# CHAPTER 10: Monitoring

Monitoring is the systemic observation of a mental health facility, its staff, its patients and/or its records. Monitoring is important because it provides information about the way a facility functions and why. It identifies institutional policies and practices, analyzes how they affect patients, and asks how they can be changed to improve life for patients. Monitoring usually focuses on finding patterns as opposed to one-time occurrences, looking at patients' problems in the aggregate rather than individually. Learning to identify, document and report problems is a valuable skill in increasing the overall effectiveness of the Advocate.

Monitoring is based on the notion that presenting solid, detailed evidence about life at the institution is the best argument for changing the institution. Monitoring helps to settle factual disputes about how isolated and egregious the incident is it allows an advocate to show a specific problem has occurred, is a regular occurrence, and warrants corrective measures. As an added feature, the organized, formalized, and empirical nature of monitoring makes it more consistent with the clinical perspective, undermining the objections of mental health personnel to the abstract and rhetorical quality of advocacy.

Monitoring hospital compliance with the Lanterman-Petris-Short Act is important to ensure that patients' rights are not being violated. Demonstrated compliance is necessary for a hospital to receive or continue to be granted the necessary designation by the local Board of Supervisors as an LPS facility, thus empowering the hospital to admit and treat involuntary mental health patients. Although similar in part to other hospital standards, such as Joint Commission on Accreditation of Hospital Organizations (JCAHO) and State Licensing, LPS compliance requires more focus on patients' rights, civil commitment, and other related issues. Most importantly, hospitals need to realize that compliance with LPS is not only necessary for the above stated reasons, but is an integral part of program integrity and quality care.

One of the Advocate's responsibilities is to develop questions allowing them to determine if a facility is in compliance with patients' rights. The answer to the advocate's questions may be provided by the patient, facility staff, patient's records or observing the ongoing activities of the facility.

An Advocate can benefit from using a standard form on which to collect detailed information. The form helps to organize and standardize the record review, interview or observation, keeping the Advocate on track and establishing

objectivity and credibility. Forms can be designed as checklists, grids, or questions and answers. They should be developed with a format that follows the flow of information to be retrieved and be usable and readable by both the collector and the analyzer of the information.

## DEVELOP A PLAN

The advocate's first task is to identify the questions to be answered in the monitoring project. Although full-scale review of a facility for compliance with all legal requirements can be very effective, focusing on a specific issue can provide more important details. Once the advocate knows the questions to be answered, she/he can develop her/his plan for answering the questions. Things to consider include:

- Would the questions best be answered by the patients themselves?
- Do the patient's records have the answers to the questions?
- Will observing the facility revealed that information? Where?
- Are there several sources of information that we can check?

Developing the plan involves creating instruments to be used, identifying personnel to be involved in establishing the procedure and timeline for collecting the information. At this stage the Advocate should set the goals and priorities of the specific project considerations of time, resources (experience, money, and equipment), suspected seriousness and pervasiveness of the problem will all be relevant to determining goals.

Developing the instruments new line even extremely simple monitoring projects can benefit from using a standardized form on which to collect information. The form helps to organize and standardize the record review, interview or observation, keeping the monitor on track in establishing objectivity and credibility for the exercise. Forms can be designed as checklists, grids, or questions and answers. They should be developed with a format that follows the flow of information to be retrieved, and be usable and readable by both the collector and analyzer of information.

## PRACTICE AND EVALUATE

Once the monitor process and forms are developed, it is helpful to do some trial runs. In the case of records reviews, several charts should be used to test the instruments and procedure. Interviews and surveys should be tested as well.

Evaluate whether you are getting the kind of information you are looking for in the format you can use, and in the amount of time you will have available. If the questions are repetitive or confusing or the charts are unavailable when and where you thought they were, modify your plan.

## POLICY AND PROCEDURE REVIEW

Review and revision of policies and procedures are critical components of effective advocacy. Establishing good policies and procedures sets the ground work for improving facility operations and promoting good practice.

All facilities maintain policies and procedures. They are extremely useful as a source of information about how the facility operates. Reviewing the policies and procedures helps to determine whether a facility has addressed a particular issue, and whether the policy instructions are in compliance with the law. In addition to reviewing the policy and procedure manual, the Advocate should review any training materials and staff directives.

Review the facility policy and procedures manual line-by-line for compliance with statutes, regulations, law and any other clinical standards. Draft an analysis of any deficiencies found in policies and procedures and make recommendations for changes or additions. Offer to participate in revising or developing any new policy or procedure that your review warrants. Encourage the facility to promote understanding of the policy and procedure for staff development and to use in staff training.

