

# Patients' Rights and Patients' Rights Advocacy

## Laws and Regulations

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## Section One: Patients' Rights Laws and Regulations

### Welfare and Institutions Code (W&IC) sections 5325-5337 Title 9, California Code of Regulations (9 CCR) sections 800-868

These are the general provisions protecting patients' rights. Laws enacted by the Legislature are found in the Welfare and Institutions Code. Regulations implementing those laws are found in the California Code of Regulations. Regulations adopted by the Department of Mental Health are now administered by the Department of State Hospitals, in the case of state hospital regulations, and the Department of Health Care Services, in the case of community mental health regulations, including Lanterman-Petris-Short (LPS) Act regulations.

There are many provisions protecting patients' rights. The ones listed in this publication are the ones most likely to be the subject of advocacy by patients' rights advocates.

#### 1. Rights of all persons with mental illness

The following rights apply to all persons with mental illness, whether or not they are receiving services under LPS. These rights apply whether or not a person with mental illness is receiving services in a facility.

#### 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.

... ..

It is the intent of the legislature that persons with mental illness shall have rights including, but not limited to, the following:

(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.**
- (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.**
- (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.**

**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.

## 2. LPS Patients' Rights

### W&IC § 5327

Every person involuntarily detained under provisions of this part or under certification for intensive treatment or postcertification treatment in any public or private mental institution or hospital, including a conservatee placed in any medical, psychiatric or nursing facility, shall be entitled to all rights set forth in this part and shall retain all rights not specifically denied him under this part.

### W&IC § 5325.1

... No otherwise qualified person by reason of having been involuntarily detained for evaluation or treatment under provisions of this part or having been admitted as a voluntary patient to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds....

### W&IC § 5157

(a) Each person, at the time he or she is first taken into custody under provisions of Section 5150, shall be provided, by the person who takes such other person into custody, the following information orally. The information shall be in substantially the following form:

My name is .

I am a \_\_\_\_\_ (peace officer, mental health professional) \_\_\_\_\_ .

with \_\_\_\_\_ (name of agency) \_\_\_\_\_ .

You are not under criminal arrest, but I am taking you for examination by mental health professionals at .

\_\_\_\_\_ (name of facility) \_\_\_\_\_

You will be told your rights by the mental health staff.

If taken into custody at his or her residence, the person shall also be told the following information in substantially the following form:

You may bring a few personal items with you which I will have to approve. You can make a phone call and/or leave a note to tell your friends and/or family where you have been taken.

(b) The designated facility shall keep, for each patient evaluated, a record of the advisement given pursuant to subdivision (a) which shall include:

(1) Name of person detained for evaluation.

(2) Name and position of peace officer or mental health professional taking person into custody.

(3) Date.

(4) Whether advisement was completed.

(5) If not given or completed, the mental health professional at the facility shall either provide the information specified in subdivision (a), or include a statement of good cause, as defined by regulations of the State Department of Health Care Services, which shall be kept with the patient's medical record.

(c) Each person admitted to a designated facility for 72-hour evaluation and treatment shall be given the following information by admission staff at the evaluation unit. The information shall be given orally and in writing and in a language or modality accessible to the person. The written information shall be available in the person's native language or the language which is the person's principal means of communication. The information shall be in substantially the following form:

My name is .

My position here is.

You are being placed into the psychiatric unit because it is our professional opinion that as a result of mental disorder, you are likely to:

(check applicable)  
harm yourself \_\_\_\_\_  
harm someone else \_\_\_\_\_  
be unable to take care of your own  
food, clothing, and housing needs \_\_\_\_\_

We feel this is true because

(herewith a listing of the facts upon which the allegation of dangerous or gravely disabled due to mental disorder is based, including pertinent facts arising from the admission interview.)

You will be held on the ward for a period up to 72 hours. This does not include weekends or holidays.

Your 72-hour period will begin \_\_\_\_\_ (day and time.) \_\_\_\_\_

During these 72 hours you will be evaluated by the hospital staff, and you may be given treatment, including medications. It is possible for you to be released before the end of the 72 hours. But if the staff decides that you need continued treatment you can be held for a longer period of time. If you are held longer than 72 hours you have the right to a lawyer and a qualified interpreter and a hearing before a judge. If you are unable to pay for the lawyer, then one will be provided free.

(d) For each patient admitted for 72-hour evaluation and treatment, the facility shall keep with the patient's medical record a record of the advisement given pursuant to subdivision (c) which shall include:

- (1) Name of person performing advisement.
- (2) Date.

(3) Whether advisement was completed.

(4) If not completed, a statement of good cause.

If the advisement was not completed at admission, the advisement process shall be continued on the ward until completed. A record of the matters prescribed by subdivisions (a), (b), and (c) shall be kept with the patient's medical record.

### **W&IC § 5325**

Each person involuntarily detained for evaluation or treatment under provisions of this part, and each person admitted as a voluntary patient for psychiatric evaluation or treatment to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, 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 providing those services, and otherwise brought to his or her attention by any additional means as the Director of Health Care Services may designate by regulation. Each person committed to a state hospital shall also 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 providing those services and otherwise brought to his or her attention by any additional means as the Director of State Hospitals may designate by regulation:

(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**.

(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.

(g) To **refuse psychosurgery**. Psychosurgery is defined as those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery, and all other forms of brain surgery if the surgery is performed for the purpose of any of the following:

(1) Modification or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain.

(2) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior.

(3) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions, or behavior.

Psychosurgery does not include prefrontal sonic treatment wherein there is no destruction of brain tissue. The Director of Health Care Services and the Director of State Hospitals shall promulgate appropriate regulations to assure adequate protection of patients' rights in such treatment.

