

California Mental Health Planning Council

Patients' Rights Committee

October 15, 2014

Lake Natoma Inn
702 Gold Lake Drive, Folsom CA 95630
(916) 351-1500

Boardroom - Natoma
12:00 - 1:30 p.m.

Item #	Time	Topic	Presenter or Facilitator	Tab
1.	12:00 pm	Welcome and Introductions	<i>Daphne Shaw, Chairperson</i>	
2.	12:05 pm	Review/Approval: Minutes for June, July, and August meetings	All members	A
3.	12:15 pm	Review/Approval: Updated PR Survey – online and print versions	All members	B
4.	12:30 pm	Review/Approval: Revised PR letter to County Mental Health Directors	All members	C
5.	12:45 pm	Discussion: County Patients' Rights Compliance reports	All members	D
6.	1:00 pm	New Business: Patients' Rights Committee Work Plan 2014-15	All members	E
7.	1:20 pm	Public Comment	<i>Daphne Shaw, Chairperson</i>	
8.	1:25 pm	Meeting adjourned		

The scheduled times on the agenda are estimates and subject to change. Any accommodations needed, please contact Laura Leonelli at 916-324-0980

Committee Members:

Co-Chairs: Daphne Shaw, Chair Cindy Clafin, Chair-Elect

Members: Carmen Lee Richard Krzynowski, DRC
Adam Nelson, MD
Walter Shwe

Staff: Laura Leonelli

INFORMATION

TAB SECTION A

 X ACTION REQUIRED

DATE OF MEETING 10/15/14

MATERIAL
PREPARED BY: Leonelli

DATE MATERIAL
PREPARED 9/17/14

AGENDA ITEM:	Review/Approval: Minutes for April, June, July and August Patients' Rights Committee meetings
ENCLOSURES:	Meeting Minutes for April 16, June 18, July 23, and August 20
OTHER MATERIAL RELATED TO ITEM:	None

ISSUE:

At the June Patients' Rights Committee meeting, there was not a quorum to approve the April meeting minutes. The minutes from all the meeting from April – August should be reviewed and approved by the PRC.

PATIENTS' RIGHTS COMMITTEE
Meeting Minutes

April 16, 2014
Hotel Irvine
Irvine, CA
Woodbridge Room

Planning Council Members In Attendance:

Daphne Shaw - Chairperson
Cindy Clafin
Richard Krzyzanowski
Carmen Lee
Adam Nelson, MD
Walter Shwe

Planning Council Staff in Attendance:

Michael Gardner
Jane Adcock, EO

The meeting was called to order at 12:05 pm by the chairperson.

Planning Council Member Issue Requests

There were no issue requests at this time.

Discuss Results of the Questionnaire Distributed at the PRAT Presentation

Daphne led a discussion on the results of the questionnaire distributed at the PRAT training that took place in February 2014. Daphne shared with the committee a summary document of some of what she noticed in the answer sheets.

- 1) She mentioned that the vast majority of the attendees at the PRAT were reasonably new to patients' rights advocacy.
- 2) There seemed to be clusters of attendees from similar geographic areas in California.
- 3) Patients' rights advocates indicate that they are overwhelmed with the demands of their jobs. They indicated that 'hearings' occupy too large a portion of their time.

At this point the committee began a discussion introduced by Dr. Nelson on probable cause hearings. This discussion included:

Is a probable cause hearing an actual court case?

Is it a legal proceeding where an attorney should be involved?

If the individual involved in the hearing cannot afford legal representation, should a public defender be appointed?

Public defenders are used at conservatorship hearings (if requested).

Cindy then used her computer to look up WIC 1801 and read it to the committee.

Staff will research and send WIC 1801 to the committee.

The committee returned to discussion of the PRAT survey.

- 4) The committee discussed drafting a letter to send to MH directors explaining that the advocates believed that 'hearings' were consuming too much of their time. Staff will draft a letter and send it to the committee for review and edits.
- 5) Many of the patients' rights advocates work for organizations that have contracts with the county. They are not directly employed by the county.
- 6) These organizations often contract with more than one county and often for more than one purpose.
- 7) It was mentioned that some respondents wanted more advocacy in county jails, the chairperson indicated that was not in the committee's jurisdiction.
- 8) Transportation was mentioned as an issue. If an individual volunteers for treatment, they must provide their own transportation. Police will not transport unless it is on a 5150 hold. In rural counties if they are provided transportation they will not be released until after the 72 hours. Committee discussed the 72 hour clock beginning when they are taken into custody, not when they arrive at the facility.
- 9) Another point mentioned was the fear of retaliation for someone reporting a complaint.
- 10) State ratio of advocates to general population numbers hasn't changed in 20 years.

The committee discussed the conditions and problems at the California Health Care Facility (CHCF) in Stockton. Members agreed with the conservator that the facility should not accept further patients until the problems observed have been resolved. It was decided that there would be no more surveys developed and distributed at this time. It was felt that the committee had exhausted the list for information.

The committee discussed the work plan and what should be included. Ideas included:

- a) Contacting counties to determine how many advocates each county has.
- b) Whether the positions are full time, half-time, etc. (FTE)
- c) What the ratio was of advocates per population.
- d) The committee received a pamphlet of county advocates from OPA that was from 2012. Is there a more recent document? (staff will investigate)
- e) It was mentioned that the latest ratio of advocates per population was from DMH and was one full-time advocate for every 500,000 population. It was mentioned that this may be because 500K seems to be the division between small, medium, and large counties.