The following policies and procedures which should be reviewed include, but are not limited to:

- Involuntary Commitment Procedures
- Patients' Rights
- Denial of Rights
- Seclusion and Restraints
- Voluntary Status and Patients' Rights
- Medical Treatment
- Informed Consent
- Medication Refusal

- Patient Evaluation/Assessment
- Confidentiality
- Access to Records
- Theft and Loss of Property

One of the most important tasks a patients' rights advocate can undertake is to review facility policies. This proactive advocacy will enable the advocate to identify patients' rights problems before they occur, and often provides a comprehensive way to monitor patients' rights issues.

## WHAT MAKES GOOD POLICY

Before reviewing facility policies and procedures, advocates should have a good understanding of what makes a good policy. Good policy complies with the law, is self-contained, is written in plain English and is easy to understand, should address foreseeable scenarios, and should contain the following elements:

- The title/subject, effective date, authorizing signature for the policy
- A statement of the purpose
- A citation to the legal authority and/or standards
- A clear statement of the policy (rationale, guiding principle, expected outcome)
- The procedures for carrying out the policy (step-by-step process, what, who, when, where and how)
- Exceptions to the policy, if any, and alternative procedures to be followed.

## FACILITY SITE REVIEW

Observation of a facility during a site review may include a determination that:

- Patient's records are reviewed and comply with patients' rights laws and regulations
- Patients' rights posters are current, in threshold language(s), and visible
- Patients' rights handbooks are available
- Telephones are available and are in working condition

- Visiting hours are posted and observed
- Patients are allowed to wear their own clothing
- Patients have access to their individual storage space
- Patients have access to their personal possessions and a reasonable sum of money
- Property entrusted to facility's care is properly safeguarded
- Patients have access to outdoors
- Patients have privacy
- Patients are treated with dignity and respect
- Patients are provided information about their medication, rights and legal status
- Patients have activities to participate in
- Patients are receiving prompt medical care and treatment
- Facility is clean and free of hazards
- Facility is comfortable, to the extent possible

## RECORDS REVIEW

Although the mere fact activities have been documented does not ensure they have been effectively accomplished, the written record is an important indicator of whether the facility recognizes its obligations and has made attempts to comply. In reviewing records, the advocate is looking for two things: what the records say, and what the records fail to say that they are supposed to say.

Record reviews are an excellent opportunity to see how well a facility understands and follows required procedures. They can be conducted as part of a special visit to the facility, monitored as part of the advocate's preparation for the certification review or capacity hearing, or other advocacy functions.

## INTERVIEW

There are occasions when interviews will be the best or the only way in which to get information. One example of this strategy is a patient interview or a survey. This can be a useful device for ascertaining the subjective experience of the patient. A great deal of what goes on in a psychiatric facility is known only to the

patients. While many mental health clinicians may be skeptical of the individual patient's opinion, they are less inclined to argue with the collective assessment. Ask patients:

- Whether they have received handbooks or were given information about their medications;
- Whether they were given an opportunity to be on voluntary status, give or withhold informed consent, or participate in treatment planning;
- How long their individual therapy sessions lasted;
- Whether their conservators have visited them;
- What is their general satisfaction with the safety, sanitation, comfort and therapeutic quality of the facility;
- If they were restrained and/or secluded, what was their experience;
- What their suggestions are for improving the facility and treatment program.

## OTHER EVIDENCE GATHERING

It is sometimes possible and very effective to collect photographs as part of the monitoring exercise. Photos labeled as to date and place give a graphic demonstration of physical plant problems, especially when produced in a series or over time. Physical evidence and demonstration are other types of evidence available to the advocate. Showing an administrator ten broken beds or a telephone that is out of service are better than simply telling him or her.

Many agencies conduct investigations and collect information about psychiatric facilities, including the facilities themselves. Find out about internal quality assurance methods, audits and medical reviews conducted by the facility or its parent organization. Ask to see the most recent reports or findings. In County bureaucracies, these functions are often conducted by different departments that are less invested in and protective of the information. Get it and review it.

Always ask the facility for the latest report of the state Department of Health, Licensing and Certification Division (or the county Health Department or Department of Social Services, if appropriate). Many police, sheriff departments, and district attorney's offices may have information about psychiatric facilities and the deficiencies revealed.

## REPORT OF FINDINGS

After all of the information is collected it must be organized and analyzed. This process will be the basis for developing your report. Monitoring reports are not necessarily long; some of the best reports are short and concise. A report should be just that; a report of your findings, your conclusions and your recommendations.

