

California Code of Regulations

Title 9. Rehabilitative and Developmental Services

Division 1. Department of Mental Health

Chapter 4. Community Mental Health Services Under the Lanterman-Petris-Short Act

ARTICLE 6. PATIENT RIGHTS: DENIAL FOR GOOD CAUSE

§ 860. Application of Article. [Repealed]

§ 861. List of Rights. [Repealed]

§ 862. Notification of Rights.

(a) A list of the rights set forth in Section 5325 of the Welfare and Institutions Code and in Section 861, as well as the complaint procedure, prescribed in Section 864, shall remain posted, in English and Spanish, in all wards and common living areas of facilities specified in Section 860.

(b) Each person admitted to a facility specified in Section 860 shall be personally notified of his rights in writing, in language he can understand, or shall have his rights brought to his attention by other means if he is unable to read or understand the information provided him.

(c) A notation to the effect that notification, or an attempt to provide notification, has occurred, shall be entered in the patient's/resident's record within 24 hours of admission.

§ 863. Definitions.

(a) The "Patients' Rights Specialist" means the person in the Headquarters Office of the Department of Health delegated the responsibility for ensuring that mentally and developmentally disabled persons in facilities providing mental health services or residential care are afforded their statutory and constitutional rights.

(b) The "Patients' Advocate" means the person in a local mental health program delegated the responsibility for ensuring that mentally disabled persons in facilities specified in Section 860 are afforded their statutory and constitutional rights.

(c) The "Residents' Advocate" means the person in a regional center program delegated the responsibility for ensuring that developmentally disabled residents in facilities specified in Section 860 are afforded their statutory and constitutional rights.

§ 863.1. Assignment of Patients'/Residents' Advocate.

(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.

§ 863.2. Duties of Patients'/Residents' Advocate.

(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.

§ 864. Complaint Procedure.

(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.

§ 865. Authority for Denial of Rights.

(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.

§ 865.1. Denial of Rights in Community Care Facilities.

(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.

§ 865.2. Good Cause for Denial of Rights.

(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.

§ 865.3. Documentation of Denial of Rights.

(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.

§ 865.4. Seclusion and Restraints.

(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).

§ 865.5. Restoration of Rights.

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.

§ 866. Quarterly Reports to the Director of Health.

(a) Each local mental health director shall, by the last day of January, April, July, and October, report on the appropriate form to the Patients' Rights Specialist, Department of Health, the number of persons, by facility, whose rights were denied and the specific right or rights denied. Denials of rights in the following types of local facilities must be reported to the local mental health director for inclusion in each quarterly report:

(1) Facilities that treat persons involuntarily detained under the Lanterman-Petris-Short Act;

(2) Local mental health facilities operated directly by or under contract with local mental health services or designated in the county plan to provide such services;

(3) Private mental institutions;

(4) Psychiatric units of general acute care hospitals, acute psychiatric hospitals, and skilled nursing facilities.

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

(c) Each facility shall note in its report to the local mental health directors that the treatment record of a person denied a specific right is identifiable and can be located for purposes of analysis and investigation by the Department.

(d) State hospitals shall submit quarterly reports on denials of rights directly to the Patients' Rights Specialist, Department of Health, in accordance with Department directive on the patients' rights program in state hospitals, as revised 1975.

§ 867. Access to Denial of Rights Information.

Information in a patient's/resident's treatment record pertaining to a denial of a right shall be available on request to the patient/resident, his attorney/conservator/guardian, the Department of Health, a member of the State Legislature, or a member of a county board of supervisors.

§ 868. Annual Review.

(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.

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