

Patients' Rights & Patients' Rights Advocacy

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Disability Rights California

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Section 1

Patients' Rights Laws and Regulations

Rights of all persons with mental illness

W&IC § 5325.1

- Persons with mental illness have the **same legal rights** and responsibilities **guaranteed all other persons** by the Federal Constitution and laws and the Constitution and laws of the State of California, unless specifically limited by federal or state law or regulations.

Rights that cannot be denied

W&IC § 5325.1 (Continued)

- (a) A right to treatment services which promote the potential of the person to function independently. Treatment should be provided in ways that are least restrictive of the personal liberty of the individual.
- (b) A right to dignity, privacy, and humane care.

Rights that cannot be denied

W&IC § 5325.1 (Continued)

- (c) A right to be free from harm, including unnecessary or excessive
 - physical restraint,
 - isolation,
 - medication,
 - abuse, or neglect.
- Medication shall not be used as
 - punishment,
 - for the convenience of staff,
 - as a substitute for program, or
 - in quantities that interfere with the treatment program.

Rights that cannot be denied

W&IC § 5325.1 (Continued)

- (d) A right to prompt medical care and treatment.
- (e) A right to religious freedom and practice.
- (f) A right to participate in appropriate programs of publicly supported education.
- (g) A right to social interaction and participation in community activities.
- (h) A right to physical exercise and recreational opportunities.
- (i) A right to be free from hazardous procedures.

No Presumption of Incompetence

W&IC § 5331

- No person may be presumed to be incompetent because he or she has been evaluated or treated for mental disorder or chronic alcoholism, regardless of whether such evaluation or treatment was voluntarily or involuntarily received. Any person who leaves a public or private mental health facility following evaluation or treatment for mental disorder or chronic alcoholism, regardless of whether that evaluation or treatment was voluntarily or involuntarily received, shall be given a statement of California law as stated in this paragraph.

LPS Patients' Rights (Deniable)

W&IC § 5325

- Each person shall have the following rights, a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient in all facilities:
 - (a) To wear his or her own clothes;
 - to keep and use his or her own personal possessions including his or her toilet articles; and
 - to keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases.
 - (b) To have access to individual storage space for his or her private use.
 - (c) To see visitors each day.

LPS Patients' Rights (Deniable) W&IC § 5325

- (d) To have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them.
- (e) To have ready access to letterwriting materials, including stamps, and to mail and receive unopened correspondence.
- (f) To refuse convulsive treatment including, but not limited to, any electroconvulsive treatment, any treatment of the mental condition which depends on the induction of a convulsion by any means, and insulin coma treatment. (Deniable only in accordance with Section 5326.7 procedures.)
- (g) To refuse psychosurgery. (Non-deniable.)
- (h) To see and receive the services of a patient advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services. (Non-deniable.)

LPS Patients' Rights (Good Cause)

W&IC § 5326, 9 CCR § 865.2

- Rights may be denied for good cause when the professional person in charge of a facility or his or her designee has good reason to believe:
 - (1) That the exercise of the specific right would be **injurious to the patient/resident**; or
 - (2) That there is evidence that the specific right, if exercised would **seriously infringe on the rights of others**; or
 - (3) That the **institution or facility would suffer serious damage** if the specific right is not denied; and
 - (4) That there is **no less restrictive way** of protecting the interests specified in (1), (2), or (3).

LPS Patients' Rights (Good Cause)

W&IC § 5326, 9 CCR § 865.2 (Continued)

- (b) The reason used to justify the denial of a right to a patient/resident must be related to the specific right denied. A right shall not be withheld or denied as a punitive measure, nor shall a right be considered a privilege to be earned.
- (c) Treatment modalities shall not include denial of any right specified in Section 861 of this article. Waivers signed by the patient/resident or by the responsible relative/guardian/conservator shall not be used as a basis for denying Section 861 rights in any treatment modality.

State Hospital Patients' Rights (Section 880 Regulations)

- Similar to LPS Patients' Rights, **except:**
 - (1) A right to keep and use personal possessions as space permits, **except items and materials that are listed as contraband by the facility. Each facility shall make a copy of the contraband listing available on all treatment units and public areas within the facility. Each patient shall receive a copy of the contraband listing upon admission.**
 - (4) A right to personal visits during regularly scheduled visiting days and hours. The right to have visits shall not be denied **except as is necessary for reasonable security of the facility and the safety of persons. The length and frequency of visits and the number of persons permitted to visit a patient at the same time may be limited consistent with safety, security, and to ensure that all patients have a fair opportunity to have visitors.**

State Hospital Patients' Rights (Section 880 Regulations, Continued)

- (8) A right to have access to legal reference material. Limitations on the time, duration, frequency, and method of access shall be specified by formal facility policy to ensure opportunity for access by all patients. **(Deniable right.)**
- (10) A right to social interaction. The formation of supervised patient leisure time activity groups that promote educational, social, cultural and recreational interests of participating patients shall be permitted, except for activities that pose a threat to safety and security. **(Deniable right.)**

State Hospital Patients' Rights (Section 880 Regulations)

- Good cause for denying a patient the exercise of a right exists when the facility director determines that:
 - (1) The exercise of the specific right would be injurious to the patient; or
 - (2) There is evidence that the specific right, if exercised, would seriously infringe on the rights of others; or
 - (3) The facility would suffer serious damage if the specific right is not denied, or;
 - (4) **The exercise of the right would compromise the safety and security of the facility and/or the safety of others;** and
 - (5) That there is no less restrictive way of protecting the interests specified in Subsections (c)(1) through (4) of this Section.

