Disability Rights California

California's Protection & Advocacy System
Toll-Free (800) 776-5746

Voluntary Services as Alternative to Involuntary Detention under LPS Act

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This memo outlines often overlooked rights to end the unnecessary involuntary commitment of Californians with psychiatric disabilities in hospitals and other institutional settings. All persons subject to involuntary hospitalization have rights to evaluation for and advisement of home and community-based services to meet individual needs. State programs and services provide for a wide array of alternatives, including but not limited to voluntary programs created by the Mental Health Services Act (MHSA) and Medi-Cal Specialty Mental Health Services.

There are several ways to challenge the denial of these rights and obtain the services that you desire as an alternative to involuntary hospitalization. One way is to request written information from county or hospital staff about available service alternatives. Another way is to request a Medi-Cal fair hearing to obtain assistance provided by your Mental Health Plan. There are also federal compliance and discrimination complaint processes. If you would like more information about how to obtain home and community-based alternatives to involuntary detention, please call Disability Rights California at 1-800-776-5746.

1. Evaluation and Offer of Voluntary Home & Community-Based Care Instead of Involuntary Hospitalization

Any person who is detained for involuntary mental health treatment under the Lanterman-Petris-Short (LPS) Act has rights:

a. to an evaluation of whether home and community-based services available under county and state programs could appropriately meet his or her needs;

b. to voluntarily accept appropriate home and community-based services as an alternative to involuntary detention; and

c. to reasonable provision of home and community services on a voluntary basis.[1]

2. Offer of Voluntary Home & Community-Based Care is Promoted and Often Required under Constitutional and Statutory Law

The right to acceptance of mental health services on a voluntary basis is based on several legal concepts, including;

a. Government curtailment of liberty under federal and state constitutions is not necessary where a person is willing and able to accept appropriate services on a voluntary basis so long as the person is nondangerous and able to take care of him- or herself. Additionally, a person's ability and willingness to accept voluntary services prevents unnecessary legal expenditures associated with furthering the involuntary commitment process, which often includes appeals.[2]

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[1] Cal. Welf. & Inst. Code §§ 5151, 5152; see also Office of Patients' Rights, "Voluntary Treatment" (Nov. 23, 1999); DMH Information Notice No.: 01-01 "Clarification of Medi-Cal Policy Regarding Voluntary Admissions to Psychiatric Inpatient Hospital Services" (Jan. 16, 2001); Office of Patients' Rights, "Voluntary vs. Involuntary Services in a Managed-Care Environment" (June 26, 2001); Cal. Welf. & Inst. Code § 5003 (no limitation on voluntary application for mental health services.

[2] O'Conner v. Donaldson (1975) 422 U.S. 563, 577 ("A finding of 'mental illness' alone cannot justify a State's locking a person up against his will and keeping him indefinitely in simple custodial confinement. . . . In short, a State cannot constitutionally confine, without more, a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends."); a person cannot be certified as gravely disabled if he or she is capable of safely surviving in freedom with the help of willing and responsible family members, friends or third parties. Conservatorship of Early (1983) 35 Cal.3d 244; Cal. Welf. & Inst. Code § 5250(d)(1)).

b. State law provides that a psychiatric patient may not be presumed incompetent solely on the basis of his or her hospitalization.[3] As such, hospitalized individuals retain the right to give informed consent to mental health care and treatment absent a judicial determination of incompetence.[4]

c. State law provides that persons subject to detention under section 5150 of the Welfare and Institutions Code are entitled to an evaluation of whether he or she "can be properly served without being detained . . . . " If so, 'he or she shall be provided evaluation, crisis intervention, or other inpatient or outpatient services on a voluntary basis."[5]

d. State law provides that a person subject to 14-day detention under section 5250 of the Welfare and Institutions Code must be "advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis."[6] The 14-day certification notice specifically references voluntary hospitalization or "referral" to specified home and community-based services.[7] (See Attachment 1 – Notice)

e. Under section 5008(d) of the Welfare and Institutions Code, "Referral" is defined, in part, as "informing the person of available services, making appointments on the person's behalf, discussing the person's problem with the agency or individual to which the person has been referred, appraising the outcome of referrals, and arranging for personal escort and transportation when necessary." Further, "[r]eferral shall be considered complete when the agency or individual to whom the person has been referred accepts responsibility for providing the necessary services." Finally, "[a]ll persons shall be advised of available pre-care services which prevent initial recourse

