time by the person who gave such consent. Except in case of transfer for emergency surgery, no patient shall be transferred to another treatment facility without receiving reasonable written notice which shall include the reason for the transfer. Such notice shall be given to the patient and to the next of kin or guardian of the patient.

"§ 122-45.7. **The right to civil remedies.** — All patients except those adjudicated incompetent under Chapter 35 of the General Statutes and not restored to legal capacity, shall retain the same rights as any other citizen of North Carolina to bring civil actions."

Sec. 2. Amend G.S. 122-36 by adding the following new sections:

(g) The words 'treatment facility' shall mean any hospital or institution operated by the State of North Carolina and designated for the admission of any person in need of care and treatment due to mental illness or mental retardation, any center or facility operated by the State of North Carolina for the care, treatment or rehabilitation of inebriates, and any community mental health clinic or center administered by the State of North Carolina.

(h) The words 'mental health professional' shall mean any person with appropriate training or experience in the field of mental health care of the mentally ill or inebriates, including but not limited to physicians, psychiatrists, psychologists, social workers, and registered nurses.

(i) The words 'mental retardation professional' shall mean any person with appropriate training or experience in the field of care for the mentally retarded, including but not limited to psychologists, physicians, educators, social workers, and registered nurses.

(j) The words 'treatment plan' shall mean the individual plan of treatment to be undertaken by the treatment facility for a patient's restoration to health.

(k) The word 'habilitation' shall mean such education, training, and treatment to be undertaken by the treatment facility to develop or restore the capabilities of the patient.

(l) The words 'habilitation plan' shall mean the individual plan of habilitation to be undertaken by the treatment facility.

(m) The word 'patient' shall mean any person admitted to or receiving care and treatment from any treatment facility.

(n) The word 'guardian,' unless otherwise restricted or defined herein, shall mean and include

- (1) a court appointed general or testamentary guardian of the person of the patient,
- (2) the natural parent or other person in loco parentis in the case of an infant patient, or if (1) and (2) not applicable,
- (3) a spouse, parent, brother, sister, or other relative or friend if designated 'closest relative' by the patient at the time of his admission; provided, however, that the word 'guardian' shall not mean or include a person who files an affidavit or testifies in a proceeding in favor of involuntary commitment of the patient.

(o) The words 'next of kin' shall mean that person or persons so designated by the patient or his guardian upon admission to treatment or acceptance for treatment at a treatment facility."

Sec. 3. G.S. 122-46 and G.S. 122-47 and all other laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 3 1/2. G.S. 20-17.1 is hereby amended as follows: Rewrite the first sentence of subsection (a) to read:

"(a) The Commissioner, upon receipt of notice that any person has been legally adjudicated incompetent or has been involuntarily admitted to an institution for the treatment of

alcoholism or drug addiction shall forthwith make inquiry into the facts for the purpose of determining whether such person is competent to operate a motor vehicle."

Rewrite the first line of subsection (b) to read:

"(b) If any person shall be adjudicated as incompetent or is involuntarily admitted for the treatment of alcoholism or drug addiction, the clerk".

Eliminate all of subsection (c) and renumber the remaining sections accordingly.

In subsection (d) on line 5, delete "of the mentally ill and".

In subsection (e), on line 3 thereof, change (c) to read (a)."

Sec. 4. This act shall become effective September 1, 1973.

In the General Assembly read three times and ratified, this the 14th day of May, 1973.