(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.

(i) Other rights, as specified by regulation.

Each patient shall also be given notification in a language or modality accessible to the patient of other constitutional and statutory rights which are found by the State Department of Health Care Services and the State Department of State Hospitals to be frequently misunderstood, ignored, or denied.

Upon admission to a facility each patient, involuntarily detained for evaluation or treatment under provisions of this part, or as a voluntary patient for psychiatric evaluation or treatment to a health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, **shall immediately be given a copy of a State Department of Health Care Services prepared patients' rights handbook**. Each person committed to a state hospital, upon admission, **shall immediately be given a copy of a State Department of State Hospitals prepared patients' rights handbook**.

The State Department of Health Care Services and the State Department of State Hospitals shall prepare and provide the forms specified in this section. The State Department of Health Care Services shall prepare and provide the forms specified in Section 5157.

The rights specified in this section **may not be waived by the person's parent, guardian, or conservator**.

### **W&IC § 5326**

The professional person in charge of the facility or state hospital or his or her designee may, for good cause, deny a person any of the rights under Section 5325, except under subdivisions (g) and (h) and the rights under subdivision (f) may be denied only under the conditions specified in Section 5326.7. To ensure that these rights are denied only for good cause, the Director of Health Care Services and Director of State Hospitals shall adopt regulations specifying the conditions under which they may be denied. Denial of a person's rights shall in all cases be entered into the person's treatment record.

## **9 CCR § 865.2**

(a) Rights listed in Section 861, except for that right listed in subdivision (g), may be denied only for good cause, and the rights under subdivision (f) may be denied only under the conditions specified in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code. Good cause for denying a patient/resident the exercise of a right exists when the professional person in charge of a facility or his 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).

(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**.

## **9 CCR § 865.3**

(a) Each denial of a patient's/resident's right shall be Noted in his treatment record. Documentation shall take place immediately whenever a right has been denied. The notation shall include:

(1) Date and time the right was denied.

- (2) Specific right denied.
- (3) Good cause for denial of right.
- (4) Date of review if denial was extended beyond 30 days.
- (5) Signature of the professional person in charge of the facility or his designee authorizing denial of right.

(b) The patient/resident shall be told of the content of the notation.

(c) Each denial of a right shall be documented regardless of the gravity of the reason for the denial or the frequency with which a specific right is denied in a particular facility or to a particular individual.

### **9 CCR § 865.5**

A right shall not continue to be denied a patient/resident when the good cause for its denial no longer exists. When a right has been denied, staff shall employ the **least restrictive means** of managing the behavior problem which led to the denial. The date a specific right is restored shall be documented in the patient's/resident's treatment record.

### **9 CCR § 865.**

(a) (Reserved)

(b) "Professional person in charge of the facility" is defined in Section 822 of this subchapter, Title 9, California Administrative Code; in community care facilities it is the administrator of the facility. Prior to denying the rights, as listed in Section 861, of a resident for good cause, the administrator of a community care facility shall first obtain concurrence from the resident's physician or social worker that good cause for denial exists.

(c) Notwithstanding the provisions of this article, good cause denial of that right listed under subdivision (f) of Section 5325 shall be in accordance with the provisions set forth in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code, as interpreted by court decision.

(d) Any person who has the lawful right on his own choice to discharge himself from a facility shall be informed of said right at the time of admission to the facility. If the person elects to discharge himself from the facility rather than voluntarily accepting any denial of his rights, such election shall be documented in his treatment record, and the person shall be permitted to leave the facility.

#### **9 CCR § 865.1**

(a) A right listed in Section 861 of this article may be denied a resident of a licensed community care facility only upon the failure of all other means taken to resolve the behavior necessitating denial.

(b) Agreements and negotiations between the resident, administrator, and social worker shall be the primary means of resolving problems regarding the rights of the resident.

(c) If the community care facility, after compliance with subsections (a) and (b) of this section, wishes to deny one or more Section 861(a) through (e) rights, the procedure of Section 865 must be followed.

#### **9 CCR § 865.4**

(a) Seclusion is the involuntary isolation of a patient in a locked room.  
**Seclusion and/or restraints shall never be used as punishment or as a substitute for a less restrictive alternative form of treatment.**

(b) Each instance of seclusion and/or restraints shall be Noted in the patient's record in accordance with Section 865.3.

(c) Documentation of the Section 861 rights actually denied a person in seclusion or restraints shall be entered in the patient's record.

(d) In addition to the foregoing, all of the provisions contained in Sections 70577(j) (General Acute Care Hospitals), 71545 (Acute Psychiatric Hospitals), 72407, 72409, 72411, 72413 (SNF), and 73403, 73405, 73407, 73409 (ICF) of Title 22 of the California Administrative Code shall prevail as applicable rules for the respective health care facilities.

(e) The authority for the use of seclusion and/or restraints on any resident of a community care facility shall be in accordance with provisions of Title 22, California Administrative Code, Section 80403(f).

**W&IC § 5326.1**

Quarterly, each local mental health director shall furnish to the Director of Health Care Services, the facility reports of the number of persons whose rights were denied and the right or rights which were denied. The content of the reports from facilities shall enable the local mental health director and Director of Health Care Services to identify individual treatment records, if necessary, for further analysis and investigation. These quarterly reports, except for the identity of the person whose rights are denied, shall be available, upon request, to Members of the State Legislature, or a member of a county board of supervisors.

Notwithstanding any other provision of law, information pertaining to denial of rights contained in the person's treatment record shall be made available, on request, to the person, his or her attorney, his or her conservator or guardian, the local mental health director, or his or her designee, or the Patients' Rights program of the State Department of Health Care Services. The information may include consent forms, required documentation for convulsive treatment, documentation regarding the use of restraints and seclusion, physician's orders, nursing notes, and involuntary detention and conservatorship papers. The information, except for the identity of the person whose rights are denied, shall be made available to the Members of the State Legislature or a member of a county board of supervisors.

