

BHS Policies and Procedures



City and County of San Francisco
Department of Public Health
San Francisco Health Network
BEHAVIORAL HEALTH SERVICES

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POLICY/PROCEDURE REGARDING: **Duties of the County Patients' Rights Advocate and Responsibility for Program Cooperation**

Issued By: Jo Robinson, LMFT
Director of Behavioral Health Services

Date: March 8, 2016

Manual Number: **3.11-02**
References: Welfare &
Institutions Code §§ 5325-5337,
5500, 5510-5514, 5520-5523,
5530, 5540-5546 and 5550; SF
DPH Full Notice of HIPAA
Privacy Rights.

Technical Revision. Replaces 3.11-02 of July 28, 2010.


PURPOSE: The California Welfare & Institutions Code (W&I Code) Section 5520, states that "Each local mental health director shall appoint, or contract for the services of, one or more county patients' rights advocates." In the City & County of San Francisco, the local mental health director is the Director of Behavioral Health Services. San Francisco Behavioral Health Services (BHS) contracts with San Francisco Mental Health Clients' Rights Advocates (SF MHCRA) to meet this requirement. The primary goals of SF MHCRA are to advocate for the rights of mental health clients and their families throughout the behavioral health system, and to assist mental health clients and family members in resolving complaints.

SCOPE: This policy defines the role of SF MHCRA and the expectation of cooperation of BHS providers, as required or permitted by law, in the event of a requested monitoring or investigation. This policy applies to all providers within BHS including contract providers and the Private Provider Network. Individuals served by SF MHCRA are clients receiving services provided by mental health facilities, services or programs offered through the City & County of San Francisco as defined in W&I Code Section 5500(c). SF MHCRA shall abide by all Federal and State laws and regulations pertaining to patient confidentiality (W&I Code Sections 5540-5546).

County patients' rights advocates of SF MHCRA are expected to possess knowledge and skill in the following areas (W&I Code Section 5512):

- the service system, financial entitlements, and service rights of persons receiving mental health services;
- patients' rights in institutional and community facilities;
- civil commitment statutes and procedures;
- state and federal laws and regulations affecting recipients of mental health services;
- administrative and judicial due process proceedings in order to provide representation or assistance where needed;

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- administrative and judicial due process proceedings in order to provide representation or assistance where needed;

- understanding of and commitment to, advocacy ethics and principles;
- ability to work effectively and respectfully with clients, providers, public administrators, community groups, and the judicial system;
- skill in interviewing and counseling clients including providing information and appropriate referrals; and
- ability to investigate and assess complaints, and to screen for legal problems.

The duties of the county patients' rights advocates of SF MHCRA include (W&I Code Section 5520):

- receiving and investigating 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);
- monitoring mental health facilities, services and programs for compliance with statutory and regulatory patients' rights provisions;
- providing training and education about mental health law and patients' rights to mental health providers;
- ensuring that recipients of mental health services in all licensed health and community care facilities are notified of their rights; and
- exchanging information and cooperating with the patients' rights program including the California Office of Patients' Rights.

Definition of Terms: *The essential core of the patients' rights program work is to monitor for compliance with patients' rights and to investigate complaints.*

For purposes of this policy, **monitoring** shall be defined as a planned review of any mental health facility for the purpose of inspecting and assessing program compliance with patients' rights protections and procedures. Monitoring usually implies a site review. In each contract year, the patients' rights program, in concert with BHS, will select a number of programs, particularly twenty-four hour services, for routine monitoring. Monitoring may also be scheduled as a follow-up to an investigation.

An **investigation** is a non-planned fact finding inspection, assessment and review in response to a specific complaint or allegation from a client or third party for the purposes of assessing potential violations of patients' rights. An investigation may or may not require an on-site review.

PROCEDURE: The patients' rights advocacy program shall take care to minimize disruption of regular program operations when conducting an investigation or monitoring. The program shall not impede the patients' rights advocacy program from conducting its investigation or monitoring, nor discriminate or retaliate in any manner against a client or employee participating in these processes (W&I Code Section 5550). During the course of an *investigation*, review of any client record shall require authorization from the client or their guardian ad litem. This authorization can be revoked at any time, either in writing or orally, to the patients' rights advocate (W&I Code Section 5541). During the course of a *monitoring*, specific authorization from the client or their guardian ad litem to review client records is NOT necessary (SF DPH Full Notice of HIPAA Privacy Rights: Health Oversight Activities, May 2015). Both monitoring and investigative processes may entail a review of program policies and procedures, the

program's physical site, client records, and interviews with program staff, program administration and clients.