The committee then discussed the general session presentation tomorrow. It was observed that in printing the handouts, some of the pertinent material was 'covered over'. It was decided that staff would re-print the handouts eliminating this and have the hotel make copies for the planning council.

The desire to have Dan Brzovic participate by telephone was discussed and will be further investigated by the EO. It was mentioned that perhaps Cynthia White could assist during the presentation.

The committee 'product' was then discussed. It was thought that the results of the PRAT survey concerns would be gathered into a letter and sent to CMHDA members. Daphne said she would talk to Stephen Grolnic-McClurg about the best way this could be accomplished without upsetting anyone.

The committee discussed the issue of the chair elections. Daphne indicated that she was getting burned out. Cindy said that she would co-chair with Daphne. This was accepted as a workable solution.

Meeting adjourned at 1:10 pm.

Respectfully submitted,

Michael Gardner

Patients' Rights Committee

Meeting Minutes

June 18, 2014

Hilton Oakland Hotel

1 Hegenberger Road, Oakland, CA 94621

Boardroom 3, Building 5

Committee Members present:

Daphne Shaw, Chairperson
Cindy Claflin, Vice-Chairperson
Walter Shwe

Staff:

Jane Adcock, Executive Officer
Laura Leonelli
Tamara Jones

Welcome and Introductions:

Chairperson Daphne Shaw called the meeting to order and those present introduced themselves.

Review and Approve April 2014 Minutes:

A quorum was not present so the approval of minutes was deferred.

Follow-up Discussion of April Presentation

The feedback on the presentation was not good. There had been communication problems within the committee following the decisions on how the presentation was to occur and so it was not as effective as the committee members had hoped it would be. It was very unfortunate that Dan was unable to give his portion in person. It did contain a lot of good information on patient's rights in involuntary care and MediCal managed care- but unfortunately was not well received.

Revisit BH/MH Contact Letter

A letter was drafted and discussed in the May meeting and it consensus was that it was possibly premature. The members present discussed it again and Jane agreed to have staff re-formulate the letter and that it suggest that BH/MH Directors look at that PR offices and Staff to see if the work load id appropriate and if they are meeting the W&I Code requirements. The committee members agreed with this approach.

Discuss/Develop Work Plan

The Committee has been working on only one project: Obtaining information on each county's compliance with W&I Code 5520. The committee started by sending a survey to PC members and learned that there is a lot of confusion as to the meaning of "Patient's Rights". The survey was sent to NAMI, UACF and CAMHPRA to distribute to their members. The possibility was discussed with CALMHB/C was they were not asked to distribute the surveys because of their lack of staff. Surveys that were received did not indicate the source of the response. Therefore the committee did not have any information as to who the responses represented- ie: family,

PR Advocate, etc. The survey was distributed at the PRAT in Sacramento and those results have been summarized. (See attached)

The committee will pursue the possibility of asking each County Mental Health Board/Commission to place the survey on their agenda for discussion and response to the questions. This would be an excellent way for the B/C to focus on Pt's Rights in their county.

Jane distributed the last posted report put out by Disability Rights California (DRC under contract with the Dept of Mental Health.) The committee needs to learn what is presently required now that the DMH is no longer in existence. Is there a contract with the Dept of State Hospitals? We need to see what other reports are out there that might help us with our work.

There was a discussion about the difference between the County Mental Health Performance Contract and the Mental Health Plan. We will seek clarification for future discussions regarding where Pt. Right's material is required. Cindy will ask MHAC for information on the contracts their local MHAs have for providing Pt. Rights in various counties.

Over the summer: a new survey will be designed - we need to look at staffing ratios, are the number/ nature of complaints recorded - Is it possible that there could be more descriptive language for PR requirements in performance contracts, etc.

Public comment – none

Evaluate meeting/ Discuss Next Agenda – Those present agreed that it has been a good meeting. Members should check in by phone in July – the 3rd Wednesday is regular schedule.

Action: Jane will send out phone appointment, reminders to everyone.

Meeting was adjourned at 1:05 pm.

Patient's Rights Committee

Meeting Highlights

July 23, 2014

10:30 a.m. to 12:00 p.m.

Members Present

Daphne Shaw, Chair

Cindy Clafin

Richard Krzyzanowski

Carmen Lee

Walter Shwe

Staff Present

Jane Adcock

Laura Leonelli

Meeting was called to order at 10:30 by Daphne Shaw, Chair

Discussion: Redesign Patients' Rights Survey – The purpose of the survey is to bring Patients' Rights to the awareness of local Mental Health Boards/Commissions. The intention is to get MHBs to work with their county Directors to get answers. The survey should be sent to MHB Chairs, do we have a current list? [Laura's note: Linda Dickerson has been sending Data Notebooks to MHB Chairs, she should have an up to date list] It should also be sent to Patients' Rights Directors and their secretaries, any county staff assigned to the MHBs.

How should the survey be modified?

- Can we get information on the percent of time PRAs spend on each activity? This issue was addressed in the cover letter to MH Directors.
- Members agreed to add one question: Is there any other task performed by PRAs that is not included in the list a – e?
- Request additional information about staffing level, ratio of staff to county population. The unofficial guideline is 1 Full Time Equivalent staff to 500,000 persons. Survey can ask total FTEs for PRA staff, then we can compare to Census data for that county.

Discussion: Letter to County MH Directors – Comments: add some softness, like 'we appreciate their efforts'. Move last paragraph to second, after introduction. Add specific legislation in the introduction, this is not a new mandate. Make a stronger 'ask'. Main concern is too much time spent on Probable Cause hearings and not enough time to other mandated tasks. Counties should devote more resources to cover all the PRA work needed.