### **3. Certification Review Hearings**

#### **W&IC §§ 5250—5256.8**

#### **W&IC § 5256**

When a person is certified for intensive treatment pursuant to Sections 5250 and 5270.15, a certification review hearing shall be held unless judicial review has been requested as provided in Sections 5275 and 5276. The certification review hearing shall be within four days of the date on which the person is certified for a period of intensive treatment unless postponed by request of the person or his or her attorney or advocate. Hearings may be postponed for 48 hours or, in counties with a population of 100,000 or less, until the next regularly scheduled hearing date.

#### **W&IC § 5256.2**

At the certification review hearing, the evidence in support of the certification decision shall be presented by a person designated by the director of the facility. In addition, either the district attorney or the county counsel may, at his or her discretion, elect to present evidence at the certification review hearing.

#### **W&IC § 5256.3**

The person certified shall be present at the certification review hearing unless he or she, with the assistance of his or her attorney or advocate, waives his or her right to be present at a hearing.

#### **W&IC § 5256.4**

(a) At the certification review hearing, the person certified shall have the following rights:

- (1) Assistance by an attorney or advocate.
- (2) To present evidence on his or her own behalf.
- (3) To question persons presenting evidence in support of the certification decision.

(4) To make reasonable requests for the attendance of facility employees who have knowledge of, or participated in, the certification decision.

(5) If the person has received medication within 24 hours or such longer period of time as the person conducting the hearing may designate prior to the beginning of the hearing, the person conducting the hearing shall be informed of that fact and of the probable effects of the medication.

(b) The hearing shall be conducted in an impartial and informal manner in order to encourage free and open discussion by participants. The person conducting the hearing shall not be bound by rules of procedure or evidence applicable in judicial proceedings.

(c) Reasonable attempts shall be made by the mental health facility to notify family members or any other person designated by the patient, of the time and place of the certification hearing, unless the patient requests that this information not be provided. The patient shall be advised by the facility that is treating the patient that he or she has the right to request that this information not be provided.

(d) All evidence which is relevant to establishing that the person certified is or is not as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, shall be admitted at the hearing and considered by the hearing officer.

(e) Although resistance to involuntary commitment may be a product of a mental disorder, this resistance shall not, in itself, imply the presence of a mental disorder or constitute evidence that a person meets the criteria of being dangerous to self or others, or gravely disabled.

### **W&IC § 5256.5**

If at the conclusion of the certification review hearing the person conducting the hearing finds that there is not probable cause to believe that the person certified is, as a result of a mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, then the person certified may no longer be involuntarily detained. Nothing herein shall prohibit the person from remaining at the facility on a voluntary basis or the facility from providing the person with appropriate referral information concerning mental health services.

### **W&IC § 5256.6**

If at the conclusion of the certification review hearing the person conducting the hearing finds that there is probable cause that the person certified is, as a result of a mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, then the person may be detained for involuntary care, protection, and treatment related to the mental disorder or impairment by chronic alcoholism pursuant to Sections 5250 and 5270.15.

### **W&IC § 5256.7**

The person certified shall be given oral notification of the decision at the conclusion of the certification review hearing. As soon thereafter as is practicable, the attorney or advocate for the person certified and the director of the facility where the person is receiving treatment shall be provided with a written notification of the decision, which shall include a statement of the evidence relied upon and the reasons for the decision. The attorney or advocate shall notify the person certified of the certification review hearing decision and of his or her rights to file a request for release and to have a hearing on the request before the superior court as set forth in Article 5 (commencing with Section 5275). A copy of the decision and the certification made pursuant to Section 5250 or 5270.15 shall be submitted to the superior court.

## 4. Right to Refuse Medication

### W&IC § 5325.2

Any person who is subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15 shall have the **right to refuse treatment with antipsychotic medication** subject to provisions set forth in this chapter.

### W&IC § 5152(c)

(c) A person designated by the mental health facility shall give to any person who has been detained at that facility for evaluation and treatment and who is receiving medication as a result of his or her mental illness, as soon as possible after detention, **written and oral information** about the **probable effects and possible side effects** of the medication. **The State Department of Health Care Services shall develop and promulgate written materials on the effects of medications, for use by county mental health programs as disseminated or as modified by the county mental health program, addressing the probable effects and the possible side effects of the medication.** The following information shall be given **orally** to the patient:

- (1) The nature of the mental illness, or behavior, that is the reason the medication is being given or recommended.
- (2) The likelihood of improving or not improving without the medication.
- (3) Reasonable alternative treatments available.
- (4) The name and type, frequency, amount, and method of dispensing the medication, and the probable length of time the medication will be taken.

The fact that the information has or has not been given shall be indicated in the patient's chart. If the information has not been given, the designated person shall document in the patient's chart the justification for not providing the information. A failure to give information about the probable effects and possible side effects of the medication shall not constitute new grounds for release.

## W&IC §§ 5332-5337

### W&IC § 5332

(a) Antipsychotic medication, as defined in subdivision (l) of Section 5008, may be administered to any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, **if that person does not refuse that medication following disclosure of the right to refuse medication** as well as **information required to be given** to persons pursuant to **subdivision (c) of Section 5152** and subdivision (b) of Section 5213.

(b) If any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, and for whom antipsychotic medication has been prescribed, **orally refuses or gives other indication of refusal** of treatment with that medication, the medication shall be administered only when treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient, and upon a determination of that person's incapacity to refuse the treatment, **in a hearing** held for that purpose.

