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California Office of Patients' Rights

PRA ACCESS AUTHORITY

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The California Office of Patients' Rights (COPR), under contract with the Department of State Hospitals and Memorandum of Understanding (MOU) with the California Department of Health Care Services provides technical assistance and training to county patients' rights advocates, conducts program reviews of county patients' rights programs and investigates patients' rights complaints that the county patients' rights advocate has been unable to resolve.

While most of facilities where county patients' rights advocates deliver advocacy services are familiar with the advocate's access authority, problems may still arise from time to time. This memo provides a brief review of advocate access, followed by strategies for addressing access issues.

Duties of the Patients' Rights Advocate, (PRA)

Welfare and Institutions Code, section 5520 mandates that "Each local mental health director shall appoint, or contract for the services of, one or more county patients' rights advocate(s)." This section goes on to provide an inexhaustive list of these services:

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 [e.g. the California Office of Patients' Rights].

PRA Access Authority

Patients 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 5325).

The advocate has authority 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, general provision of rights information, etc.), the advocate is entitled to access during normal working and visiting hours. The facility must provide "reasonable" and "available" private space for the advocate to meet with the client. (WIC 5530 et seq.)

A "mental health client" is any person who is receiving or has received services from a mental health facility service or program and who has entered into an agreement with the advocate for the provision of advocacy services. County patients' rights advocates have access to both clients and potential clients. Advocates may provide information to potential clients through "distribution of education materials and discussion in groups and with individual patients." Further, advocates not only receive and investigate complaints from patients, but also act as an advocate on behalf of patients who are unable to register a complaint because of their mental or physical condition. (9 CCR sec. 863.2)

County patients' rights advocates in many counties are also responsible for representing clients in certification review hearings, medication capacity hearings and in Independent Clinical Reviews. The law states the advocate shall meet with clients subject to these proceedings to advise them of their rights and discuss the hearing/review processes. WIC secs. 5255, 5333 and 6002.20

Beyond Acute Inpatient Facilities

The PRA's advocacy, **investigation**, and monitoring duties are not limited to patients in acute inpatient mental health settings. "Mental health facilities, services and programs" is defined broadly for the purposes of patient's rights advocacy:

"Mental health facilities, services, or programs" means a publicly operated or supported mental health facility or program; a private facility or program licensed or operated for health purposes providing services to persons with mental health disorders; **and publicly supported agencies providing other than mental health services to clients with mental health disorders. (WIC, sec. 5500(c)).**

This definition encompasses much more than inpatient mental health facilities and includes, among other things, crisis residential, crisis stabilization, licensed residential facilities (board and cares), county and private mental health clinics, etc. Further, advocates provide services to mental health clients receiving services “other than mental health services” in “publicly supported agencies.” This may include advocacy on behalf of mental health clients in county jails, with county social services programs, with the public guardian’s office, with the Social Security Administration, etc. For clarity, we encourage PRAs who are contractors to review their service contract, job duties and discuss with the County Mental Health Director if questions arise.

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 5520(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 et seq.

PRA Access to Records

County patients' rights advocates have the right to inspect or copy any records or other material not subject to confidentiality under WIC 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 et seq.)

County patients' rights advocates must obtain the client's written consent before inspecting or copying a client's mental health records. Exceptions would be:

- for the purpose of providing patients' rights advocacy or
- through monitoring mental health facilities, services or programs for compliance with patients' rights law

(WIC Sections 5520, 5540-5546 et seq.)

Addressing Access Denials

When these rare incidents of denial of access occur, often the first and most expedient approach is simply educating the staff member responsible for the denial about the advocate’s statutory authority for access to facilities and patients.

Explaining the advocate's authority and the prohibition against obstructing the advocate under WIC section 5550 (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," and the corresponding penalties for obstruction: Any person or facility found in violation of [this provision] 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)...," is often enough to resolve the issue.

It can be helpful for advocacy programs to develop and have on hand a summary of the laws pertaining to advocate access to be provided to facility staff in such situations. When education of the staff responsible for denial of access is not effective, the advocate may need to pursue more formal action. The law provides that advocates may appeal any denial of access to facilities directly to the head of the facility, the director of a county mental health program, or the State Department of Health Care Services, or may seek appropriate relief in the courts. If a petition to a court sets forth prima facie evidence for relief, a hearing on the merits of the petition shall be held within two judicial days of the filing of the petition. The superior court for the county in which the facility is located shall have jurisdiction to review the petition. WIC 5530, et seq.

If the PRA is having issues with a denial of access, and is unable to resolve with the facility staff, we encourage you to contact your county mental health director. This is a good next step in addressing common access issues. If unable to resolve the issue at that level, you may contact California Office of Patients' Rights to receive support and technical assistance. COPR's goal will be to assist you in resolving the issue at the lowest level of authority possible. This access authority document is intended as an informational tool about specific state laws and regulations regarding mental health patients' rights advocacy. If specific legal advice is sought, it is recommended this be sought after from legal counsel. County patients' rights advocates may contact California Office of Patients' Rights for technical assistance at any time.