- Revised letter will be available for review at next PRC meeting
- Future emails to PRC should include all documents in one message

Discussion: State Office of Patients' Rights – updated information on State contract, Reports:

Email message from the Office of Patients' Rights/Disability Rights CA was shared with members. Not much surprise that reports are not available to public. Can we contact the Department of State Hospitals for any reports? We still don't know if DRC contract includes

only State Hospitals or all County Patients' Rights departments. We would like to see a copy of the contract and its report requirements.

- Laura will reply to Michelle at COPR and ask for clarification about their scope of work.
- Jane will follow up with Dept. of State Hospitals

Discussion: Staff/Client ratio in County Offices of Patient's Rights – PRC will get this information from the revised Survey. The ratio (1/500K) was a policy formula at DMH, we can check Dan's PowerPoint to see if this is in a statute. Are mental health consumers in primary care included under the PRA responsibility? Or just consumers in the specialty mental health system?

PRC Work Plan: 4 items

- State Hospitals
- LPS involuntary treatment/holds
- MediCal grievance process
- California Office of Patients' Rights

Next meeting: 3rd Wednesday, **August 20, 2014**

Agenda will include finalizing the Letter to MH Directors, County compliance reviews, MediCal grievance process

Patient's Rights Committee

Meeting Highlights

August 20, 2014

10:30 a.m. to 12:00 p.m.

Members Present

Daphne Shaw, Chair
Richard Krzyzanowski
Carmen Lee
Walter Shwe

Staff Present

Jane Adcock
Laura Leonelli

Meeting was called to order at 10:35 by Daphne Shaw, Chair

Review/Approval: Updated PR Survey – The survey was modified to include a letter of introduction to the Mental Health Boards. Further edits were requested:

- Instead of referencing WIC 5514, the full text should be included for reference and emphasis.
- Other proposed changes – express appreciation for the experience and assistance of MHB/Cs.
- Send copy to Patients' Rights Advocates in each county; need to find a recent directory of contact information.
- The survey should be available electronically for ease of completion. Staff will work on developing this.

Review/Approval: Revised PR letter to County Mental Health Directors – Committee members received the letter by email and all have approved the content. However, it should be modified to also include the full text of WIC 5514. Staff will finalize letter with some minor wording changes.

Discussion: County Patients' Rights Compliance reports – Concerns were expressed that at least two counties had compliance issues that recurred over multiple triennial reviews. It appears that corrective action is not being monitored, and there may be some confusion about which agency is responsible for enforcing compliance. Are corrective action plans submitted to the Technical Assistance section of the Department of Health Care Services (DHCS)? It is possible that due to all the recent department changes at the State level that this issue is not receiving the attention that is due. The concern is that consumers do not have a choice of Mental Health Plans as a result of the 1115 Waiver. Grievance issues should be resolved at the State level to avoid a Federal level response.

- Request that a DHCS staff involved in compliance review present at the next PRC face-to-face meeting in October.

Discussion: State Office of Patients' Rights – updated information on State contract, Reports

Recent email correspondence confirmed that Disability Rights California continues to hold the contract with DHCS as the California Office of Patients' Rights (COPR). The Director of the COPR stated that their office is prevented by DHCS and the Department of State Hospitals from releasing reports to the public. There was discussion about the role of public agencies and their responsibility to share information. It was difficult for the CMHPC to obtain the 5 county compliance reviews referenced in the previous agenda item.

- EO Jane Adcock will ask DHCS Director Karen Baylor about this process.

New Business – None at this time.

Public Comment – None.

Adjourn – The meeting was adjourned at 11:30 am.

_____ INFORMATION

TAB SECTION B

X ACTION REQUIRED

DATE OF MEETING 10/15/14

MATERIAL
PREPARED BY: Leonelli

DATE MATERIAL
PREPARED 9/17/14

AGENDA ITEM:	Review/Approval: Updated PRC Survey – Online and Print versions
ENCLOSURES:	Print Survey and Cover Letter to MH Board Chair
OTHER MATERIAL RELATED TO ITEM:	None

ISSUE:

The cover letter has been revised to include WIC 5514 language to strengthen the message to Mental Health Board members. The print survey is modified for Mental Health Boards, by eliminating the survey respondent information and substituting information about which County is responding. The online survey link has been sent to members for review. It includes the same questions as the print survey.

CALIFORNIA MENTAL HEALTH PLANNING COUNCIL

Date:

Dear Local Mental Health Board/Commission Chair,

The California Mental Health Planning Council (CMHPC) is mandated in federal and state statute to advocate for children with serious emotional disturbances, and adults and older adults with serious mental illness; to review and report on the public mental health system; and to advise the Administration and the Legislature on priority issues and participate in statewide planning.

Welfare and Institutions Code 5514 states "There shall be a five-person Patients' Rights Committee formed through the California Mental Health Planning Council. This committee, supplemented by two ad hoc members appointed by the chairperson of the committee, shall advise the Director of Health Care Services and the Director of State Hospitals regarding department policies and practices that affect patients' rights. The committee shall also review the advocacy and patients' rights components of each county mental health plan or performance contract and advise the Director of Health Care Services and the Director of State Hospitals concerning the adequacy of each plan or performance contract in protecting patients' rights."

In order to fulfill this mandate, the Patients' Rights Committee (PRC) is seeking to determine what level of patient advocacy is currently taking place in the counties of California. Because of the unique perspective of Local Mental Health Boards/Commissions, which we consider valuable for your local knowledge and expertise, we are asking for your assistance. We have developed this short questionnaire in an attempt to understand how each county provides patients' rights advocacy services. An online version is available at _____ for your convenience.