(c) Each hospital in conjunction with the hospital medical staff or any other treatment facility in conjunction with its clinical staff shall develop internal procedures for facilitating the filing of petitions for capacity hearings and other activities required pursuant to this chapter.

(d) When any person is subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, the agency or facility providing the treatment shall acquire the person's medication history, if possible.

(e) In the case of an emergency, as defined in subdivision (m) of Section 5008, a person detained pursuant to Section 5150, 5250, 5260, or 5270.15 may be treated with antipsychotic medication over his or her objection prior to a capacity hearing, but only with antipsychotic medication that is **required to treat the emergency condition, which shall be provided in the manner least restrictive to the personal liberty of the patient.** It is not necessary for harm to take place or become unavoidable prior to intervention.

## **W&IC § 5333**

(a) Persons subject to capacity hearings pursuant to Section 5332 shall have a **right to representation by an advocate or legal counsel**.

“Advocate,” as used in this section, means a person who is providing mandated patients’ rights advocacy services pursuant to Chapter 6.2 (commencing with Section 5500), and this chapter. If the State Department of State Hospitals provides training to patients’ rights advocates, that **training shall include issues specific to capacity hearings**.

(b) Petitions for capacity hearings pursuant to Section 5332 shall be filed with the **superior court**. The director of the treatment facility or his or her designee shall **personally deliver a copy of the notice** of the filing of the petition for a capacity hearing to the person who is the subject of the petition.

(c) The mental health professional delivering the copy of the notice of the filing of the petition to the court for a capacity hearing shall, at the time of delivery, inform the person of his or her legal right to a capacity hearing, including the right to the assistance of the patients’ rights advocate or an attorney to prepare for the hearing and to answer any questions or concerns.

(d) As soon after the filing of the petition for a capacity hearing is practicable, an attorney or a patients’ rights advocate shall meet with the person to discuss the capacity hearing process and to assist the person in preparing for the capacity hearing and to answer questions or to otherwise assist the person, as is appropriate.

## **W&IC § 5334**

(a) Capacity hearings required by Section 5332 shall be heard within 24 hours of the filing of the petition whenever possible. However, if any party needs additional time to prepare for the hearing, the hearing shall be postponed for 24 hours. In case of hardship, hearings may also be postponed for an additional 24 hours, pursuant to local policy developed by the county mental health director and the presiding judge of the superior court regarding the scheduling of hearings. The policy developed pursuant to this subdivision shall specify procedures for the prompt filing and processing of petitions to ensure that the deadlines set forth in this section are met, and shall take into consideration the availability of advocates and the treatment needs of the patient. In no event shall hearings be held beyond 72 hours of the filing of the petition. The person who is the subject of the petition and his or her advocate or counsel shall receive a copy of the petition at the time it is filed.

(b) Capacity hearings shall be held in an **appropriate location at the facility** where the person is receiving treatment, and shall be held in a manner compatible with, and the **least disruptive of, the treatment being provided to the person.**

(c) Capacity hearings shall be conducted by a superior court judge, a court-appointed commissioner or referee, or a **court-appointed hearing officer.** All commissioners, referees, and hearing officers shall be appointed by the superior court from a list of attorneys unanimously approved by a panel composed of the local mental health director, the county public defender, and the county counsel or district attorney designated by the county board of supervisors. **No employee of the county mental health program or of any facility designated by the county and approved by the department as a facility for 72-hour treatment and evaluation may serve as a hearing officer. All hearing officers shall receive training in the issues specific to capacity hearings.**

(d) The person who is the subject of the capacity hearing shall be given **oral notification of the determination at the conclusion of the capacity hearing**. As soon thereafter as is practicable, the person, his or her counsel or advocate, and the director of the facility where the person is receiving treatment shall be provided with **written notification** of the capacity determination, which shall include a **statement of the evidence relied upon and the reasons for the determination**. A copy of the determination shall be submitted to the superior court.

(e)

(1) The person who is the subject of the capacity hearing may **appeal** the determination to the superior court or the court of appeal.

(2) The person who has filed the original petition for a capacity hearing may request the district attorney or county counsel in the county in which the person is receiving treatment to appeal the determination to the superior court or the court of appeal, on behalf of the state.

(3) Nothing shall prohibit treatment from being initiated pending appeal of a determination of incapacity pursuant to this section.

(4) Nothing in this section shall be construed to preclude the right of a person to bring a writ of habeas corpus pursuant to Section 5275, subject to the provisions of this chapter.

(f) All appeals to the superior court pursuant to this section shall be subject to de novo review.

### **W&IC § 5336**

Any determination of a person's incapacity to refuse treatment with antipsychotic medication made pursuant to Section 5334 shall remain in effect **only for the duration of the detention period** described in Section 5150 or 5250, or both, or until capacity has been restored according to standards developed pursuant to subdivision (c) of Section 5332, or by court determination, whichever is sooner.

## 5. Confidentiality of LPS Treatment Information

### W&IC § 5328—5330

#### W&IC § 5328

**All information and records** obtained in the **course of providing services** under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services **shall be confidential**. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records **shall be disclosed only** in any of the following cases:

(a) **In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings.** The **consent** of the patient, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by a professional person employed by a facility **to a professional person not employed by the facility** who does not have the medical or psychological responsibility for the patient's care.

(b) **When the patient, with the approval** of the physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, or licensed professional clinical counselor, who is in charge of the patient, **designates persons to whom information or records may be released**, except that nothing in this article shall be construed to compel a physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family. Nothing in this subdivision shall be construed to authorize a licensed marriage and family therapist or licensed professional clinical counselor to provide services or to be in charge of a patient's care beyond his or her lawful scope of practice.

