

CHAPTER 3: Authority of Advocates

County patients' rights advocates are authorized to act by state law. Advocates may enter facilities within their county to respond to and investigate client complaints and to monitor for compliance with patients' rights. (Welfare and Institutions Code (WIC) Section 5520)

Access to a facility, its clients, and their records is a valuable power of an advocate. Access includes the formal statutory and individual facility requirements.

ACCESS AUTHORITY FOR COUNTY PATIENTS' RIGHTS ADVOCATES

Statutorily, the advocate has the following authority:

- To request that mental health facilities, when available, provide reasonable space for county patients' rights advocates to interview clients in privacy and shall make appropriate staff persons available for interview with the advocates in connection with pending matters. (WIC Section 5530 [c])
- To interview all persons providing the client with diagnostic or treatment services. (WIC Section 5530 [b])
- To inspect and copy patient records. A specific authorization by the client or by the guardian ad litem is necessary for a county patients' rights advocate to have access to copy or otherwise use confidential records or information pertaining to the client. Such an authorization shall be given knowingly and voluntarily by a client or guardian ad litem and shall be in writing or be reduced to writing. The client or the guardian ad litem, whoever has entered into the agreement, may revoke such authorization at any time, either in writing or by oral declaration to the advocate. (WIC Section 5541)
- To inspect or copy, or both, any records or other materials not subject to confidentiality under WIC Section 5328 or other provisions of law in the possession of any mental health program, services, or facilities, or city, county or state agencies relating to an investigation on behalf of a client or which indicate compliance or lack of compliance with laws and regulations governing patients' rights, including, but not limited to, reports

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on the use of restraints or seclusion, and autopsy reports. (WIC Section 5542)

CLIENTS

Clients have a statutory right "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" (WIC Section 5325 [h]).

Furthermore, a client, no matter what his or her legal status, is presumed competent for the purpose of entering into an agreement with county patients' rights advocates for the provision of advocacy services unless found by the superior court to be incompetent to enter into an agreement with an advocate and a guardian ad litem is appointed for such purposes. The client can revoke the agreement with the advocate at any time, orally or in writing. The patient can also refuse to see the advocate or terminate a visit at any time. (WIC Section 5523 [a], Section 5523[c], Section 5530[d]).

The advocate is entitled by statute to visit a client or other recipient of services "at all times necessary to investigate or resolve specific complaints". For any other purposes (monitoring, training and general provision of rights information), the advocate is entitled to access during normal working and visiting hours. (WIC Section 5530 [a])

FACILITIES

County patients' rights advocates have access to all clients and other recipients of mental health services in any mental health facility, program, or service at all times as are necessary to investigate or resolve specific complaints and to monitor mental health facilities, services and programs for compliance with statutory and regulatory patients' rights provisions in accordance with WIC Section 5523(b). The advocates have access to mental health facilities, programs, and services, and recipients of services therein during normal working hours and visiting hours for other advocacy purposes. The advocate is entitled to "reasonable" and "available" private space in which to meet with the client (WIC Section 5530 [a] and [c]).

RECORDS/INFORMATION

County patients' rights advocates must obtain the client's written consent before inspecting or copying a client's mental health records except for the purpose of

monitoring mental health facilities, services and programs for compliance with patients' rights law (WIC Section 5520 [b], 5545, 5541).

County patients' rights advocates have the right to inspect or copy any records or other material not subject to confidentiality under W&I Section 5328 or other provision of law, in the possession of any mental health program, service, or facility, relating to an investigation on behalf of a client or which indicate compliance or lack of compliance with laws and regulations governing patients' rights. (WIC Section 5542)

WIC Section 5326.1 provides access to the local mental health director, or his or her designee, which may include county advocates, information pertaining to denial of rights, including consent forms, required documentation for convulsive treatment, seclusion and restraint, physician's orders, nursing notes and involuntary detention papers.

AUTHORITY AND DUTIES OF THE CALIFORNIA OFFICE OF PATIENTS' RIGHTS (COPR)

The COPR is authorized to act by state law. The COPR's authority to act and its access authority arise under a state contract with the Department of State Hospitals, which is supported in state statute. The COPR shall serve as a liaison between county patients' rights advocates and the State Department of Health Care Services. (WIC Section 5510, 5511, 5512, 5513, 5370.2)

In order to ensure that persons with mental disabilities have access to high quality advocacy services, the COPR shall establish a grievance procedure and shall advise persons receiving services of the availability of other advocacy services, including services provided by the protection and advocacy agency specified in WIC Section 4901, known as "Disability Rights California", and the county patients' rights advocates specified in WIC Section 5520.

The COPR is specifically responsible for conducting the following activities:

- When issues that cannot be resolved by county patients' rights advocates, 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.
- Provide consultation, technical assistance, and support to county patients' rights advocates. Conduct program review of patients' rights

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programs. These services are to be provided in coordination with the appropriate county patients' rights advocates.

In addition, the COPR provides training to county patients' rights advocates to ensure all advocates possess:

- Knowledge of the service system, financial entitlements, and service rights of persons receiving mental health services. This includes the available treatment and service resources in order to ensure timely access to treatment and services.
- Knowledge of patients' rights in institutional and community facilities.
- Knowledge of civil commitment statutes and procedures.
- Knowledge of state and federal laws and regulations affecting recipients of mental health services.
- Ability to work effectively and respectfully with service recipients and providers, public administrators, community groups, and the judicial system.
- Skill in interviewing and counseling service recipients, including giving information and appropriate referrals.
- Ability to investigate and assess complaints and screen for legal problems.
- 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 WIC Section 5522 regarding cooperation between advocates and legal representatives.
- Knowledge of, and commitment to, advocacy ethics and principles.

SANCTIONS FOR INTERFERENCE WITH ADVOCATES/RETALIATION AGAINST PATIENTS AND STAFF

WIC Section 5550 states no person shall knowingly obstruct any county patients' rights advocate in the performance of duties, including, but not limited to, access to clients or potential clients, or to their records, whether financial, medical, or records, or otherwise violate the provisions of this chapter.

No facility to which the provisions of WIC 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. Any person or facility knowingly found to obstruct a patients' rights advocate in the performance of their duties may subject the individual or facility to a civil penalty of \$100.00 to \$1000.00 (WIC Section 5550 [b][c][e]).