We are requesting that you add this topic to the Agenda of a regular Board/Commission meeting, to begin a discussion about Patients' Rights and to define the system of Patients' Rights Advocacy in your county based on the information requested. We are suggesting a collaborative approach with your County Mental Health Department and Patients' Rights Advocate, who may be a County staffperson or employed by another agency. When your Board/Commission is ready to discuss this topic, can you please share with us a copy of the agenda? Of course the PRC would be pleased to answer any questions or concerns that may come up in this process.

Thank you in advance for your attention and cooperation,

Daphne Shaw
PRC Chair

County represented in this survey: _____

1. California's Welfare and Institutions Code (WIC) 5220 states the following:

Each local mental health director shall appoint, or contract for the services of, one or more county patients' rights advocates.

The duties of these advocates shall include, but not be limited to, the following:

- (a) *To receive and investigate complaints from or concerning recipients of mental health services residing in licensed health or community care facilities regarding:*
- *abuse,*
 - *unreasonable denial or punitive withholding of rights guaranteed under the provisions of Division 5 (commencing with Section 5000).*

Is this taking place in your county? Yes _____ No _____

If not taking place to the level you believe it should, what are the barriers?

- (b) *To monitor mental health facilities, services and programs for compliance with statutory and regulatory patients' rights provisions.*

Is this taking place in your county? Yes _____ No _____

If this is not taking place, what are the barriers to full compliance?

- (c) *To provide training and education about mental health law and patients' rights to mental health providers.*

Is this taking place in your county? Yes _____ No _____

If this is not occurring, what are the barriers preventing it?

- (d) *To ensure that recipients of mental health services in all licensed health and community care facilities are notified of their rights.*

Is this occurring in your county? Yes _____ No _____

If this is not occurring, what are the barriers preventing it?

- (e) *To exchange information and cooperate with the patients' rights program.*

Is this occurring in your county? Yes _____ No _____

If this is not occurring, what are the barriers preventing it?

2. Are there any other services provided by your county' Patients' Rights Advocates that are not listed above? Please share examples.

3. How many Full Time Equivalent (FTE) Patients' Rights Advocates are employed by your county?

The PRC would appreciate any other suggestions you may have to improve patients' rights. Thank you!

INFORMATION

TAB SECTION C

 X ACTION REQUIRED

DATE OF MEETING 10/15/14

MATERIAL
PREPARED BY: Leonelli

DATE MATERIAL
PREPARED 9/17/14

AGENDA ITEM:	Review/Approval: Revised Patients' Rights Committee Letter to County Mental Health Directors
ENCLOSURES:	Draft Letter
OTHER MATERIAL RELATED TO ITEM:	None

ISSUE:

This letter has been reviewed and approved by most PRC members, but it has been modified by adding WIC 5514 language to clarify the role of the PRC and its interest and responsibility in Patients' Rights Advocacy

August 20, 2014

Dear Mental Health/Behavioral Health Director:

The California Mental Health Planning Council (CMHPC) is mandated in federal and state statute to advocate for children with serious emotional disturbances, and adults and older adults with serious mental illness; to review and report on the public mental health system; and to advise the Administration and the Legislature on priority issues and participate in statewide planning.

Welfare and Institutions Code 5514 states “There shall be a five-person Patients’ Rights Committee formed through the California Mental Health Planning Council. This committee, supplemented by two ad hoc members appointed by the chairperson of the committee, shall advise the Director of Health Care Services and the Director of State Hospitals regarding department policies and practices that affect patients’ rights. The committee shall also review the advocacy and *patients’ rights components of each county mental health plan or performance* contract and advise the Director of Health Care Services and the Director of State Hospitals concerning the adequacy of each plan or performance contract in protecting patients’ rights.”

We acknowledge that patients’ rights advocacy is often difficult and demanding work, and we appreciate the many duties and responsibilities that Patients’ Rights Advocates perform in every county for the benefit of consumers and their families. We are writing to you today to emphasize the importance of effective and appropriate patients’ rights advocacy and to encourage you to have an open and honest dialogue with your patients’ rights advocacy staff and/or contractors regarding workload, areas of responsibility and ways to manage the demands that ensure necessary advocacy occurs for the people in need in your county.

Over the course of the last year, the PRC has been researching and collecting information about the system of patients’ rights laws, authority, requirements, etc., in California. We have had opportunity to speak with a variety of patients’ rights advocates from around the state and we have found that no two counties are alike, although it appears that an overwhelming workload is consistent from one office to the next.

Another consistency we heard was the utilization of county-designated patients’ rights advocates at “Probable Cause” hearings held pursuant to Welfare and Institutions Code Section 5250 et. seq. In some cases, the advocates indicate that upwards of 90% of their time is spent in these hearings, which leaves almost no time for the myriad of other functions tasked to their office. Thus, this letter to you urges your action to review the workload and focus of advocacy services in your county to ensure compliance with all of the duties set forth in WIC Section 5220, and to seek additional resources if needed.

If you would like to discuss this issue more in-depth, please do contact Jane Adcock, Executive Officer, at (916) 319-9343 or jane.adcock@cmhpc.ca.gov.

Sincerely,

Daphne Shaw, Chair
Patients' Rights Committee

X INFORMATION

TAB SECTION D

_____ ACTION REQUIRED

DATE OF MEETING 10/15/14

MATERIAL
PREPARED BY: Leonelli

DATE MATERIAL
PREPARED 9/17/14

AGENDA ITEM:	Discussion: County Patients' Rights Compliance reports
ENCLOSURES:	DHCS Civil Penalties and Sanctions Grid
OTHER MATERIAL RELATED TO ITEM:	None

ISSUE:

The Patients' Rights Committee has been reviewing county PR compliance reports over the summer. At least two reports show ongoing compliance issues over two triennial reports. Information was requested from DHCS on the measures that are in place to enforce compliance. This Penalties and Sanctions Grid was summarized by Jane in a recent email.