... ..

**W&IC § 5330**

(a) Any person may bring an action against an individual who has willfully and knowingly released confidential information or records concerning him or her in violation of this chapter, or of Chapter 1 (commencing with Section 11860) of Part 3 of Division 10.5 of the Health and Safety Code, for the greater of the following amounts:

- (1) Ten thousand dollars (\$10,000).
- (2) Three times the amount of actual damages, if any, sustained by the plaintiff.

(b) Any person may bring an action against an individual who has negligently released confidential information or records concerning him or her in violation of this chapter, or of Chapter 1 (commencing with Section 11860) of Part 3 of Division 10.5 of the Health and Safety Code, for both of the following:

- (1) One thousand dollars (\$1,000). In order to recover under this paragraph, it shall not be a prerequisite that the plaintiff suffer or be threatened with actual damages.
- (2) The amount of actual damages, if any, sustained by the plaintiff.

(c) Any person may, in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin the release of confidential information or records in violation of this chapter, and may in the same action seek damages as provided in this section.

(d) In addition to the amounts specified in subdivisions (a) and (b), the plaintiff shall recover court costs and reasonable attorney's fees as determined by the court.

## 6. State Hospital Patients' Rights

### 9 CCR §§ 880-892 (Section 880 regulations)

#### 9 CCR § 880

Chapter 4.5 applies to patients' rights and related procedures for all non-Lanterman-Petris-Short Act (LPS) patients placed in or committed to a treatment program in a Department of Mental Health facility, except when transferred to or placed in a federally certified program.

#### 9 CCR § 882

(a) Upon admission to the facility, each non-LPS patient shall be informed of the rights specified in Sections 883 and 884 and given a copy of their rights in the language or modality understood by the patient.

(b) These patients' rights shall also be prominently posted in the predominant languages of the patients in patients' living areas.

#### 9 CCR § 883

(a) The patient's parent, guardian, or conservator **may not waive** the rights listed in this Section unless authority to waive these rights is specifically granted by court order.

(b) Non-LPS Patients have the following rights:

(1) A right to **privacy, dignity, respect and humane care.**

(2) A **right to receive treatment** for a **diagnosed mental disorder** that is provided in a method **least restrictive of individual liberty** and **promotes personal independence.**

(3) A right to **medical care and treatment** for physical ailments and conditions according to accepted clinical standards and practices.

(4) A **right to refuse psychosurgery, electroconvulsive therapy, experimental and other hazardous procedures.**

(5) A **right to be free from harm including abuse or neglect, and unnecessary or excessive medication, restraint, seclusion, or protective or administrative isolation.** Medication, restraint, seclusion, or protective or administrative isolation shall not be used as punishment, as retaliation for filing complaints, for the convenience of staff, as a substitute for a treatment program or in quantities that interfere with the patient's treatment.

(6) A **right to confidential case discussions, consultation, examination, and patient records.** Confidential information shall only be provided to those people providing evaluation and/or treatment or as authorized by law.

(7) A right to be informed of the **procedures for filing complaints** and the process for appeals when complaints are not resolved to the patient's satisfaction.

(8) A right to access the services of a **Patients' Rights Advocate.**

(9) A right to **confidential communications with an attorney,** either through correspondence or through private consultation, during regularly scheduled visiting days and hours.

(10) A right to **religious freedom and practice,** within the context of the environment of a secure treatment facility.

(11) A right to **opportunities for physical exercise and recreational activities.**

#### **9 CCR § 884**

(a) The patient's parent, guardian, or conservator **may not waive** the rights listed in this Section unless authority to waive these rights is specifically granted by court order. These rights shall only be denied for good cause in accordance with Subsection (b) of this Section.

(b) Non-LPS Patients have the following rights, **subject to denial for good cause:**

(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.

(2) A right to have access to **individual secured storage space** for personal possessions in accordance with the formal policies and procedures of the facility. Title 19, Section 314 and Title 22, Sections 71543 and 73507 require hospitals and licensees to comply with State Fire Marshall regulations.

(3) A right to **keep and spend** a sum of the **patient's own money** via the facility monetary replacement system.

(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.

(5) A right to access **telephones** to make and receive confidential telephone calls, or to have such calls made for them. Telephone hours, frequency and duration of telephone calls, and method of payment may be limited to ensure access by all patients.

(6) A right to have access to **letter writing materials** and to mail and receive correspondence. Designated facility employees shall open and inspect all incoming and outgoing mail addressed to and from patients **for contraband. Confidential mail, as defined in Section 881(c), shall not be read**. Limitations on size, weight and volume of mail shall be specified by formal facility policy.

(7) A right to receive **packages**. Designated facility employees **shall open and inspect** all incoming and outgoing packages addressed to and from patients for **contraband**. Limitations on the size, weight and volume, and frequency/number of packages allowed shall be specified by formal facility policy.

(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.

(9) A right to participate in appropriate programs of **publicly supported education** that are consistent with the patient's treatment plan and with the secure treatment facility environment.

(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.

(c) The rights specified in Subsection (b) of this Section shall be denied only for good cause. 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.

(d) The reason for denial of a right under this Section must be related to the specific right denied. A right specified in this Section shall not be withheld or denied as a punitive measure, nor shall a right specified in this Section be considered a privilege to be earned. A denial of a right shall not exceed thirty days without additional staff review. Treatment plans shall not include denial of any right specified in Subsection (b) of this Section.

(e) Each denial of a right specified in this Section shall be noted in the patient's treatment record. Documentation shall take place immediately whenever a right is denied. The notation shall include:

- (1) Date and time the right was denied.
- (2) Specific right denied.
- (3) Good cause for denial of right.
- (4) Date of review if denial was extended beyond 30 days.
- (5) The facility director's signature authorizing the denial.

