

## CHAPTER 4: Patients' Rights

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All patients, clients, consumers, or in general, recipients of mental health services, regardless of their means, mental or physical health challenges, should expect to be treated respectfully and without discrimination by their providers, practitioners and payers. People receiving mental health treatment are protected by both state and federal laws, to include all rights and responsibilities unless limited by court order.

Currently, our state has patients' rights for LPS patients identified in Welfare and Institutions Code (WIC) Sections 5325 and 5325.1. Within these rights, there are two categories; Rights that are non-deniable and rights that are subject to denial.

### **LPS – PATIENTS' RIGHTS NON-DENIABLE**

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. (WIC Section 5325.1)

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.

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- (h) A right to physical exercise and recreational opportunities.
- (i) A right to be free from hazardous procedures.
- The right to see and receive the services of an attorney and a Patients' Rights Advocate.

## **LPS – PATIENTS' RIGHTS SUBJECT TO DENIAL**

Psychiatric facilities must also uphold the following specific legal rights of individuals. These rights can only be denied when “good cause” exists (WIC Section 5325; Title 9 California Code of Regulations (CCR) Section 865.2):

- The right to wear one's own clothing (per WIC Section 7232, this right has been removed from persons receiving mental health treatment in a secured perimeter at a State Hospital).
- The right to keep and use one's own personal possessions, including toilet articles, in a place accessible to the individual.
- The right to keep and spend a reasonable sum of one's own money for canteen expenses and small purchases. (In a State Hospital, money may be held in an account and spent through a “bar code” system).
- The right to have access to individual storage space for one's own use.
- The right to see visitors each day.
- The right to have reasonable access to a telephone, to make and receive confidential calls, or to have calls made for you. (Calls will be made if one is unable to e.g. in restraints or experiencing medical difficulties).
- To mail and receive unopened correspondence.
- The right to have ready access to letter-writing materials, including stamps.

These rights can only be denied for “Good Cause” and a formal Denial of Rights must be filed in order to deny these rights to any individual. “Good Cause” exists only when the exercise of the right would cause:

- INJURY TO THE INDIVIDUAL
- A SERIOUS INFRINGEMENT ON THE RIGHTS OF OTHERS
- SERIOUS DAMAGE TO THE FACILITY

**AND THERE IS NO LESS RESTRICTIVE WAY OF PROTECTING THE INTEREST SPECIFIED ABOVE.**

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## DENIAL OF RIGHTS' PROCESS

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. Treatment modalities shall not include denial of any right. Waivers signed by the patient/resident or by the responsible relative/guardian/conservator shall not be used as a basis for denying rights in any treatment modality.

Each Denial of a Right (DOR) specified shall be noted in the individual'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.

The individual shall be told of the content of the notation and the process for restoration at the time of the denial.

- Each denial of a right shall be documented regardless of the reason (Good Cause must be met) for the denial, or the frequency with which a specific right is denied in a particular facility, or a particular individual.
- An individual's right 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 individual's treatment record.
- Information in the individuals' treatment record pertaining to a denial of rights shall be available on request to the individual or their attorney/conservator/guardian.

In addition, each individual retains these rights even when in either seclusion or some form of restraint.

## **ANALYSIS OF DENIAL OF RIGHTS**

- Is there a right?
- Can that right be denied?
- Does the reason support “good cause”?
- Is it an absolute denial or a restriction?
- If restriction is it a “lesser restrictive measure”?
- Were there less restrictive alternatives tried or considered?
- Is the reason given for the denial related to the right denied?
- Was the denial punishment, substitute for programming, or for staff convenience?
- Does the plan for restoration articulate staffs role in assisting in the restoration of the DOR?
- Was the right restored when good cause no longer existed?

**\*\*\*SAMPLE\*\*\* DENIAL OF RIGHTS \*\*\*SAMPLE\*\*\***  
**ONLY THOSE RIGHTS SUBJECT TO DENIAL FOR GOOD CAUSE**  
**WIC CODE SECTION 5325; CCR TITLE 9 SECTION 865.2**

See instructions on reverse side

<u>Patient Name</u>		<u>Date of Denial</u>	<u>Time of Denial</u>
<u>Program</u>	<u>Unit</u>	<u>Original Denial Date</u>	<u>30-Day Extension Date</u>

Right(s) Denied: 1 2 3 4 5 6 7 8

*Circle each right that is denied. See reverse side for definition of each numbered right.*

"Good Cause" must be established and a formal Denial of Rights must be filed in order to deny a patient one or more right. "Good Cause" exists only when the **Director of the facility** determines that:

*Circle the number of one or more applicable criteria.*

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. **There are no less restrictive means of protecting the patient's right.**

**Describe less restrictive alternatives utilized prior to the Denial and the relationship to the right denied: Attachment is advised**