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[3] Cal. Welf. & Inst. Code § 5331.
[4] Cal. Welf. & Inst. Code §§ 5325.1, 5326.2, 5326.5(d); Riese v. St. Mary's Hospital & Medical Center (1987) 209 Cal.App.3d 1303, 1315, 271 Cal.Rptr. 199; see also Uniform Health Care Decision Act, Cal. Probate Code §§ 4600 et seq., 4657 (stating any adult is presumed to have capacity to develop an advance directive).
[5] Cal. Welf. & Inst. Code § 5151 (emphasis added).
[6] Id. § 5250(c).
[7] Id. § 5252.

to hospital treatment or aftercare services which support adjustment to community living following hospital treatment." (Section 5008(d)).

f. A person may be detained for up to one year on LPS conservatorship only if a treating professional determines that the proposed conservatee "is unwilling to accept, or incapable of accepting, treatment voluntarily . . . ."[8]

g. The Americans with Disabilities Act and Olmstead decision require provision of services in the most integrated setting and reasonable modifications in programs to ensure integration of persons with psychiatric disabilities in the community. The U.S. Supreme Court has ruled that public entities such as county mental health departments have a duty to provide home and community-based services to individuals who would otherwise be in a facility when: (i) the assistance would appropriately meet the person's needs, (ii) the person prefers or does not oppose the assistance, and (iii) the assistance could be reasonably provided.[9]

3. Provision of Home and Community-Based Services Available under State Law

a. Home and Community-based services that are available under state law on a voluntary basis include:

(i) Mental Health Services Act (MHSA) services "will be provided to severely mentally ill children . . . . " and "shall be available to adults and seniors with severe illnesses… "[10] (See Attachment 2 for the provision of MHSA services)

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[8] Id. § 5352.

[9] 42 U.S.C. section 12101 et seq.; Olmstead v. L.C., 527 U.S. 581, at 587 ("[P]lacement of persons with mental disabilities in community settings rather than in institutions . . . . is in order when the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.").

[10] Cal. Welf. & Inst. Code §§ 5878.1(a), 5813.5.

(ii) Medically necessary Medi-Cal Specialty Mental Health Services for Medi-Cal eligible persons (See Attachment 3)

(iii) Housing Programs

(iv) Peer and Self-Advocacy Services

(v) County Social Services, including In-Home Support Services

(vi) Medi-Cal and other Physical Health Care Services

(vii) Substance Abuse Services

(viii) Educational Services

(ix) Vocational Services

(x) Transportation Services

(xi) Legal Services.

b. These home and community-based services must both be tailored to individual needs and be administered in a manner that affords reasonable access. Rules or policies must be reasonably modified to ensure access.

ATTACHMENT 1 - § 5252. Necessity for, and form of, notice of certification

A notice of certification is required for all persons certified for intensive treatment pursuant to Section 5250 or 5270.15, and shall be in substantially the following form (strike out inapplicable section):

The authorized agency providing evaluation services in the County of has evaluated the condition of:

[name, address, age, sex, marital status]

We the undersigned allege that the above-named person is, as a result of mental disorder or impairment by chronic alcoholism: (1) A danger to others, (2) A danger to himself or herself, (3) Gravely disabled as defined in paragraph (1) of subdivision (h) or subdivision (l) of Section 5008 of the Welfare and Institutions Code.

The specific facts which form the basis for our opinion that the above-named person meets one or more of the classifications indicated above are as follows:

(certifying persons to fill in blanks)

[Strike out all inapplicable classifications.]

The above-named person has been informed of this evaluation, and has been advised of the need for, but has not been able or willing to accept treatment on a voluntary basis, or to accept referral to, the following services:

We, therefore, certify the above-named person to receive intensive treatment related to the mental disorder or impairment by chronic

alcoholism beginning this day of , 20 , in the intensive treatment facility herein named =

(Date)

Signed

Countersigned

(Representing facility)

I hereby state that I delivered a copy of this notice this day to the above-named person and that I informed him or her that unless judicial review is requested a certification review hearing will be held within four days of the date on which the person is certified for a period of intensive treatment and that an attorney or advocate will visit him or her to provide assistance in preparing for the hearing or to answer questions regarding his or her commitment or to provide other assistance. The court has been notified of this certification on this day.

