

<p>Name of Policy: Involuntary Civil Commitment; Patients Lacking Decision-Making Capacity</p> <p>Policy Number: 3364-100-45-23</p> <p>Approving Officer: Chief Executive Officer, UTMC Chief of Staff</p> <p>Responsible Agent: Chief Nursing Officer</p> <p>Scope: University of Toledo Medical Center - All UTMC sites and clinics (excluding Kobacker and potential Kobacker patients, which is governed by separate policy)</p>	 <p>Effective date:</p> <p>Original effective date: July 1, 2014</p>
---	--

Key words: Involuntary Civil Commitment, Patients Lacking Decision-Making Capacity, Persons with a Mental Illness, Patient Right's

<input type="checkbox"/>	New policy proposal	<input type="checkbox"/>	Minor/technical revision of existing policy
<input type="checkbox"/>	Major revision of existing policy	<input type="checkbox"/>	Reaffirmation of existing policy

(A) Policy statement

The University of Toledo Medical Center ("UTMC") recognizes every patient's rights with respect to decisions regarding health care and at the same time recognizes its obligation to a Person with a Mental Illness, their families and the public to get persons to a safe environment.

(B) Purpose of policy

To know and recognize when a patient needs involuntary civil commitment (emergency or judicial hospitalization) and to set forth the procedures for handling the patient once that determination has been made; To know and recognize when a patient lacks decision-making capacity.

(C) Scope

This policy applies to all UTMC sites and clinics and University faculty, employees (UT Security/Police, staff, Residents) and medical staff members, excluding Kobacker or potential patients of Kobacker that arrive in the UTMC Emergency Department.

(D) Procedure

1. Generally.

- a. There are two situations when a person may be hospitalized against his/her wishes, known as an involuntary civil commitment: (1) emergency hospitalization; or (2) judicial hospitalization. A person may also request to be hospitalized, or not object, to

hospitalization for mental health issues, known as voluntary admission. Mental illness alone is not justification for involuntary civil commitment. Additional elements of substantial risk of harm to self or others, substantial and immediate risk of serious physical impairment or injury to self or a grave and imminent risk to substantial rights of others or the person must exist.

- b. Under emergency hospitalization, psychiatrists, licensed physicians, licensed clinical psychologists, clinical nurse specialists (must be certified as a psychiatric-mental health CNS by the American Nurses Credentialing Center), certified nurse practitioner (must be certified as a psychiatric-mental health NP by the American Nurses Credentialing Center), health officer (includes public health physicians, nurses, or individuals designated by a city, health district, or ADAMH Board, parole officer, police officer, sheriff, chief of the Adult Parole Authority, parole or probation officer (with approval from the Chief of the Adult Parole Authority), may take a person into custody if they have reason to believe the person with a mental illness and subject to hospitalization and believe the person represents a substantial risk of harm to self or others if allowed to remain at liberty pending a psychiatric evaluation. A person may be detained for no longer than 24 hours under an emergency hospitalization at UTMC (this excludes Kobacker). UTMC may admit the person, or provide care and treatment for the person, but must transfer the person to a hospital or inpatient unit licensed, controlled, or supervised by the Ohio Department of Mental Health. A written statement must accompany the transport, detailing the circumstances and reasons for the belief that emergency hospitalization is necessary.
- c. As for a judicial hospitalization, anyone, including physicians, UTMC staff, court personnel, police officers, family or friends may pursue a judicial involuntary commitment if they have reason to believe a person with a mental illness and subject to hospitalization and is currently in a safe place but is refusing treatment for the mental illness based on personal knowledge. The affiant begins the process by filing an Affidavit of Mental Illness with the probate court in the county where the ill person resides that includes facts sufficient to provide the probate court probable cause to believe the respondent is a Person with Mental Illness, needs hospitalization and refused treatment. The affidavit should be accompanied by a certificate signed by a licensed physician stating that the person who issued the certificate has examined the person and is of the opinion that the person is a *Person with a Mental Illness Subject to Court Order* as defined in ORC Section 5122.01(B), or by a written statement by the applicant, under oath, that the person has refused to submit to an examination by a psychiatrist, or by licensed clinical psychologist and licensed physician. The probate court may issue an order of detention or direct transportation of the ill person to a hospital licensed by the Ohio Department of Mental Health.