Access for Monitoring and Investigations:

When planning a monitoring review, the patients' rights advocacy program will contact the program's director in writing 14 days prior to the visit. The patients' rights advocacy program shall provide the program's director with information about the nature and protocol for the monitoring prior to the monitoring visit. The program's director will provide access and necessary workspace to inspect the facility and records, as well as access to clients and staff to conduct the monitoring. Upon arrival for a site visit, the patients' rights staff member will provide identification to the program.

In the event of an on-site investigation, the patients' rights advocacy program will inform the program's director or their designee of the need to conduct an investigation of a client-related complaint or to fulfill a request by the Director of BHS or designee to complete an investigation. The patients' rights staff member will provide the program's director with information about the nature and protocol for the investigation. Upon arrival for an investigation, the patients' rights staff member will provide identification to the program. The program will provide the investigator with access to the facility, related records, clients and staff. The complaint investigation should occur as soon as possible after the receipt of the complaint. An onsite investigation would normally occur during usual business hours.

Following the completion of an investigation, the patients' rights advocacy program may conduct a monitoring visit to assure correction and compliance with identified patient rights violations. This follow up visit should be scheduled at the convenience of both the patients' rights program and the monitored program.

Complaint Investigation Procedures

1. The patients' rights program may receive complaints by telephone, facsimile, US mail or electronic mail, or in person. Clients or a third party may initiate a complaint. SF MHCRA can be reached at 1-800-729-7727 or 1-415-552-8100 or FAX 1-415-552-8109 and is located at 1663 Mission Street, Suite 310, San Francisco, CA 94103.
2. The advocacy program seeks to resolve the complaint to the satisfaction of the complainant.
3. To the extent possible, the patients' rights advocacy program will respond to all requests for patients' rights information.
4. The patients' rights advocacy program will open a case for each individual and document the complaint or request, the advocate contact, and the resolution or referral. Clients may be referred to BHS Grievance Office or legal counsel when needed.
5. The patients' rights advocacy program will maintain a database with a minimum of demographic and statistical data about the population served and the number and type of complaints received including the name of the facility/provider involved and the outcome of the complaint or investigation
6. The patients' rights advocacy program will provide reports to BHS that includes demographic and statistical information, and identified system problems.

7. The patients' rights advocacy program will revise, print, and distribute written information on Patients' Rights to whoever requests such information. Patients' rights handbooks and posters are available to be downloaded through the following link:

<http://www.dhcs.ca.gov/services/Pages/Office-of-Patients-Rights.aspx>

Monitoring: *The patients' rights advocacy program monitors designated facilities, other mental health facilities, services and programs for compliance with statutory and regulatory patients' rights provisions to assure that patients' rights are protected.*

As described in the W&I Code Section 5325.1, it is the intent of the legislature that persons with mental health disorders shall have rights including, but not limited to, the following:

1. 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.
2. A right to dignity, privacy, and humane care.
3. 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.
4. A right to prompt medical care and treatment.
5. A right to religious freedom and practice.
6. A right to participate in appropriate programs of publicly supported education.
7. A right to social interaction and participation in community activities.
8. A right to physical exercise and recreational opportunities.
9. A right to be free from hazardous procedures.

Monitoring Procedures

1. The patients' rights advocacy program monitors 5150 Designated Facilities on a regular basis.
2. The patients' rights advocacy program may choose to focus on specific issues or areas of concern in its monitoring process (e.g., seclusion and restraint, access to written materials, consents for treatment).
3. A random selection of charts will be reviewed to ascertain compliance with various patients' rights requirements. Client permission to review a chart during a monitoring procedure will not be necessary.
4. Both open and closed charts may be reviewed for patients' rights violations and/or compliance with applicable authority.
5. Staff, physicians, and clients may be interviewed regarding patients' rights.
6. The facility environment may be reviewed for compliance with patients' rights laws.
7. The patients' rights advocacy program will use standardized tools and protocols when monitoring for compliance with specific statutory and regulatory requirements and other applicable authority.
8. The monitoring process varies in length of time depending on the nature and gravity of the identified problems and/or the scope of the review.
9. The monitoring process may include, but is not limited to, interviews, data collection, inspection and copying of records, data processing, and report preparation.

10. Verbal or written interim reports may be given to BHS during the course of monitoring which is more prolonged in nature, and will be provided at any time when requested by the Director of BHS or his/her designee.
11. The patients' rights advocacy program will compile a monitoring report delineating findings and recommendations. Copies of the monitoring report will normally be sent to the monitored program as well as the Director of BHS or his/her designee.
12. The report may include a requirement that the respective facility/program respond within a specific time frame with a written plan of correction.
13. Written monitoring reports shall be submitted in the format and manner requested by BHS.
14. Patients' rights training may be offered to direct service staff and program administrators to assist in improving compliance.
15. Follow-up monitoring may be done at intervals of one to twelve months following the initial visit. Additional training may be provided in follow up visits.
16. The Patients' Rights Advocacy Program shall provide quarterly and annual reports to BHS that identify key issues and trends related to patients' rights protections.