Signed

ATTACHMENT 2 – MENTAL HEALTH SERVICES ACT PROGRAMS AND SERVICES UNDER WELFARE AND INSTITUTIONS CODE SECTIONS 5801, 5802 AND 5806

Section 5801(b) The underlying philosophy for these systems of care includes the following:

. . . .

(4) Seriously mentally disordered adults and older adults should have an interagency network of services with multiple points of access and be assigned to a single person or team to be responsible for all treatment, case management, and community support services.

(5) The client should be fully informed and volunteer for all treatment provided, unless danger to self or others or grave disability requires temporary involuntary treatment.

(6) Clients and families should directly participate in making decisions about services and resource allocations that affect their lives.

. . . .

(9) For the majority of adults and older adults, treatment is best provided in the client's natural setting in the community. Treatment, case management, and community support services should be designed to prevent removal from the natural environment to more restrictive and costly placements.

. . . .

(11) State and county government agencies each have responsibilities and fiscal liabilities for seriously emotionally disordered adults and seniors.
Section 5802(a)

. . . .

(1) A comprehensive and coordinated system of care includes community-based treatment, . . . case management, and interagency [coordination] . . .

(2) [Services come from] . . . many different state and local agencies, particularly criminal justice, employment, housing, public welfare, health and mental health. In a system of care these agencies collaborate in order to deliver integrated and cost-effective programs.

. . . .

(4) System of care services which ensure culturally competent care for persons with severe mental illnesses in the most appropriate, least restrictive level of care necessary to achieve the desired performance outcomes.

Section 5806(a)

[Desired performance outcomes enable adults with severe mental illness to reduce symptoms which impair their ability to live independently, work, maintain community supports, care for their children, stay in good health, not abuse drugs or alcohol, and not commit crimes. State standards must include planning for services including outreach, services design, and evaluation strategies that consider cultural, linguistic, gender, age and special needs of minorities in the target population.]

(2) . . . . Provision shall be made for staff with the cultural background and linguistic skills necessary to remove linguistic barriers to mental health services due to limited English speaking ability and cultural differences. . . .

(3) Provision shall be made for services to meet the needs of target population clients who are physically disabled.

(4) Provision shall be made for services to meet the special needs of older adults.

(5) Provision for family support and consultation services, parenting support and consultation services, and peer support or self-help group support, where appropriate.

. . . .

(b)Each client shall have a clearly designated mental health case manager or multidisciplinary treatment team who is responsible for providing or assuring needed services. Responsibilities include complete assessment of the client's needs, development of the client's personal services plan, linkage with all appropriate community services, monitoring of the quality and follow-through of services, and necessary advocacy to ensure each client receives those services which are agreed to in the personal services plan. Each client shall participate in the development of his or her personal services plan, and responsible staff shall consult with the designated conservator . . . and, with the consent of the client, consult with family and other significant persons as appropriate.

(c) The individual services plan shall assure that . . . [system of care clients receive services which are designed to:

1. Reduce the disabling conditions of mental illness.
2. Live in the most normal housing feasible in the local community.
3. Have an adequate income and an appropriate level of work or vocational training.
4. Are in good health.
5. Have a support system, with friendships and participation in community activities.
6. Have freedom from dangerous, addictive substances.
7. Maintain socially responsible behavior.
8. Obtain an appropriate level of education and learning.
9. Receive culturally appropriate services.
10. Receive gender and age appropriate services.]

(a) [Children with severe mental illness, as defined under Welfare and Institutions Code sections 5878.2 and subdivision (a) of section 5600.3,] for whom services under any other public or private insurance or mental health or entitlement program is inadequate or unavailable . . . [shall be offered services by the county mental health program.] Other entitlement programs include but are not limited to Medi-Cal, child welfare, and special education programs. The [MHSA] funding shall cover only those portions of care that cannot be paid for with public or private insurance, or other mental health funds or other entitlement programs.