2. Immunity from Liability for Retaining Patients.

a. Staff involved in the involuntary commitment process, whether through emergency hospitalization or court-ordered treatment, are protected under Ohio Revised Code § 5122.34, provided they act in good faith and follow established procedures. This legal protection applies to:

- Hospital staff
- Law enforcement officers
- Community mental health providers
- Alcohol, drug addiction, and mental health boards
- Expert witnesses participating in court proceedings

These individuals are not subject to criminal or civil liability for actions taken in good faith to support the hospitalization, discharge, or treatment of a person with mental illness. This includes:

- Assisting with emergency custody or judicial hospitalization
- Participating in evaluations, documentation, or hearings
- Making clinical decisions regarding placement, discharge, or treatment

Key Points:

b. Patients who are not medically cleared should not be involuntarily detained through the Emergency Hospitalization process. Alternatives may include:

- Voluntary inter-hospital transfer
- Initiating Judicial Hospitalization proceedings
- Assessing decision-making capacity and advising family on guardianship if appropriate

c. Once a patient is medically cleared and meets criteria for Emergency Hospitalization, the applicable form may be completed and Rescue Crisis contacted.

d. Risk Management, Compliance, or Legal Affairs may be consulted to support risk-balanced decision-making in complex or uncertain cases.

Support and Consultation

These protections are in place to support staff acting responsibly and in the patient's best interest. If you have questions about your role or responsibilities in this process, please contact **Risk Management, Compliance, or Legal Affairs** for guidance.

a.

3. Application for **Emergency and Judicial Hospitalization** per the ORC. Prior to beginning proceedings for emergency or judicial hospitalization, all efforts should be taken to convince the patient to voluntarily submit to the recommended care. Persons who have serious non-psychiatric illness but no mental health problems defined as a *Person with a Mental Illness Subject to Court Order*, as defined in ORC Section 5122.01(B) and as set forth below, are to be offered voluntary treatment only. Persons who are intoxicated are not automatically

considered *a Person with Mental Illness Subject to Court Order* or lacking capacity, and the appropriate analysis needs to be conducted on each patient.

a. Definition of a Person with a Mental Illness Subject to Court Order¹

This definition of a Person *with a Mental Illness Subject to Court Order* means that the person who, because of the person's illness:

- "(1) Represents a **substantial risk of physical harm to self** as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
- "(2) Represents a **substantial risk of physical harm to others** as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
- "(3) Represents a **substantial and immediate risk of serious physical impairment or injury to self** as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's *mental illness* (defined below) and that appropriate provision for those needs cannot be made immediately available in the community;
- "(4) Would benefit from treatment for the person's mental illness and is in need of such treatment as manifested by evidence of behavior that creates a **grave and imminent risk to substantial rights of others or the person; OR**
- "(5) (a) Would benefit from treatment as manifested by evidence of behavior that indicates **all** of the following:
 - "(i) The person is unlikely to survive safely in the community without supervision, based on a clinical determination;
 - "(ii) The person has a history of lack of compliance with treatment for mental illness and one of the following applies:
 - "(I) At least twice within the thirty-six months prior to the filing of an affidavit seeking court-ordered treatment of the person under ORC Section 5122.111, the lack of compliance has been a significant factor in necessitating hospitalization in a hospital or receipt of services in a forensic or other mental health unit of a correctional facility, provided that the 36-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the 36-month period.
 - "(II) Within the forty-eight months prior to the filing of an affidavit seeking court-ordered treatment of the person under ORC Section 5122.111, the lack of compliance resulted in

¹ Taken from the Ohio Revised Code 5122.01 for purposes of 5122.10 Emergency Hospitalization and 5122.11 for Judicial Hospitalization

one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others, provided that the 48-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the 48-month period.

“(iii) The person, as a result of the person's mental illness, is unlikely to voluntarily participate in necessary treatment.

“(iv) In view of the person's treatment history and current behavior, the person is in need of treatment in order to prevent a relapse or deterioration that would be likely to result in substantial risk of serious harm to the person or others.”

- b. “*Mental illness*” as used in (1) c., d., and e. above means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life.
- c. Individuals who only meet the standard described in (1) e. above cannot be placed in a hospital setting but can be ordered into outpatient treatment. Notwithstanding, the court will ultimately decide if there is clear and convincing evidence that the person is a *Person with a Mental Illness Subject to Court Order* and, if so, which of the five standards the person meets.

4. **Emergency Hospitalization**

- a. **Who May Sign a Form for Emergency Hospitalization?** Any of the following persons may sign the form for emergency hospitalization (Pink Slip) and take a person in need into custody or ask that a person be taken into custody:
 - i. psychiatrist,
 - ii. other licensed physician,²
 - iii. licensed clinical psychologist,
 - iv. health officer (defined as public health physician; public health nurse; or other person authorized by or designated by a city health district; a general health district; or a board of alcohol, drug addiction, and mental health services to perform the duties of a health officer under this chapter,
 - v. parole officer, police officer or sheriff.
- b. **On what basis may the person be taken into custody for Emergency Hospitalization (“Pink Slipped”)?** A person may be taken into custody for Emergency Hospitalization (Pink Slip) if a psychiatrist, licensed clinical psychologist, licensed physician, health officer, parole officer, police officer, or sheriff has reason to believe:

That the person is a *Person with a Mental Illness Subject to Court Order* (definition above);

AND

² A resident with a training certificate is considered a licensed physician.