**Department of Health Care Services
Mental Health Services Division
PROGRAM OVERSIGHT & COMPLIANCE BRANCH
CIVIL PENALITIES AND SANCTIONS GRID**

Code / Authority	Relevant Parts
<p>W&I Code 5775 Implementation of managed mental health care for Medi-Cal beneficiaries through fee-for-service or capitated rate contracts with mental health plans</p>	<p>5775 (c).....If a county elects not to contract with the department, does not renew its contract, <i>or does not meet the minimum standards set by the department</i>, the department may elect to contract with any other governmental or nongovernmental entity for the delivery of mental health services in that county and may administer the delivery of mental health services until a contract for a mental health plan is implemented. The county may not subsequently contract to provide mental health services under this part unless the department elects to contract with the county.</p> <p>(e) Whenever the department determines a mental health plan has failed to comply with this part or any regulations adopted pursuant to this part, the department may impose sanctions, including, but not limited to, fines, penalties, the withholding of payments, special requirements, probationary or correction actions, or any other actions deemed necessary to prompt and ensure contract and performance compliance. If fines are imposed by the department, they may be withheld from the state matching funds provided to a mental health plan for Medi-Cal mental health services.</p>
<p>W&I Code 5777 Mental health care contractor; financial risk for services; plan and county service protocols; plan duties; contract renewal and termination; oversight; obligations</p>	<p>5777 (b) Any contract entered into pursuant to this part may be renewed if the plan continues to meet the requirements of this part, regulations promulgated pursuant thereto, and the terms and conditions of the contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may base the decision to renew on timely completion of a mutually agreed-upon plan of correction of any deficiencies, submissions of required information in a timely manner, or other conditions of the contract.</p> <p>(d) The department shall immediately terminate a contract when the director finds that there is an immediate threat to the health and safety of Medi-Cal beneficiaries. Termination of the contract for other reasons shall be subject to reasonable notice of the department's intent to take that action and notification of affected beneficiaries. The plan may request a hearing by the Office of Administrative Hearings.</p>
<p>W&I Code 14123.2 Civil Money Penalties (CMPs)</p>	<p>14123.2. Any provider or person that presents or causes to be presented a claim for services to an officer, employee, or agent of the state, or of any department or agency thereof as defined in appropriate state law, that the director determines is for a medical or other item or service that the person knows or has reason to know; (a) was not provided as claimed, or</p>

(b) payment for which may not be made under the program in the following instances: (1) when the person or provider has been suspended from participation in the program, or (2) when the department determines that the services or items claimed are substantially in excess of the needs of individuals or are of a quality that fails to meet professionally recognized standards of health care, or (3) when the department determines that a person has demonstrated a pattern of abusive overbilling of the program, or (4) when the department determines that a person has intentionally or negligently made a false statement or representation on any request for payment submitted to the Medi-Cal program; or (c) is submitted in violation of an agreement between the person and the state, shall be subject in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than three times the amount claimed for each item or service. For continuing intentional violations, a civil money penalty of not more than three times the amount claimed for each item or service may be imposed for each day the violation continues. The director shall make the determination to assess civil money penalties and shall be responsible for the collection of the penalty amounts. The provider or person subjected to a civil money penalty may appeal any decision by the director to assess the penalty pursuant to Section 100171 of the Health and Safety Code. Notwithstanding any other provisions of law, all money collected pursuant to this section shall be deposited in the General Fund on a monthly basis.

W&I Code 14123.25

14123.25. (a) In lieu of, or in addition to, the imposition of any other sanction available to it, including the sanctions and penalties authorized under Section 14123.2 or 14171.6, and as the "single state agency" for California vested with authority to administer the Medi-Cal program, the department shall exercise the authority granted to it in Section 1002.2 of Title 42 of the Code of Federal Regulations, and may also impose the mandatory and permissive exclusions identified in Section 1128 of the federal Social Security Act (42 U.S.C. Sec. 1320a-7), and its implementing regulations, and impose civil penalties identified in Section 1128A of the federal Social Security Act (42 U.S.C. Sec. 1320a-7a), and its implementing regulations, against applicants and providers, as defined in Section 14043.1, or against billing agents, as defined in Section 14040.1. The department may also terminate, or refuse to enter into, a provider agreement authorized under Section 14043.2 with an applicant or provider, as defined in Section 14043.1, upon the grounds specified in Section 1866(b)(2) of the federal Social Security Act (42 U.S.C. Sec. 1395cc(b)(2)).

And Pertaining to Cost Reports:

(c) (1) In addition, the department may issue a written warning notice of improper billing or improper cost report computation, which shall specifically identify the statute, regulation, or rule that is being violated, to a provider via certified mail, return receipt requested, whenever a review of the provider's paid claims or a provider's cost report demonstrates a pattern of improper billing or improper cost report computation. The review shall not take into account claims that were denied or payment reductions. The warning notice shall be in a format that specifically apprises the provider of the item or service improperly billed and, if applicable, the deficiencies in the manner in which provider costs were computed. The warning notice may be issued with annual cost report audit findings, or in addition to any audit or any other action that the department is authorized to take. The failure of the department to exercise its discretion to issue the warning notice shall not limit its authority to audit or take any action authorized by

law. The warning notice shall provide the provider with the opportunity to contest the warning notice and explain to the department the correctness of the provider's bill or cost report computation. If the department accepts the provider's explanation, in whole or in part, no further action related to the notice or part of the notice that the department accepts as correct shall be taken pursuant to this section.