(f) The patient shall be told of the content of the notation and the process for restoration at the time of the denial.

(g) Each denial of a right specified in this Section shall be documented regardless of the reason for the denial, or the frequency with which a specific right is denied in a particular facility, or to a particular patient.

(h) A patient's right under this Section shall be restored when the good cause for its denial no longer exists. When a right has been denied, staff shall employ the least restrictive means of managing the behavior that led to the denial. The date that a specific right is restored shall be documented in the patient's treatment record.

(i) Information in the patients' treatment record pertaining to a denial of rights shall be available on request to the patient, their attorney/conservator/guardian, the Department, or excluding the patient identity, a member of the State Legislature.

## **9 CCR § 886**

(a) Each facility director shall file quarterly reports with the Office of Patients' Rights, by the last day of January, April, July, and October. These reports shall list the number of patients whose right or rights were denied and the specific right or rights that were denied.

(b) The quarterly reports shall enable the Director of the Department and the Office of Patients' Rights to identify individual treatment records, if necessary, for further analysis and investigation.

## **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.**

(d) Each hospital list of contraband items developed pursuant to subdivision (a), and the statewide list of contraband items developed pursuant to subdivision (b) are subject to review and approval by the Director of State Hospitals or his or her designee.

(e) A list of contraband items developed pursuant to subdivision (a) shall be updated and subject to review and approval by the director of the department, or his or her designee, no less often than every six months.

(f) If an item presents an **emergent danger to the safety and security of a facility, the item may be placed immediately on a contraband list** by the Director of State Hospitals or the executive director of the state hospital, but this placement shall be reviewed by the contraband committee, if applicable, and approved by the Director of State Hospitals or his or her designee within six weeks.

(g) **The lists of contraband items developed pursuant to this section shall be posted prominently in every unit of the hospital and throughout the hospital, and provided to a patient upon request.**

(h) **The lists of contraband items developed pursuant to this section shall be posted on the hospital's Internet Web site.**

(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.**

(j) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the hospital and the department may implement, interpret, or make specific this section without taking regulatory action.

## **7. Medi-Cal Patients' Rights**

### **9 CCR § 1850.205-1850.215**

#### **9 CCR § 1850.205. General Provisions.**

(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.

(c) For the grievance, appeal, and expedited appeal processes, found in Sections 1850.206, 1850.207 and 1850.208 respectively, the MHP shall ensure:

(1) That each beneficiary has adequate information about the MHP's processes by taking at least the following actions:

(A) Including information describing the grievance, appeal, and expedited appeal processes in the MHP's beneficiary booklet and providing the beneficiary booklet to beneficiaries as described in Section 1810.360.

(B) Posting notices explaining grievance, appeal, and expedited appeal process procedures in locations at all MHP provider sites sufficient to ensure that the information is readily available to both beneficiaries and provider staff. The posted notice shall also explain the availability of fair hearings after the exhaustion of an appeal or expedited appeal process, including information that a fair hearing may be requested whether or not the beneficiary has received a notice of action pursuant to Section 1850.210. For the purposes of this Section, an MHP provider site means any office or facility owned or operated by the MHP or a provider contracting with the MHP at which beneficiaries may obtain specialty mental health services.

(C) Making forms that may be used to file grievances, appeals, and expedited appeals, and self addressed envelopes available for beneficiaries to pick up at all MHP provider sites without having to make a verbal or written request to anyone.

(2) That a beneficiary may authorize another person to act on the beneficiary's behalf. The beneficiary may select a provider as his or her representative in the appeal or expedited appeal process.

(3) That a beneficiary's legal representative may use the grievance, appeal, or expedited appeal processes on the beneficiary's behalf.

(4) That an MHP staff person or other individual is identified by the MHP as having responsibility for assisting a beneficiary, at the beneficiary's request, with these processes, including assistance in writing the grievance, appeal, or expedited appeal. If the individual identified by the MHP is the person providing specialty mental health services to the beneficiary requesting assistance, the MHP shall identify another individual to assist that beneficiary.

(5) That a beneficiary is not subject to discrimination or any other penalty for filing a grievance, appeal, or expedited appeal.

(6) That procedures for the processes maintain the confidentiality of beneficiaries.

(7) That a procedure is included by which issues identified as a result of the grievance, appeal or expedited appeal processes are transmitted to the MHP's Quality Improvement Committee, the MHP's administration or another appropriate body within the MHP for consideration in the MHP's Quality Improvement Program as required by Section 1810.440(a)(5).

(8) That the individuals making the decision on the grievance, appeal, or expedited appeal were not involved in any previous review or decision-making on the issue presented in the respective problem resolution process.

(9) That the individual making the decision on the grievance, appeal, or expedited appeal has the appropriate clinical expertise as determined by the MHP to treat the beneficiary's condition, if the grievance is regarding the denial of a request for an expedited appeal or if the grievance, appeal, or expedited appeal is about clinical issues.

(d) For the grievance, appeal, and expedited appeal processes found in Sections 1850.206, 1850.207, and 1850.208, the MHP shall:

(1) Maintain a grievance and appeal log and record grievances, appeals, and expedited appeals in the log within one working day of the date of receipt of the grievance or appeal. The log entry shall include but not be limited to the name of the beneficiary, the date of receipt of the grievance, appeal, or expedited appeal, and the nature of the problem.

(2) Record in the grievance and appeal log or another central location determined by the MHP the final dispositions of grievances, appeals, and expedited appeals, including the date the decision is sent to the beneficiary, or document the reason(s) that there has not been final disposition of the grievance, appeal, or expedited appeal.