**Plan for restoring the denied right(s): Attachment is advised**

Patient informed of denial and restoration plan: Yes <input type="checkbox"/> No <input type="checkbox"/> If no, please provide explanation	Patient Signature (this does not mean <b>Date</b> agreement)
	Staff Name (Print Legibly) <span style="float: right;"><b>Date</b></span>
Staff Signature (Review) <span style="float: right;">Date</span>	ADDRESSOGRAPH
Patients' Rights Advocate (Review) <span style="float: right;">Date</span>	
Facility Director - <b>Authorizing Signature</b> <span style="float: right;">Date</span>	

**Original**, after all signatures, to patient file; (1) copy patients' pending file; (1) copy to the individual; (1) copy to be retained by the Advocate

**General Provisions:** The reason for denial of a right must be related to the specific right denied. When a right has been

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denied, staff shall employ the least restrictive means of managing the behavior that led to the denial. A right shall not be withheld or denied as a punitive measure, nor shall a right be considered a privilege to be earned. Treatment plans shall not include denial of any right.

Psychiatric facilities must also uphold the following specific legal rights of individuals. These rights can only be denied when "good cause" exists (WIC Section 5325: Title 9 CCR Section 865.2):

1. **The right to wear one's own clothing (per WIC Section 7232, this right has been removed from persons receiving mental health treatment in a secured perimeter).**
2. **The right to keep and use one's own personal possessions, including toilet articles, in a place accessible to the individual.**
3. **The right to keep and spend a reasonable sum of one's own money for canteen expenses and small purchases. (Money may be held in an account and spent through a "bar code" system in the canteen on grounds. Outside purchases will be submitted on a "withdrawal of client funds" form).**
4. **The right to have access to individual storage space for one's own use.**
5. **The right to see visitors each day.**
6. **The right to have reasonable access to a telephone, to make and receive confidential calls, or to have calls made for you. (Calls will be made if one is unable to e.g. in restraints or experiencing medical difficulties).**
7. **To mail and receive unopened correspondence.**
8. **The right to have ready access to letter-writing materials, including stamps.**

**Rights while in Seclusion or Restraint:** Patients retain the rights above even when in either seclusion or some form of restraint. However, if the patient is in seclusion and/or restraint, a specific request must be made by the patient to exercise one or more of their rights. If staff finds that there is "Good Cause" to deny the request to exercise one or more rights, then a denial of rights must be filed in accordance with these procedures.

**Patient Informing:** The patient shall also be told of the content of the notation (reason for the denial) and the process for restoration at the time of the denial. The date that a specific right is restored shall be documented in the patient's treatment record.

**Restoration of Rights:** A patient's right under this Section shall be restored when the good cause for its denial no longer exists. A denial of a right shall not exceed thirty days without additional staff review.

**Distribution of Forms:**

- Copy to patient file (pending)
- Copy to the patient after informing & patient signature.
- Route original and remaining copies to Staff for review and signature.
- Route original to Advocate for review and signature.
- Route to Facility Director for final review/signature.
- Original to patient file, pull pending copy and forward to Program for Denial of Rights data tracking.

## **ALL INDIVIDUALS HAVE THE FOLLOWING RIGHTS:**

### **Physical Health Care:**

**Probate Code Section 4650** - "The Legislature finds the following:

(a) In recognition of the dignity and privacy a person has a right to expect, the law recognizes that an adult has the fundamental right to control the decisions relating to his or her own health care, including the decision to have life-sustaining treatment withheld or withdrawn.

**Probate Code Section 4657** - "An individual is presumed to have the capacity to make a health care decision, to give or revoke an advance health care directive, and to designate or disqualify a surrogate. This presumption is a presumption affecting the "burden of proof."

**Probate Code Sections 3200 - 3212:**

3201. (a) A petition may be filed to determine that a patient has the capacity to make a health care decision concerning an existing or continuing condition.

(b) A petition may be filed to determine that a patient lacks the capacity to make a health care decision concerning specified treatment for an existing or continuing condition, and further for an order authorizing a designated person to make a health care decision on behalf of the patient. (c) One proceeding may be brought under this part under both subdivisions (a) and (b).

### **Notification of Rights - Title 9 CCR Section 862:**

Individuals must be notified of their rights. A notation of this will be placed into the patient's record within 24 hours of admission.

### **Title 22 CCR Section 73523:**

Individuals are to be fully informed at the time of admissions and during their stay, of these rights (Patients' Rights) and of all rules and regulations governing individual conduct.

### **Emergency - WIC Section 5008 (m):**

"Emergency" means a situation in which action to impose treatment over the person's objection is immediately necessary for the preservation of life or the prevention of serious bodily harm to the individual or others, and it is impracticable

to first gain consent. It is not necessary for harm to take place or become unavoidable prior to treatment.

**Medical Emergency Exception:**

In case of a medical emergency, medical treatment may be provided without the individual's consent as long as no evidence exists (i.e. Advance Directives) to indicate that the individual would refuse the treatment. **Only the emergency condition may be treated.**

**Immediate services must be provided for the alleviation of severe pain,**

**-Or-**

Immediate diagnosis and treatment of unforeseeable medical conditions must be provided, if such conditions would lead to serious disability or death if not immediately diagnosed and treated.