(2) Civil money penalties may be imposed in the following circumstances:

(A) If a provider presents or causes to be presented claims for payment by the Medi-Cal program that are:

(i) Billed improperly, and are for a service or item about which the provider has received two or more warning notices of improper billing, the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one hundred dollars (\$100) per claim, or up to two times the amount improperly claimed for each item or service, whichever is greater.

(ii) For a service or item for which the department solicits provider costs for use in calculating Medi-Cal reimbursement or in calculating and assigning Medi-Cal reimbursement rates, the cost reports relevant to the claims are improperly calculated, and the provider has received two or more warning notices of improper cost report computation regarding substantially similar errors, the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one hundred dollars (\$100) per adjustment by the department to the costs submitted by the provider, or up to two times the amount improperly claimed for each item or service, whichever is greater.

(B) If a provider presents or causes to be presented claims for payment by the Medi-Cal program that are:

(i) Billed improperly, and are for a service or item about which the provider has received three or more warning notices of improper billing, or has been assessed a penalty under subparagraph (A), the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one thousand dollars (\$1,000) per claim, or up to three times the amount improperly claimed for each item or service, whichever is greater.

(ii) For a service or item for which the department solicits provider costs for use in calculating Medi-Cal reimbursement or in calculating and assigning Medi-Cal reimbursement rates, and the cost reports relevant to the claims are improperly calculated, and the provider has received three or more warning notices of improper cost report computation regarding substantially similar errors, or has been assessed a penalty under subparagraph (A), the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one thousand dollars (\$1,000) per adjustment by the department to the costs submitted by the provider, or three times the amount claimed for each item or service, whichever is greater.

(3) Any provider subjected to civil money penalties under paragraph (2) may appeal the decision to assess penalties pursuant to Section 100171 of the Health and Safety Code.

14124.2.

(a) (1) During normal working hours, the department may make any examination of the books and records of, and may visit and inspect the premises or facilities of, those identified in paragraphs (2) and (3), that it may deem necessary to carry out the provisions of this chapter or Chapter 8 (commencing with Section 14200) and regulations adopted

W&I Code 14124.2 Examination of books and records; inspection of premises – Failure to comply

thereunder, or the law under which the department or its agents or contractors administer any other health care program.

(b) (1)..... Failure to comply with the requests for information or records made pursuant to this section shall be grounds for immediate suspension of the provider or others subject to this section under subdivision (b) of Section 14123 or under the other health care programs administered by the department or its agents or contractors.

(2) Any copies furnished pursuant to this section shall be used only to investigate and pursue criminal, civil, or administrative sanctions for Medi-Cal fraud or abuse, including the provision of dental services that are below or less than the standard of acceptable quality as prescribed by subdivision (f) of Section 14123, or fraud or abuse under any other health care program administered by the department or its agents or contractors and the copies shall be destroyed when that purpose has been satisfied. This section shall not be construed to prohibit the referral of investigative findings, including copies of books and records, to the appropriate federal, state, or local licensing, certifying, regulatory, or prosecutorial authority.

CCR Title 9, Chapter 10, Section 1731 State Oversight (Pertaining to Psychiatric Inpatient Services)

1731 State Oversight

(a) **The Department shall provide ongoing oversight to an MHP through site visits and monitoring of data reports from MHPs and claims processing. In addition the Department shall:**

- (1) Perform reviews of program and fiscal operations of each MHP to verify that medically necessary services are provided in compliance with this chapter and the provisions of the Department's Federal Waiver Request for Medi-Cal Psychiatric Inpatient Hospital Services.
- (2) Perform immediate on-site reviews of MHP program operations whenever there is a threat to the health or safety of beneficiaries.
- (3) Monitor compliance with problem resolution process requirements contained in Article 5 of this chapter and the MHP's Implementation Plan for Psychiatric Inpatient Hospital Services.
- (4) Monitor provider contracts to ensure that the MHP enters into necessary contracts with DSH and Traditional Hospital Providers.
- (5) Monitor denials of MHP authorization for payments.
- (b) **If the Department activities in (a) result in a determination that an MHP is out of compliance with State or Federal laws and regulations, the Department shall provide the MHP with a written Notice of Noncompliance. The Notice of Noncompliance shall include:**
 - (1) A description of the violation.
 - (2) A description of any corrective action required by the Department and time limits for compliance.
 - (c) In the event that the agreement with the MHP is terminated for any cause, the remaining balance of State funds which were transferred to the MHP for psychiatric inpatient hospital services shall be returned to the Department. The State has a right to examine all records of an MHP to determine the balance of funds to be returned to the Department.