Investigation of Alleged or Suspected Violations of the Rights of Involuntarily Detained Persons:

At the request of the Director for BHS or his/her designee, the patients' rights advocates will act to fulfill the local director's obligation as described in W&I Code Section 5326.9(a) to investigate "any alleged or suspected violation of the rights described in Chapter 2 (commencing with Section 5150)." Of particular concern to BHS is the "right to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect [(W&I Code Section 5325.1 (c)).]"

Investigation Procedures

1. The Director for BHS or his/her designee may request that the patients' rights advocacy program investigate incidents of death or serious injury of individuals involuntarily detained, and allegations of sexual abuse or sexual misconduct perpetrated against individuals involuntarily detained.
2. When the patients' rights advocacy program learns of such incidents without previously being requested to investigate by BHS, they will so inform the Director of BHS or his/her designee of the need to initiate an investigation.
3. As the result of repeated complaints or a pattern of complaints within a specific period of time, the patients' rights advocacy program may initiate a monitoring review. As above, the patients' rights program shall inform the Director for BHS or his/her designee of their intent to initiate the monitoring review.
4. As described above, the patients' rights program will conduct its investigation and/or monitoring.
5. The patients' rights advocacy program will complete a report delineating its findings and recommendations.
6. Results of monitoring or an investigation are provided to both the program and the Director of BHS or his/her designee.
7. The report may contain recommendations that the facility/program respond within a definite time frame with a written plan of correction.

Provide Training and Technical Assistance on Patients' Rights to Mental Health Providers: *The requirement for the patients' rights advocacy program to perform this duty is in W&I Code Section 5520(c) "to provide training and education about mental health law and patients' rights to mental health providers."*

Training Procedures

1. The patients' rights advocacy program will work with BHS Quality Management (QM) or training staff to design and provide the patients' rights training and orientation.
2. The patients' rights advocacy program may schedule and conduct patients' rights training for staff of Designated Facilities which may include, but is not limited to patients' rights, civil commitment, informed consent, and seclusion/restraint.
3. In order to remain current with new developments in the patients' rights arena, the program consults regularly with the California Office of Patients' Rights and other patients' rights organizations, legal services groups, and regulatory agencies. The patients' rights advocacy program staff will attend regular regional meetings when possible and a yearly statewide training to share information and maintain advocacy expertise.
4. The patients' rights advocacy program provides technical assistance and consultation to providers and community members on patients' rights issues.
5. The patients' rights advocacy program reviews proposed policies from BHS on request.
6. Upon request, the patients' rights advocacy program may access BHS statistical reports on involuntary detention, Reise hearings, provision of ECT treatments, and the denial of rights and grievances.
7. The patients' rights advocacy program will help to identify existing translations of rights information and policies and participate in the development of additional written information regarding rights for individuals who speak other languages as resources are available.

Provide Outreach/Education for Vulnerable Individuals: *The requirement for the patients' rights advocacy program to perform this duty is in W&I Code Section 5520(d) "to ensure that recipients of mental health services in all licensed health and community care facilities are notified of their rights."*

The patients' rights advocacy program will provide information about patients' rights to groups and individuals and initiate advocacy efforts that ensure patients' rights, consistent with the provisions of State law governing patients' rights advocates. The patients' rights advocacy program will participate in and/or conduct efforts to assess satisfaction and outcome by users of their service.

Summary of Monitoring and Investigative Procedures:

Procedure	Monitoring	Investigation
How is it initiated?	Programs are selected for monitoring by BHS and the Clients' Rights Program, or as a follow up after an investigation.	Through a specific complaint from a client, a third party or at the direction of the Director of BHS.
When does it happen?	Usually scheduled with the program director.	ASAP after receipt of the complaint and usually during normal business hours.
Is it scheduled?	Yes.	No.
Is permission of client needed to review client records?	No.	Yes. Permission may also be granted by the guardian ad litem.
What is the focus of the procedure?	Various aspects of patients' rights protections.	The complaint that has been made by the client or third party.
What is reviewed?	Client records, the facility, program manuals, program documentation, interviews with staff, clients & administrators.	Client records, the facility, program manuals, program documentation, interviews with staff, clients & administrators.
To whom does the final report go?	To the program and to the Director of BHS.	To the program and to the Director of BHS.

CONTACT: Quality Management, Behavioral Health Services, 1-415-255-3400

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