A report should include, at least, the following:

- An introduction — identify any issue being addressed and the reason the project was undertaken;
- An explanation of the methodology - including a description of the protocol and a copy of the forms used;
- A statement of findings - including description and graphics, if necessary, and any notable examples;
- An analysis of the findings - what they suggest and why;
- A statement of relevant law - including cites;
- A list of recommendations;
- A summary and conclusion.

A good report will emphasize serious problems, and give credit when and where it is due. Don't overlook the good performance of an employee. Mention it in the report and point it out as an example of good work or a “best practice”. If possible, show how your suggestions can positively address any identified issues. Communicate your findings in writing and ask for a response.

## EXHIBIT A

### SAMPLE MONITORING PROTOCOL

1) Notify the Mental Health Director and/or his/her designee of the need for a monitoring at a designated facility. Notification shall include the following:
   - Purpose of monitoring
   - Date monitoring will begin
   - Projected date for completion of final report.

2) Upon approval from the Mental Health Director, notify facility in writing of the following:
   - Purpose of monitoring
   - Legal basis for monitoring
   - Date monitoring will begin
   - Projected date for completion of final report.
3) If the person responsible for the monitoring finds serious patients' rights violations prior to the conclusion of the monitoring process, those will be reported to the facility and the Mental Health director and/or his/her designee at the time they are found.
4) A copy of the draft monitoring reports shall be provided to the facility director for review prior to being presented to the hospital. If the report contains serious patients' rights violations, the Mental Health Director's designee will participate in meetings held between the facility and advocacy staff. A copy of the final report shall be provided to the mental health director with the hospital's corrective plan
5) The monitoring shall be conducted utilizing a team comprised of a representative of the Patients' Rights Office, the Mental Health Administration, and the facility that is being monitored. (this can include PR office only)
6) A monitoring tool shall be developed by the Patients' Rights Advocate in accordance with guidelines established by the California Office of Patients' Rights.
7) Any patients' rights violations shall be corrected within 60 days of the final monitoring report. Patients' rights violations of a life-threatening nature shall be corrected immediately.

## EXHIBIT B

### HOW AND WHAT TO MONITOR

**1) Records**

Although the mere fact activities have been documented does not ensure they have been effectively accomplished, the written record is an important indicator of whether the facility recognizes its obligations and has made attempts to comply.

In reviewing records, the advocate is looking for two things;

- What the records say and
- What the records fail to say that they are supposed to say.

The advocate is interested both in the form of the record (i.e., whether information is provided and is accurate and accessible) as well as the substance of the record (i.e., whether the information provided shows that the facility has performed up to the standards it is required to by law). A good general principle is that records speak for themselves. Advocates should presume a particular word means what is says; when a record is silent as to a particular event, that event has not occurred. The burden is on the facility to explain a different meaning or an event has occurred and why it was not documented.

The most important principle in chart reviews is to remain alert and flexible, follow-up on unusual comments or notations. Read progress notes of all involved staff carefully.

Record reviews are an excellent opportunity to see how well a facility understands and follows required procedures. They can be conducted as part of a special visit to the facility, monitored as part of the advocate's preparation for the certification review or capacity hearing, or other advocacy functions.

### 2) Policy and Procedure Review

Review of policies and procedures for a general facility review should include (but are not limited to) an analysis of the following provisions:

- California Welfare and Institutions Code (WIC) Section 5325-5325.1 rights are addressed within the policies;
- Rights are denied only for "good cause" as defined in California Code of Regulations (CCR) Title 9, Section 865.2 (check examples, if any) and only when less restrictive alternatives are not available;
- Rights denied are related to the specific behavior complained of and are to be restored when "good cause" no longer exists;
- Rights are not denied on a programmatic basis, as a condition of admission, as a punishment, as part of a treatment program, or treated as a privilege to be earned;

- Rights denials are documented in the record according to CCR Title 9, Section 865.3;
- Rights denials are documented in reports submitted quarterly to the California Office of Patients' Rights;
- Involuntary Detention and Treatment Standards and Procedures are consistent with legal requirements;
- Informed consent and capacity hearing procedures are consistent with legal requirements;
- Voluntary status is offered to all patients who are willing and able to accept treatment;
- Seclusions and/or restraints are used only under the conditions set forth in CCR Title 9, Section 865.4 and relevant provisions of CCR Title 22, HFCA or JAHCO (if applicable);
- Electroconvulsive therapy is administered only under the conditions set forth in WIC Section 5326.7 et seq.;
- Policies provide for appropriate investigation and reporting of special incidents, including alleged sexual assaults;
- Patients are permitted access to their treatment record and denials of access are consistent with the statute (California Health and Safety Code Section 123110);
- Patients are given proper information about their treatment (WIC Section 5326.2).