1810.380 State Oversight

CCR Title 9, Chapter 11, Section

1810.380 State Oversight

- (a) **The MHP shall be subject to state oversight, including the following:**
- (1) Site visits and monitoring of data reports from MHPs and claims processing.
 - (2) Reviews of programs and fiscal operations of each MHP to verify that medically necessary services are provided in compliance with this Chapter and the contracts between the Department and the MHP.
 - (3) Immediate on-site reviews of MHP program operations whenever the Department obtains information indicating that there is a threat to the health or safety of beneficiaries.
 - (4) Monitoring compliance with problem resolution process requirements contained in subchapter 5 and the MHP's implementation Plan.
 - (5) Monitoring provider contracts to ensure that the MHP enters into necessary contracts with DSH and Traditional Hospitals.
 - (6) Monitoring denials of MHP payment authorizations.
 - (7) Annual, external independent reviews of the quality outcomes of, timeliness of, and access to, the services covered by the MHPs as required by Title 42, Code of Federal Regulations, Section 438.204.
- (b) **If the Department determines that an MHP is out of compliance with State or Federal laws and regulations or the term of the contract between the MHP and the Department, the Department may take any or all of the following actions:**
- (1) Require that the MHP develop a plan of correction.
 - (2) Withhold all or a portion of payment due to the MHP from the Department.
 - (3) Impose civil penalties pursuant to Section 1810.385.
 - (4) Terminate the contract with the MHP pursuant to Section 1810.323.
 - (5) Take other actions deemed necessary to encourage and ensure contract and regulatory compliance.
- (c) **If the Department determines that an action should be taken pursuant to Subsection (b), the Department shall provide the MHP with a written Notice of Non-compliance. The Notice of Non-compliance shall include:**
- (1) A description of the violation
 - (2) A description of any corrective actions required by the Department and time limits for compliance.
 - (3) A description of any and all proposed actions by the Department under this Section or Sections 1810.385 or 1810.323, and any related appeal rights.
 - (d) Except as provided in Section 1810.325, the MHP may appeal the notice of Non-compliance to the Department, in writing, within 15 working days after the receipt of the notice, setting forth relevant facts and arguments. The Department shall grant or deny the appeal in whole or in part within 30 calendar days after receipt of the appeal. Except as provided in Section 1810.325, the Department shall suspend any proposed action pursuant to Subsection © (3) until the Department has acted on the MHPs appeal.
 - (e) In consultation with representatives from beneficiaries, their family members, MHP, and selected other stakeholders, the Department shall develop, and update as appropriate a comprehensive oversight program. The Department may affect this oversight program through administrative actions; incorporation into regulation as changes to this Section, to Implementation Plan requirements in Section 1810 or to other standards in this Chapter and amendments to the contracts between the

Department and each MHP.

Section 1810.385 Civil Penalties

(a) The Department may impose one or more of the civil penalties specified in subsection (b) upon an MHP that fails to comply with the provisions of section 5775 through 5780 and 14680 through 14685 of the Welfare and Institutions Code, the provisions of this Chapter, or the terms of the MHP's contract with the Department.

(b) **Civil penalties imposed by the Department shall be in the amounts specified below with respect to violation of:**

(1) The provisions of Sections 1810.360, 1850.205, 1850.210 and 1850.215

(A) First violation: \$1000.

(B) Second and each subsequent violation: \$5,000.

(2) The provisions of Section 1810.375 and any other regulation or contract provision establishing a time frame for action.

(A) First violation: \$500, plus \$25 per day for each day that the item to be submitted is late.

(B) Second and each subsequent violation: \$500, plus \$25 per day for each day that the item to be submitted is late.

(3) Any provision of this Chapter that is not specifically addressed in this Section.

(A) First Violation: \$500.

(B) Second violation: \$1,000.

(C) Third and each subsequent violation: \$5,000.

Any provision of the contract between the MHP and the Department that is not specifically governed by this Chapter.

(A) First violation \$500.

(B) Second and subsequent violations: \$1,000.

(4) Any provision of Section 5775 through 5780 and 14680 through 14685 of the Welfare and Institutions Code, which is not specifically addressed in this Chapter.

(A) First violation: \$1,000.

(B) Second and subsequent violations: \$1,000

(c) When the Department issues a notice of non-compliance as described in Section 1810.380 to an MHP found by the Department to be in violation of any provision of law, regulation or the contract, **failure to comply** with corrective actions in the notice within the time limits given shall be deemed to be subsequent violation under this Section.

CCR, Title 22 51458 Cause for Suspension

§ 51458. Cause for Suspension.

(a) The conviction of a provider of either (1) a felony, or (2) any offense, misdemeanor or felony, involving moral turpitude shall be grounds for suspension from participation in the California Medical Assistance Program. The record of such conviction shall be conclusive evidence of the fact that the conviction occurred. The Department may inquire into the circumstances surrounding the commission of the crime in order to determine if such conviction was of an offense involving moral turpitude and suspension is warranted. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a

felony, or any offense involving moral turpitude, shall be deemed to be a conviction within the meaning of this section.

(b) The Department may suspend a provider from the program based upon a judgment of conviction regardless of whether the provider obtains a subsequent order under the provisions of section 1203.4 of the Penal Code allowing him to withdraw his plea of guilty, and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the information or indictment.

(c) Suspension of a provider of service from participation in the Medicare program shall be grounds for suspension of that provider from participation in the Medi-Cal Program.

(d) The suspension or revocation of a provider's license, certification, permit or registration or the failure to obtain such license, certification permit or registration shall be grounds for suspension from participation in the California Medical Assistance program, when such license, certification, permit or registration is required for program participation in accordance with article 3.

Note: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 208, Health and Safety Code. Reference: Section 14123, Welfare and Institutions Code

§ 51458.1. Cause for Recovery of Provider Overpayments.