That the person represents a **substantial risk of physical harm to self or others if allowed to remain at liberty pending examination.**

c. **What Must be Done to Effectuate an Emergency Hospitalization?**

- i. A written statement (the pink slip) is signed by a psychiatrist or other licensed physician, a licensed clinical psychologist or police officer stating the circumstances under which such person was taken into custody and the reasons for this person's belief. **Exhibit A** to this Policy contains the form to be used for Emergency Hospitalization. This statement shall be made available to the patient or the patient's attorney upon request of either.
- ii. Any person taken into custody under this section shall be transported to or shall remain at UTMC, and UTMC may admit the person, or provide care and treatment for the person, or both, but by the end of twenty-four hours after signature of the form, the person is required to be transferred to a Licensed Hospital (one that has a psychiatric inpatient unit, or other hospital licensed with the Ohio Department of Health for providing psychiatric care).

d. **Process for any patient for which a form for Emergency Hospitalization has been completed:**³

- i. Every reasonable and appropriate effort shall be made to take a patient into custody in the least conspicuous manner possible.
- ii. A person taking the patient into custody pursuant to this section must explain to the patient: the name, professional designation, and agency affiliation of the person taking the patient into custody; that the custody-taking is not a criminal arrest; and that the patient is being taken for examination by mental health professionals.
- iii. Immediately upon being taken into custody, the patient will be informed and provided with a written statement that the person may do any of the following:
 - a. Immediately make a reasonable number of telephone calls or use other reasonable means to contact an attorney, a licensed physician, or a licensed clinical psychologist, to contact any other person or persons to secure representation by counsel, or to obtain medical or psychological assistance, and be provided assistance in making calls if the assistance is needed and requested;
 - b. Retain counsel and have independent expert evaluation of the patient's mental condition and, if the patient is unable to obtain an attorney or independent expert evaluation, be represented by court-appointed counsel or have independent expert evaluation of the patient's mental condition, or both, at public expense if the person is indigent;

³ These requirements are in compliance with Ohio Revised Code 5122.10 Emergency Hospitalization

- c. Have a hearing to determine whether or not the person is a *Person with a Mental Illness Subject to Court Order* (right granted to person under law).

5. **Involuntary Judicial Commitment**

Process for any Patient fits the definition of *Person with a Mental Illness Subject to Court Order and is not medically cleared*:⁴

- a. Any person may pursue a judicial involuntary commitment, including the physician of the patient, a psychiatrist, licensed clinical psychologist, a social worker, family, or friends. For purposes of this policy, the person seeking to cause involuntary hospitalization of another believed to be a *Person with a Mental Illness and Subject to Court Order* is called the affiant. The affiant will work with the House Supervisor, who will engage UTMC social workers or other staff as needed to complete and have the appropriate person file the affidavit with the probate court in the county where the ill person resides. This affidavit requires the affiant to allege facts sufficient to provide the probate court probable cause to believe that the person meets the definition of a *Person with a Mental Illness Subject to Court Order* and needs hospitalization.
- b. If a physician, psychiatrist, or licensed clinical psychologist has examined the patient and believes that the patient meets the criteria of a *Person with a Mental Illness Subject to Court Order* set forth above, the examining physician or psychiatrist should begin proceedings for judicial hospitalization (Ohio Revised Code sections 5122.11 to 5122.15) by contacting the House Supervisor. Alternatively, if the patient has refused to submit to an examination by a physician, psychiatrist, or licensed clinical psychologist, and the UTMC staff member believes that the patient meets the criteria of a Person with a Mental Illness *Subject to Court Order* based on personal knowledge, the UTMC staff member shall contact the House Supervisor.
- c. The House Supervisor, enlisting the assistance of social workers as needed, will coordinate the filing of an Affidavit of Mental Illness for court ordered hospitalization. The Affidavit of Mental Illness form is attached as **Exhibit B**. The primary service provider of the patient will be responsible for completing the Affidavit of Mental Illness unless another person is available, willing, and capable of completing the affidavit. Staff/social workers will assist physicians of the primary service provider in completing the forms and filing with the Probate Court where a Person with a Mental Illness *Subject to Court Order* resides.
- d. The Probate Court may require that the affidavit be accompanied by a certificate of a psychiatrist, other licensed physician, or a licensed clinical psychologist stating that the person issuing the certificate has examined the person and is of the opinion that the person is a *Person with a mental illness Subject to Court Order*.