State Hospital Patients' Rights Contraband--W&IC § 7295

- (a) To ensure its safety and security, a state hospital that is under the jurisdiction of the State Department of State Hospitals, as listed in Section 4100, may develop a list of items that are deemed contraband and prohibited on hospital grounds, and control and eliminate contraband on hospital grounds.
- (b) The State Department of State Hospitals shall develop a list of items that shall be deemed contraband at every state hospital.
- (c) A state hospital shall form a contraband committee, comprised of hospital management and employees designated by the hospital's director, to develop the list of contraband items. The committee shall develop the list with the participation of patient representatives, or the patient government of the hospital, if one is available, and the Office of Patients' Rights.
- (i) For the purposes of this section, **“contraband”** means materials, articles, or goods that a patient is prohibited from having in his or her possession because the **materials, articles, or goods present a risk to the safety and security of the facility.**

Medi-Cal Grievance System

- (a) An MHP shall develop problem resolution processes that enable a beneficiary to resolve a problem or concern about any issue related to the MHP's performance of its duties under this Chapter, including the delivery of specialty mental health services.
- (b) The MHP's beneficiary problem resolution processes shall include:
 - (1) A grievance process;
 - (2) An appeal process; and
 - (3) An expedited appeal process.

Section 2

Patients' Rights Advocacy

Calif. Office of Patients' Rights (COPR)

- **Disability Rights California (DRC)**
 - (a) The State Department of State Hospitals and the State Department of Health Care Services shall contract with a single nonprofit agency that meets the criteria specified in subdivision (b) of Section 5510 to conduct the activities specified in paragraphs (1) to (4), inclusive. These two state departments shall enter into a memorandum of understanding to ensure the effective management of the contract and the required activities affecting county patients' rights programs:
 - (1) Provide patients' rights advocacy services for, and conduct investigations of alleged or suspected abuse and neglect of, including deaths of, persons with mental disabilities residing in state hospitals.
 - (2) Investigate and take action as appropriate and necessary to resolve complaints from or concerning recipients of mental health services residing in licensed health or community care facilities regarding abuse, and unreasonable denial, or punitive withholding of rights guaranteed under this division that cannot be resolved by county patients' rights advocates.
 - (3) Provide consultation, technical assistance, and support to county patients' rights advocates in accordance with their duties under Section 5520.
 - (4) Conduct program review of patients' rights programs.
 - (b) The services shall be provided in coordination with the appropriate mental health patients' rights advocates.

Calif. Office of Patients' Rights (COPR) Disability Rights California (DRC) (Continued)

- (c)(1) The contractor shall develop a plan to provide patients' rights advocacy services for, and conduct investigations of alleged or suspected abuse and neglect of, including the deaths of, persons with mental disabilities residing in state hospitals.
- (2) The contractor shall develop the plan in consultation with the statewide organization of mental health patients' rights advocates, the statewide organization of mental health clients, and the statewide organization of family members of persons with mental disabilities, and the statewide organization of county mental health directors.
- (3) In order to ensure that persons with mental disabilities have access to high quality advocacy services, the contractor shall establish a grievance procedure and shall advise persons receiving services under the contract of the availability of other advocacy services, including services provided by the protection and advocacy agency specified in Section 4901 and the county patients' rights advocates specified in Section 5520.

Calif. Office of Patients' Rights (COPR) Disability Rights California (DRC) (Continued)

- Non-LPS patients shall be informed of and provided with a written procedure for filing complaints or appeals alleging violations of any right(s) contained in Sections 883 and 884. The written procedure shall contain the following information:
 - (a) Notification that any patient who believes a patients' right listed in this Article has been abused, punitively withheld, or unreasonably denied may file a complaint with the Patients' Rights Advocate.
 - (b) The contact name of the Patients' Rights Advocate assigned to address patients' rights complaints, their telephone number and contact times.
 - (c) A statement that the Patients' Rights Advocate shall take action to investigate and address patients' rights complaints within two working days.
 - (d) A statement that if the complainant is not satisfied with the response and/or action taken pursuant to Subsection (c) of this Section, the complainant may, within ten working days, request that the complaint be referred to the facility director for review and response.
 - (e) A statement that the facility director shall take action to review the patients' rights complaint and issue a response within fifteen working days.
 - (f) A statement that if the complainant is not satisfied with the response of the facility director, the complainant may, within thirty working days, request that the complaint be referred to the Office of Patients' Rights for review and response.
 - (g) A statement that if the complainant is not satisfied with the response of the Office of Patients Rights, the complainant may request, within thirty working days, that the complaint be referred to the Director of the Department.

