

## TO SUMMARIZE

- Always remain calm and deal with hospital staff courteously.
- If you believe that actions by the hospital staff are in violation of your legal rights, ask questions. Take notes, and document everything. Create a paper trail. Write down who said what, and when they said it.
- Do NOT get into legal arguments with hospital staff.
- Sometimes it is best to say nothing. For example, if hospital staff demands the name of your midwife, you are NOT REQUIRED TO GIVE IT, and they CANNOT DENY YOU CARE if you do not. Simply say “I prefer not to give that information to you.” Repeat as many times as necessary.
- If the hospital staff is bringing in the law (DCFS, police, court orders, etc.) SO SHOULD YOU. It is best if you already have an attorney who you know and trust, and it is ideal if that attorney understands the issues involved with homebirth and midwifery in Illinois. If you have no attorney, you can contact the author of this pamphlet, who will consult with you in an emergency at no cost.

## RESOURCES:

- **Emergency Medical Treatment and Active Labor Act (EMTALA)**  
[http://www.law.cornell.edu/uscode/html/uscode42/usc\\_sec\\_42\\_00001395-dd000-.html](http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00001395-dd000-.html)
- **Health Insurance Portability and Accountability Act (HIPAA)**  
<http://www.hhs.gov/ocr/privacy>
- **Illinois Medical Patient Rights Act**  
<http://law.justia.com/codes/illinois/2005/chapter35/1525.html>
- **Illinois Department of Children and Family Services (DCFS)**  
<http://dcfswebresource.dcf.illinois.gov>

This brochure was produced by the Illinois Council of Certified Professional Midwives. ICCPM promotes the development and support of the practice of professional midwifery in order to establish it as a safe and reliable health care option for families in Illinois. Contact ICCPM at [info@illinoismidwives.org](mailto:info@illinoismidwives.org)

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This brochure is not a substitute for legal advice. It is important to seek legal counsel from an attorney who is familiar with your unique situation.

# When Homebirth Doesn't Stay Home

Your Rights in the Hospital



Photo courtesy of E.M. Richter

You have carefully planned a homebirth for months. You hired a skilled midwife, and your pregnancy has been healthy and without incident. But now, during labor or immediate postpartum, there is a problem that is beyond your midwife's ability to handle at home. Together you decide that it would be best to transfer to a hospital...

The purpose of this brochure is to make you aware of your rights as a patient in a hospital, the basis for those rights, how your rights can be violated by hospital staff, and what to do if they are!

Transfer to a hospital during or after a planned homebirth can be difficult for everyone. For you as the parents, it is a disruption of your plans. However necessary the hospital transport might be, you might feel angry and afraid. You might be worried about going to the hospital, and concerned about how you will be treated.

The hospital staff may also be angry and concerned. They probably don't know anything about you or the reasons that brought you to the hospital. If your midwife is practicing illegally, she may be unable to provide a complete history of your care.

In the midst of this, emotions (and tempers!) can flare. Doctors and nurses may say things and make threats that have no basis in the law and that threaten your legal rights.

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## WHAT ARE YOUR RIGHTS AS A HOSPITAL PATIENT?

In Illinois, your legal rights are based in federal, state, and administrative law.

Among the most important federal laws are the Emergency Medical Treatment and Active Labor Act (EMTALA) and the Health Insurance Portability and Accountability Act (HIPAA).

EMTALA provides that a pregnant woman who arrives at a hospital emergency room in active labor must, for all practical purposes, be admitted and treated until delivery (including the placenta) is complete. You cannot be turned away for lack of insurance or because you owe the hospital a prior debt. ***The hospital cannot refuse to treat you because you were planning a homebirth.***

HIPAA protects the privacy of your medical information and, with few exceptions, provides that you have a right to review and receive a copy of your medical records. ***The hospital cannot deny you access to your records because you were planning a homebirth.***

Illinois law also protects your rights as a hospital patient. Among other things, the Illinois Medical Patient Rights Act provides that hospital patients must receive competent care, be given the name of the physician providing that care, be provided with the information about their condition, and be allowed to refuse treatment to the extent permitted by law. ***You cannot be denied these rights because you were planning a homebirth.***

Perhaps the scariest state agency for parents is the Illinois Department of Children and Family Services (DCFS). Illinois law permits an investigator to take temporary protective custody of a child without the consent of the parents only if there is reason to believe that the child is in immediate danger and there is not time to file a petition in court. For further information about your rights in DCFS proceedings, see:

<http://www.state.il.us/dcf/docs/whatcani.pdf>

## HAVE YOUR RIGHTS BEEN VIOLATED?

The fact that hospital staff may be angry about a "failed homebirth" does not necessarily mean that your legal rights have been violated. Although it would be courteous (and professional!), the hospital staff is not required to be nice to you.

But if you believe that any of the rights outlined here have been denied, you should consider the following:

1. Ask questions, and document who said what and when they said it. For example: "Which law requires that you give my baby Vitamin K?" "When did homebirth become illegal?" "I don't want Erythromycin ointment in my baby's eyes. Do I have a right to refuse it?" Do NOT get into legal arguments with hospital staff.
2. Be polite. It is always best to be courteous when initially dealing with what might be a violation of your rights.
3. REMAIN CALM.
4. If the hospital staff threatens legal action, threatens to call DCFS or the police, or threatens to take custody of your baby, it is time to contact an attorney. Many times, just the mention of an attorney will make the hospital back down. If you do call an attorney, listen carefully to his/her advice. Ask if he/she will be willing to come to the hospital if necessary.