(b) Funding shall be sufficient to ensure that counties can provide each child served all of the necessary services set forth in the applicable treatment plan, including services where appropriate and necessary to prevent an out of home placement . . . .

ATTACHMENT 3 - MEDI-CAL SPECIALTY MENTAL HEALTH SERVICES AVAILABLE AS AN ALTERNATIVE TO HOSPITALIZATION

ARTICLE 2. DEFINITIONS, ABBREVIATIONS AND PROGRAM TERMS

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ADULT RESIDENTIAL TREATMENT – Rehabilitative services provided in a non-institutional, residential setting, . . . for beneficiaries who would be at risk of hospitalization or other institutional placement if they were not in a residential treatment program. The service is available 24 hours a day, seven days a week. Service activities include assessment, plan development, therapy, rehabilitation and collateral.

(Cal. Code Regs., tit. 9 § 1810.203).

ASSESSMENT – Service activity that may include clinical analysis of the history and current status of the beneficiary's mental, emotional, or behavioral disorder; relevant cultural issues and history; diagnosis; and the use of testing procedures. (Cal. Code Regs., tit. 9 § 1810.204).

. . . .

COLLATERAL – A service activity to a significant support person in a beneficiary's life with the intent of improving or maintaining the mental health status of the beneficiary. The beneficiary may or may not be present for this activity. The activity may include helping significant support persons to understand and accept the beneficiary's condition and involving them in service planning and implementation of service plan(s). Family counseling or therapy that is provided on behalf of the beneficiary is considered collateral. (Cal. Code Regs., tit. 9 § 1810.206). Significant support person means persons, in the opinion of the beneficiary or the person providing services, who have or could have a significant role in the successful outcome of treatment, including a person living in the same household as the beneficiary, the beneficiary's spouse, parents, and relatives. (Cal. Code Regs., tit. 9 § 1810.246.1).

. . . .

CRISIS RESIDENTIAL TREATMENT SERVICE - Therapeutic and/or rehabilitation services provided in a 24-hour non-institutional residential treatment setting providing a structured program as an alternative to hospitalization for beneficiaries experiencing an acute psychiatric episode or crisis, and who do not present medical complications requiring nursing care. Individuals are supported in their efforts to restore, maintain and apply interpersonal and independent living skills and access community supports systems. This is a structured, packaged program with services available day and night, seven days a week. Service activities may include assessment, plan development, therapy, rehabilitation, collateral and crisis intervention. (Cal. Code Regs., tit. 9 § 1810.208).

CRISIS INTERVENTION - Subdivision (e) of section 5008 of the Welfare and Institutions Code defines "Crisis intervention" as consisting of "an interview or series of interviews within a brief period of time, conducted by qualified professionals, and designed to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the person or the family. The interview or interviews may be conducted in the home of the person or family, or on an inpatient or outpatient basis with such therapy, or other services, as may be appropriate. Crisis intervention may, as appropriate, include suicide prevention, psychiatric, welfare, psychological, legal, or other social services." State regulations further provide that "Crisis intervention" is a service lasting less than 24 hours to or on behalf of a beneficiary for a condition that requires more timely response than a regularly scheduled visit. The service includes but is not limited to assessment, collateral and therapy. Crisis intervention is distinguished from crisis stabilization by being delivered by providers not eligible to deliver crisis stabilization or who are eligible but deliver the service at a site other than a provider site certified to provide crisis stabilization. (Cal. Code Regs., tit. 9 § 1810.209).

CRISIS STABILIZATION - "Crisis Stabilization" means a service lasting less than 24 hours, to or on behalf of a beneficiary for a condition which requires more timely response than a regularly scheduled visit. Service activities may include, but are not limited to, assessment, collateral and therapy. Crisis stabilization must be provided on site at a 24 hour health

facility or hospital-based outpatient program or at other provider sites which have been certified by the department or a Mental Health Plan to provide crisis stabilization services. (Cal. Code Regs., tit. 9 § 1810.210).

. . . .