Calif. Office of Patients' Rights (COPR) Disability Rights California (DRC) (Continued)

- Training of county patients' rights advocates shall be provided by the contractor specified in Section 5510 responsible for the provision of protection and advocacy services to persons with mental disabilities. Training shall be directed at ensuring that all county patients' rights advocates possess:
 - (a) Knowledge of the service system, financial entitlements, and service rights of persons receiving mental health services. This knowledge shall include, but need not be limited to, knowledge of available treatment and service resources in order to ensure timely access to treatment and services.
 - (b) Knowledge of patients' rights in institutional and community facilities.
 - (c) Knowledge of civil commitment statutes and procedures.
 - (d) Knowledge of state and federal laws and regulations affecting recipients of mental health services.
 - (e) Ability to work effectively and respectfully with service recipients and providers, public administrators, community groups, and the judicial system.
 - (f) Skill in interviewing and counseling service recipients, including giving information and appropriate referrals.
 - (g) Ability to investigate and assess complaints and screen for legal problems.
 - (h) Knowledge of administrative and judicial due process proceedings in order to provide representation at administrative hearings and to assist in judicial hearings when necessary to carry out the intent of Section 5522 regarding cooperation between advocates and legal representatives.
 - (i) Knowledge of, and commitment to, advocacy ethics and principles.

Calif. Office of Patients' Rights
(COPR)
Disability Rights California (DRC)
(Continued)

- The patients' rights program shall serve as a liaison between county patients' rights advocates and the State Department of Health Care Services.

County Patients' Rights Advocates

- 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).
 - (b) To monitor mental health facilities, services and programs for compliance with statutory and regulatory patients' rights provisions.
 - (c) To provide training and education about mental health law and patients' rights to mental health providers.
 - (d) To ensure that recipients of mental health services in all licensed health and community care facilities are notified of their rights.
 - (e) To exchange information and cooperate with the patients' rights program.

County Patients' Rights Advocates (Continued)

- (a) The Patients'/Residents' Advocate shall:
 - (1) Ensure that the rights listed in Section 5325 of the Welfare and Institutions Code and in Section 861 remain posted in all facilities where posting is required pursuant to Section 860.
 - (2) Ensure that all incoming patients/residents are notified of these rights.
 - (3) Assist in training staff of facilities specified in Section 860 regarding patients'/residents' rights.
 - (4) Investigate complaints of patients/residents or their responsible relatives, and, if necessary, act as advocate for patients/residents.
 - (5) Act as advocate in behalf of patients/residents who are unable to register a complaint because of their mental or physical condition.
 - (6) Act as local consultant in the area of patients'/residents' rights.
 - (7) Act as liaison to the Patient Rights Specialist, Department of Health.

County Patients' Rights Advocates (Continued)

- (a) The list of rights that shall be posted, provided, or explained to the patient/resident pursuant to Section 862 shall contain:
 - (1) Notification that any patient/resident who believes a right of his/hers has been abused, punitively withheld, or unreasonably denied may file a complaint with the Patients'/Residents' Advocate.
 - (2) The name of the Patients'/Residents' Advocate who has been assigned to handle such complaints, his telephone number, and the times during which he may be contacted.
- (b) When a complaint is received by the Patients'/Residents' Advocate he shall, within two working days, take action to investigate and resolve it.
- (c) If the complainant expresses dissatisfaction with the action taken, the matter shall be referred, within five working days, to the local mental health director if the complaint originated in the mental disabilities program or to the regional center director if the complaint originated in the developmental disabilities program.
- (d) If the complaint cannot be satisfactorily resolved by the local mental health director or by the regional center director within ten working days, it shall be referred to the Patients' Rights Specialist, Department of Health, whose responsibility it shall be to make a decision in the case. Appeal from the decision of the Patients' Rights Specialist may be made to the Director of State Department of Health, or his designee.
- (e) This section shall not apply to state mental health hospitals. The complaint procedures for Lanterman-Petris-Short individual patients in state mental health hospitals shall be the same as those that apply to Non-LPS patients as set forth in Title 9, California Code of Regulations Section 885.

County Patients' Rights Advocates (Continued)

- (a) The Patients' Rights Specialist shall, with the assistance of the Patients'/Residents' Advocate, conduct an annual review of the patients' rights program in each local mental health program and regional center.
- (b) The Patients' Rights Specialist shall submit a report of the annual review to the local mental health director or the regional center director, as appropriate, with a copy to the Mental Disabilities Services Branch Chief, or the Developmental Disabilities Branch Chief, as appropriate.

Mental Health Planning Council

Patients' Rights Committee

- 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. The ad hoc members of the committee shall be persons with substantial experience in establishing and providing independent advocacy services to recipients of mental health services.