⁴ These requirements are in compliance with Ohio Revised Code 5122.11 Judicial Hospitalization

- e. In the alternative, the affidavit will need to be accompanied by a written statement by the affiant, under oath, that the patient has refused to submit to an examination by a psychiatrist, or by other licensed physician or by a licensed clinical psychologist.
- f. Upon receipt of the affidavit, if a judge of the court or a referee who is an attorney at law appointed by the court has probable cause to believe that the person named in the affidavit is a Person with a Mental Illness *Subject to Court Order*, the judge or referee may issue a temporary order of detention ordering any health or police officer or sheriff to take into custody and transport the person to:
 - i. Licensed Hospital (one that has a psychiatric inpatient unit, or other hospital licensed with the Ohio Department of Health for providing psychiatric care);
 - ii. Be temporarily retained at UTMC for such period of time as indicated by the judge or referee pending removal to a Licensed Hospital, except that such period of time will not exceed forty-eight (48) hours from the time issued by the judge or referee (in which case the affiant may have to attest to the lack of transferability of the patient to a Licensed Hospital to the court), or
 - iii. The Court may set the matter for further hearing in which case the person may be observed and treated until the initial hearing provided for in section 5122.141 of the Ohio Revised Code. If no such hearing is held, the person may be observed and treated until the full hearing provided for in section 5122.15 of the Ohio Revised Code.
- 6. **If the Patient is temporarily detained at UTMC per (E) (6) b. above at the request of anyone other than the person's legal guardian, spouse, or next of kin:**⁵
 - a. The Chief Clinical Officer of UTMC will be immediately notified.
 - b. The Chief Clinical Officer of UTMC or designee shall immediately notify the person's legal guardian, spouse or next of kin, and counsel, if these persons can be ascertained through exercise of reasonable diligence.
 - c. If a person **voluntarily** remains at or is admitted to UTMC, such notification will not be given without the patient's consent. The Chief Clinical Officer or designee shall inform a person voluntarily remaining at or admitted to UTMC that he or she may authorize such notification.
- 7. **Lacking Decision-Making Capacity.**

Refusing recommended treatment may be a poor choice and could be evidence of a mental disorder, but refusal itself may not be used as a mental disorder. The practitioner needs to determine whether the patient lacks competency to make health care decisions. Assessment of capacity does not require the opinion of a psychiatrist or psychologist, however, it should

⁵ These requirements are in compliance with Ohio Revised Code 5122.11 Judicial Hospitalization

be noted that psychiatrists do have more experience in assessing the capacity of patients whose decision-making seems impaired and in detecting subtle indications of mental disorders that compromise decision-making capacity.*⁶ An independent physician's review of a patient's status also assists in removing other influences that may be present regarding a patient's treatment. *See also policy 3364-100-10-10 regarding AMA.*⁷

- a. "Incompetent" means any person who is a person with a mental illness as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is **incapable of taking proper care of the person's self or property** or fails to provide for the person's family or other persons for whom the person is charged by law to provide.

If a patient is believed to be "Incompetent" as defined by this Section, UTMC staff may contact Outcomes Management to begin the process for appointment of guardian, whether limited, interim, emergency, or standby. Outcomes Management will work to find an appropriate guardian and determine the appropriate persons to complete the paperwork for the application. Outcomes Management may work with Risk Management/Legal Counsel through this process.

- b. Where representations are made by a patient's family that a guardianship or other legal document with respect to decision making for the patients' health care exists, like a durable power of attorney for health care, documentation should be obtained by UTMC and placed into the medical record in accordance with policy and measures taken to ensure that staff at UTMC involved in the care of the patient are fully informed as to the requirements of the documentation.

<p>Approved by:</p> <p>_____</p> <p>Daniel Barbee Chief Executive Officer</p> <p>_____</p> <p>Date</p> <p>_____</p> <p>Puneet Sindhwan, MD</p>	<p>Policies Superseded by This Policy:</p> <ul style="list-style-type: none">• <i>None</i> <p>Initial effective date: <i>July 1, 2014</i></p> <p>Review/revision date: <i>November 1, 2017</i> <i>May 1, 2021</i></p> <p>Next review date:</p>
--	---

⁶ * *Psychiatric 'Holds' for Non-psychiatric Patients, Current Psychiatry*, Douglas Mossman, MD, March 2013

⁷ <http://www.utoledo.edu/policies/utmc/administrative/pdfs/3364-100-10-10.pdf>

<p>Chief of Staff</p> <hr/> <p>Date</p> <hr/> <p>Kurt Kless Chief Nursing Officer</p> <hr/> <p>Date</p> <p><i>Review/Revision Completed by:</i> <i>Office of Legal Affairs</i> <i>Risk Management</i> <i>Chief Nursing Officer</i></p>	
--	--

Exhibit A



DMHAS-0030-Affidavit-of-Mental-Illness

Exhibit B



DMHAS-0025-Application-for-Emergency