(3) Provide a staff person or other individual with responsibility to provide information on request by the beneficiary or an appropriate representative regarding the status of the beneficiary's grievance, appeal, or expedited appeal.

(4) Acknowledge the receipt of each grievance, appeal, and expedited appeal to the beneficiary in writing.

(5) Identify the roles and responsibilities of the MHP, the provider, and the beneficiary.

(6) Notify those providers cited by the beneficiary or otherwise involved in the grievance, appeal, or expedited appeal of the final disposition of the beneficiary's grievance, appeal, or expedited appeal.

(e) No provision of an MHP's beneficiary problem resolution processes shall be construed to replace or conflict with the duties of county patients' rights advocates as described in Welfare and Institutions Code, Section 5520.

**9 CCR § 1850.210. Provision of Notice of Action.**

(a) The MHP shall provide a beneficiary of the MHP with a Notice of Action when the MHP denies or modifies an MHP payment authorization request from a provider for a specialty mental health service to the beneficiary.

(1) Except as provided in Subsection (c), when the denial or modification involves a request from a provider for continued MHP payment authorization of a specialty mental health service or when the MHP reduces or terminates a previously approved MHP payment authorization, notice shall be provided in accordance with Title 22, Section 51014.1.

(2) Notice is not required when a denial is a non-binding verbal description to a provider of the specialty mental health services that may be approved by the MHP.

(3) Notice is not required when the MHP modifies the duration of any approved specialty mental health services as long as the MHP provides an opportunity for the provider to request MHP payment authorization of additional specialty mental health services before the end of the approved duration of services.

(4) Except as provided in Subsection (b), notice is not required when the denial or modification is a denial or modification of a request for MHP payment authorization for a specialty mental health service that has already been provided to the beneficiary.

(b) A Notice of Action is required when the MHP denies or modifies an MHP payment authorization request from a provider for a specialty mental health service that has already been provided to the beneficiary when the denial or modification is a result of post-service, prepayment determination by the MHP that the service was not medically necessary or otherwise was not a service covered by the MHP.

(c) The MHP shall deny the MHP payment authorization request and provide the beneficiary of the MHP with a Notice of Action when the MHP does not have sufficient information to approve or modify, or deny on the merits, an MHP payment authorization request from a provider within the timeframes required by Sections 1820.220 or 1830.215.

(d) The MHP shall provide the beneficiary of the MHP with a Notice of Action if the MHP fails to notify the affected parties of a grievance decision within 60 calendar days, an appeal decision within 45 days, or an expedited appeal decision within three working days. If the timeframe for a grievance, appeal or expedited appeal decision is extended pursuant to Sections 1850.206, 1850.207 or 1850.208 respectively, the MHP shall provide a beneficiary of the MHP with a Notice of Action if the MHP fails to notify the affected parties of the grievance, appeal or expedited appeal decision within the extension period.

(e) The MHP shall provide a beneficiary of the MHP with a Notice of Action if the MHP fails to provide a specialty mental health service covered by the MHP within the timeframe for delivery of the service established by the MHP.

(f) The MHP shall comply with the requirements of Section 1850.212 regarding the content of Notices of Action and with the following timeframes for mailing of Notices of Action:

(1) The written Notice of Action issued pursuant to Subsections (a) or (b) shall be deposited with the United States postal service in time for pick-up no later than the third working day after the action, except that a Notice of Action issued pursuant to Subsection (a)(1) shall be provided in accordance with the applicable timelines of Title 22, Section 51014.1.

(2) The written Notice of Action issued pursuant to Subsections (c) or (d) shall be deposited with the United States Postal Service in time for pick-up on the date that the applicable timeframe expires.

(3) The written Notice of Action issued pursuant to Subsection (e) shall be deposited with the United States Postal Service in time for pick up on the date that the timeframe for delivery of the service established by the MHP expires.

(g) When a Notice of Action would not be required under Subsections (a), (b), or (c), the MHP shall provide a beneficiary of the MHP with Notice of Action under this Subsection when the MHP or its providers determine that the medical necessity criteria in Section 1830.205(b)(1), (b)(2), (b)(3)(C) or 1830.210(a) have not been met and that the beneficiary is, therefore, not entitled to any specialty mental health services from the MHP. A Notice of Action pursuant to this Subsection is not required when a provider, including the MHP acting as a provider, determines that a beneficiary does not qualify for a specific service covered by the MHP, including but not limited to crisis intervention, crisis stabilization, crisis residential treatment services, psychiatric inpatient hospital services, or any specialty mental health service to treat a beneficiary's urgent condition, provided that the determination does not apply to any other specialty mental health service covered by the MHP. The Notice of Action under this Subsection, shall, at the election of the MHP, be hand delivered to the beneficiary on the date of the action or mailed to the beneficiary in accordance with Subsection (f)(1) and shall specify the information contained in Section 1850.212(b).

(h) For the purpose of this Section, each reference to a Medi-Cal managed care plan in Title 22, Section 51014.1, shall mean the MHP.

(i) For the purposes of this Section, "medical service" as cited in Title 22, Section 51014.1, shall mean specialty mental health services that are subject to prior authorization by an MHP pursuant to Subchapters 2 and 3, beginning with Sections 1820.100 and 1830.100, respectively.

(j) The MHP shall retain copies of all Notices of Action issued to beneficiaries under this Section in a centralized file accessible to the Department, the Department of Health Services and other appropriate oversight entities as specified in the contract between the Department and the MHP.