(a) The Department shall recover overpayments to providers including, but not limited to, payments determined to be:

- (1) In excess of program payment ceilings or allowable costs.
 - (2) In excess of the amounts usually charged by a provider.
 - (3) For services not documented in the provider's records, or for services where the provider's documentation justifies only a lower level of payment.
 - (4) Based upon false or incorrect claims or cost reports from providers.
 - (5) For services deemed to have been excessive, medically unnecessary or inappropriate.
 - (6) For services prescribed, ordered or rendered by persons who did not meet the standards for participation in the Medi-Cal program at the time the services were prescribed, ordered or rendered.
 - (7) For services not covered by the program.
 - (8) For services to persons not eligible for program coverage when the services were provided.
 - (9) For Medi-Cal covered services already paid for by the beneficiary, but not yet refunded, or for services already reimbursed by the Department or other coverage.
 - (10) For services that should have been billed to other coverage.
 - (11) For services not ordered or prescribed, when an order or prescription is required.
 - (12) For services not authorized, when a treatment authorization request is required.
 - (13) In violation of any other Medi-Cal regulation where overpayment has occurred.
- (b) The provisions of Sections 51488 and 51488.1 shall prevail in circumstances that conflict with this section.

Note: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code.

Reference: Sections 14005, 14005.1, 14005.4, 14005.8, 14018, 14019, 14021, 14024, 14026,

CCR, Title 22 51458.1 Cause for Recovery of Provider Overpayments

14103.2, 14103.6, 14105, 14107, 14110.1, 14117, 14123, 14124.1, 14124.2, 14124.5, 14131, 14132, 14133, 14133.1, 14170, 14176 and 1477, Welfare and Institutions Code.

§ 51458.2. Statistical Extrapolation of Medi-Cal Provider Reviews.

CCR, Title 22 51458.2 Statistical Extrapolation of Medi-Cal Provider Reviews

(a) The Department shall make a demand to recover an amount due from a Medi-Cal provider (as specified in Section 51458.1) using probability sampling to extrapolate the recoverable amount when the extrapolated recovery amount exceeds the cost to the Department of doing the audit.

(b) Probability sampling shall be done in conformance with generally accepted statistical standards and procedures described in any textbook on statistical sampling methods.

(c) Whenever the results of a probability sample are used to extrapolate the amount to be recovered, the demand for recovery shall be accompanied by a clear description of:

- (1) The universe from which the sample was drawn,
 - (2) The sample size and method used to select the sample,
 - (3) The formulas and calculation procedures used to determine the amount to be recovered, and
 - (4) The confidence level used to calculate the precision of the extrapolated overpayment.
- (d) As used in this section, the following definitions shall apply:

(1) "Probability sampling" means the standard statistical methodology in which a sample is selected based on the theory of probability (a mathematical theory used to study the occurrence of random events).

(2) "Extrapolation" means the methodology whereby an unknown value can be estimated by projecting the results of a probability sample to the universe from which the sample was drawn with a calculated precision (margin of error).

Note: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.
Reference: Sections 14170 and 14133, Welfare and Institutions Code.

W&IC 5675.2 Licensing and Certification Fund; Application for renewal of license to operate an Mental Health Rehabilitation Center

W&IC 5675.2 Licensing and Certification Fund; Application for renewal of license to operate an Mental Health Rehabilitation Center

(d) Each license or renewal issued pursuant to this chapter shall expire 12 months from the date of issuance. Application for renewal of the license shall be accompanied by the necessary fees and shall be filed with the department at least 30 days prior to the expiration date. Failure to file a timely renewal may result in expiration of the license.

(f) Fees collected by the department pursuant to this section shall be expended by the department for the purpose of ensuring the health and safety of all individuals providing care and supervision by licensees and to support activities of the Licensing and Certification Program, including, but not limited to monitoring facilities for compliance with applicable laws and regulations.

(g) The department may make additional charges to the facilities if additional visits are required to ensure that corrective action is taken by the licensee.

X INFORMATION

TAB SECTION E

_____ ACTION REQUIRED

DATE OF MEETING 10/15/14

MATERIAL
PREPARED BY: Leonelli

DATE MATERIAL
PREPARED 9/17/14

AGENDA ITEM:	Discussion: Patients' Rights Committee Work Plan
ENCLOSURES:	Updated Work Plan Handouts
OTHER MATERIAL RELATED TO ITEM:	None

ISSUE:

The PRC has been discussing several topics with Jane Adcock, who is providing guidance on new goals, objectives and activities to develop a Committee work plan for 2014-15

Patients' Rights Committee

Work Plan 2013-2014

Goal #1 Measure each County's compliance with WIC 5520 (a)-(e) <i>WIC 5514 ...The committee shall also review the advocacy and patients' rights components of each county mental health plan or performance contract and advise the Director of Health care Services and Director of State Hospitals concerning the adequacy of each plan or contract in protecting patients' rights. ..."</i>		Measure of Success Issuing Statewide Report		Target Audience Directors of Health Care Services and State Hospitals
Objectives	Action Steps	Data/Evaluation	Timeline	Leads
<ul style="list-style-type: none"> Measure compliance 	<ul style="list-style-type: none"> Survey the Counties/MHBs Collect PRAT Questionnaires Secure Input from NAMI Compile/Analyze/Evaluate all Input Draft Statewide Report Submit report to DHCS 	<ul style="list-style-type: none"> Review survey data Explore data from Medi-Cal Compliance Reviews Review annual report from Disability Rights CA 	<ul style="list-style-type: none"> November 2013: County surveys released 2013: Survey of Mental Health Boards March 2014: Participated in Patient Rights' Advocate training and solicited attendee input 	Michael Gardner

Goal #2		Measure of Success		Target Audience	
Objectives	Action Steps	Data/Evaluation	Timeline		Leads
	➤				

Goal #3		Measure of Success		Target Audience	
Objectives	Action Steps	Data/Evaluation	Timeline		Leads

Goal #4		Measure of Success		Target Audience	
Objectives	Action Steps	Data/Evaluation	Timeline		Leads