

SENATE No. 743

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act concerning the right of persons receiving services from programs or facilities of the Department of Mental Health to daily access to fresh air and the outdoors..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: Section 23 of chapter 123 of the General Laws, as appearing in the 2004
2 Official Edition, is hereby amended by inserting after subparagraph (e) the following
3 subparagraph:

4 (f) to daily access to fresh air and the outdoors.

5 This right shall attach upon admission to an inpatient facility. The initial exercise of this
6 right shall be subject to an assessment by a clinician which shall be completed no more than 48
7 hours after admission.

8 The exercise of this right shall only be suspended for a person in an inpatient facility
9 upon written certification by a clinician that such person's exercise of such right in the
10 immediate future would present a substantial risk of serious harm to such person or others. The
11 suspension shall last no longer than the time necessary to prevent the harm and its imposition
12 shall be documented with specific facts in such person's record. The signing of a three-day
13 notice shall not constitute a basis for suspending the rights set forth in clause (f).

SECTION 2: Section 23 of chapter 123 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding after the seventh paragraph the following paragraphs:

Any person who believes that their aforementioned rights in clauses (a) to (f), inclusive were violated may seek redress through the following procedure:

Any person alleging such violation shall file a written request for a hearing with the Department stating facts regarding the right(s) violated and requesting a hearing based on the alleged violation.

An impartial hearing officer shall select a hearing location convenient to the Department and to the client and shall conduct the hearing, which shall be an adjudicatory proceeding pursuant to section 11 of Chapter 30A, in not less than 10 business days and not later than 30 business days after the receipt of the request for the hearing. The client and the Department may be represented by an attorney or other person and shall be afforded the opportunity to present evidence, to examine adverse evidence and to examine and cross-examine witnesses.

Within 30 business days after the conclusion of the hearing, the hearing officer shall prepare a written decision containing findings of fact and conclusions of law based on the evidence received at the hearing. Said decision may order such remedial relief as necessary. The hearing officer shall submit copies of the decision, together with notice of appeal rights, to the client and the Department. The decision may be appealed to the superior court pursuant to section 14 of chapter 30A.