## **Section Two: Patients' Rights Advocacy**

### **W&IC §§ 5500-5550**

#### **1. California Office of Patients' Rights (COPR), Disability Rights California (DRC)**

### **W&IC §§ 4900-4906, 5010, 5370.2, 5500-5514, 5550**

### **W&IC § 5510**

(a) The Legislature finds and declares as follows:

(1) The State of California accepts its responsibility to ensure and uphold the right of persons with mental disabilities and an obligation, to be executed by the State Department of State Hospitals and the State Department of Health Care Services, to ensure that mental health laws, regulations and policies on the rights of recipients of mental health services are observed and protected in state hospitals and in licensed health and community care facilities.

(2) Persons with mental illness are vulnerable to abuse, neglect, and unreasonable and unlawful deprivations of their rights.

(3) Patients' rights advocacy and investigative services concerning patient abuse and neglect previously provided by the State Department of Mental Health, including the Office of Human Rights and investigator, and state hospitals' patients' rights advocates and state hospital investigators and transferred to the State Department of Health Care Services and the State Department of State Hospitals, may have had or have conflicts of interest or the appearance of a conflict of interest.

(4) The services provided to patients and their families are of such a special and unique nature that they must be contracted out pursuant to paragraph (3) of subdivision (b) of Section 19130 of the Government Code.

(b) Therefore, to avoid the potential for a conflict of interest or the appearance of a conflict of interest, it is the intent of the Legislature that the patients' rights advocacy and investigative services described in this article be provided by a single contractor specified in Section 5370.2 that meets both of the following criteria:

(1) The contractor can demonstrate the capability to provide statewide advocacy services for persons with mental disabilities.

(2) The contractor has no direct or indirect responsibility for providing services to persons with mental disabilities, except advocacy services.

(c) For the purposes of this article, the Legislature further finds and declares, because of a potential conflict of interest or the appearance of a conflict of interest, that the goals and purposes of the state patients' rights advocacy and investigative services cannot be accomplished through the utilization of persons selected pursuant to the regular state civil service system. Accordingly, the contracts into which the department enters pursuant to this section are permitted and authorized by paragraphs (3) and (5) of subdivision (b) of Section 19130 of the Government Code.

(d) The State Department of State Hospitals and the State Department of Health Care Services shall contract with a single nonprofit entity to provide for the protection and advocacy services to persons with mental disabilities, as specified in Section 5370.2. The State Department of Health Care Services and the State Department of State Hospitals shall enter into a memorandum of understanding to ensure the effective management of the contract and the required activities affecting county patients' rights programs. The entity shall be responsible for ensuring that mental health laws, regulations, and policies on the rights of recipients of mental health services are observed in state hospitals and in licensed health and community care facilities.

(e) The findings and declarations of potential conflict of interest provided in this section shall not apply to advocacy services provided under Article 3 (commencing with Section 5520).

## **W&IC § 5370.2**

(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.

(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.

(d) Nothing contained in this section shall be construed to restrict or limit the authority of the department to conduct the reviews and investigations it deems necessary for personnel, criminal, and litigation purposes.

(e) The State Department of State Hospitals and the State Department of Health Care Services shall jointly contract on a multiyear basis for a contract term of up to five years.

### **9 CCR § 885**

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.

### **W&IC § 5512**

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.

(j) This section shall become operative on January 1, 1996.

### **W&IC § 5513**

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

## **2. County Patients' Rights Advocates**

### **W&IC §§ 5500-5550**

#### **W&IC § 5520**

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.

This section does not constitute a change in, but is declarative of the existing law.

### **9 CCR § § 863.1**

- (a) Each county mental health director shall assign a Patients' Advocate to handle complaints of mentally disabled patients and residents regarding the abuse, unreasonable denial, or punitive withholding of a right guaranteed under Section 861 of this article. Each regional center director shall assign a Residents' Advocate to handle similar complaints from developmentally disabled residents. If the person assigned to handle complaints is a member of the staff of a particular facility, he shall not be involved in the direct supervision of patients or residents of that facility.
- (b) The appointment of a Patients'/Residents' Advocate in a state hospital, as well as the complaint procedure to be observed there, shall be in accordance with Department of Health directives on the patients' rights program for state hospitals.

## **9 CCR §§ 863.2**

(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.

## **9 CCR §§ 864**

(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.

### **9 CCR § § 868**

(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.

### **3. COPR (DRC) and County Patients' Rights Advocates**

#### **W&IC § 5550**

(a) Any person participating in filing a complaint or providing information pursuant to this chapter or participating in a judicial proceeding resulting therefrom shall be presumed to be acting in good faith and unless the presumption is rebutted shall be immune from any liability, civil or criminal, and shall be immune from any penalty, sanction, or restriction that otherwise might be incurred or imposed.

(b) No person shall knowingly obstruct any county patients' rights advocate in the performance of duties as described in this chapter, including, but not limited to, access to clients or potential clients, or to their records, whether financial, medical, or otherwise, or to other information, materials, or records, or otherwise violate the provisions of this chapter.

(c) No facility to which the provisions of Section 5325 are applicable shall discriminate or retaliate in any manner against a patient or employee on the basis that such patient or employee has initiated or participated in any proceeding specified in this chapter. Any attempt by a facility to expel a patient, or any discriminatory treatment of a patient, who, or upon whose behalf, a complaint has been submitted to a county patients' rights advocate within 120 days of the filing of the complaint shall raise a rebuttable presumption that such action was taken by the facility in retaliation for the filing of the complaint.

(d) No county patients' rights advocate shall knowingly violate any provision of this chapter concerning client privacy and the confidentiality of personally identifiable information.

(e) Any person or facility found in violation of subdivision (b) or (d) shall pay a civil penalty, as determined by a court, of not less than one hundred dollars (\$100), or more than one thousand dollars (\$1,000) which shall be deposited in the county general funds.

## **W&IC § 5514**

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.