DAY REHABILITATION - "Day Rehabilitation" means a structured program of rehabilitation therapy to improve, maintain or restore personal independence and functioning, consistent with requirements for learning and development, which provides services to a distinct group of beneficiaries and is available at least three hours and less than twenty-four hours each day the program is open. Service activities may include, but are not limited to, assessment, plan development, therapy, rehabilitation and collateral.

(Cal. Code Regs., tit. 9 § 1810.212).

DAY TREATMENT INTENSIVE - "Day Treatment Intensive" means a structured, multi-disciplinary program of therapy which may be an alternative to hospitalization, avoid placement in a more restrictive setting, or maintain the beneficiary in a community setting, with services available at least three hours and less than twenty-four hours each day the program is open. Service activities may include, but are not limited to, assessment, plan development, therapy, rehabilitation and collateral.

(Cal. Code Regs., tit. 9 § 1810.213).

. . . .

EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT (EPSDT) SUPPLEMENTAL MENTAL HEALTH SERVICES - "EPSDT Supplemental Services" means those services defined in Title 22, Section 51184, that are provided to beneficiaries under age 21 to correct or ameliorate the diagnoses listed in section 1830.205, and that are not otherwise covered services (e.g., Therapeutic Behavioral Services). (Cal. Code Regs., tit. 9 § 1810.215).

. . . .

MEDICATION SUPPORT SERVICES - “Medication Support Services” means those services which include prescribing, administering, dispensing and monitoring of psychiatric medications or biologicals which are necessary to alleviate the symptoms of mental illness. The services may include evaluation of the need for medication, evaluation of clinical effectiveness and side effects, the obtaining of informed consent, medication education and plan development related to the delivery of the service and/or assessment of the beneficiary. (Cal. Code Regs., tit. 9 § 1810.225).

. . . .

MENTAL HEALTH SERVICES - “Mental Health Services” means those individual or group therapies and interventions that are designed to provide reduction of mental disability and improvement or maintenance of functioning consistent with the goals of learning, development, independent living and enhanced self-sufficiency and that are not provided as a component of adult residential services, crisis residential treatment services, crisis intervention, crisis stabilization, day rehabilitation, or day treatment intensive. Service activities may include but are not limited to assessment, plan development, therapy, rehabilitation, and collateral. (Cal. Code Regs., tit. 9 § 1810.227).

. . . .

PLAN DEVELOPMENT - “Plan Development” means a service activity for development of client plans, approval of client plans, and/or monitoring of a beneficiary’s progress. (Cal. Code Regs., tit. 9 § 1810.232).

. . . .

PSYCHIATRIST SERVICES - “Psychiatrist Services” means services provided by licensed physicians, within their scope of practice, who have contracted with the MHP to provide specialty mental health services or who have indicated a psychiatrist specialty as part of the provider enrollment process for the Medi-Cal program, to diagnosis or treat a mental illness or condition. For the purposes of this chapter, psychiatrist services may only

be provided by physicians who are individual or group providers. (Cal. Code Regs., tit. 9 § 1810.240).

PSYCHOLOGIST SERVICES - "Psychologist Services" means services provided by licensed psychologists, within their scope of practice, to diagnose or treat a mental illness or condition. For the purposes of this chapter, psychologist services may only be provided by psychologists who are individual or group providers. (Cal. Code Regs., tit. 9 § 1810.241).

. . . .

REHABILITATION - "Rehabilitation" means service activity which includes assistance in improving, maintaining, or restoring a beneficiary's or group of beneficiaries' functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, and support resources; and/or medication education.

(Cal. Code Regs., tit. 9 § 1810.243).

. . . .

TARGETED CASE MANAGEMENT/BROKERAGE - Services that assist a beneficiary to access needed medical, educational, social, prevocational, vocational, rehabilitative, or other community services. The service activities may include communication, coordination, and referral; monitoring service delivery to ensure beneficiary access to service and the service delivery system; monitoring of the beneficiary's progress; and plan development. (Cal. Code Regs., tit. 9 § 1810.249).

THERAPY - "Therapy" means a service activity which is a therapeutic intervention that focuses primarily on symptoms reduction as a means to improve functional impairments. Therapy may be delivered to an individual or group of beneficiaries and may include family therapy at which the beneficiary is present. (Cal. Code Regs., tit. 9 § 1810.250).

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