



ADMINISTRATIVE/FISCAL/CLINICAL/PHF POLICY AND PROCEDURES

COUNTY OF SANTA BARBARA
ALCOHOL, DRUG AND MENTAL HEALTH SERVICES

Section -	QUALITY ASSURANCE	Effective:	9/1/2004
Policy -	#27 PATIENTS' RIGHTS ADVOCACY	Revised:	1/11/10
Director's Approval	<u>Ann Detrick</u>	Date	<u>5/26/10</u>
Deputy Director's Approval	<u>[Signature]</u>	Date	<u>8/20/10</u>
Form Ref.	-	Reviewed:	

POLICY:

It is the policy of the Santa Barbara County Mental Health Plan (SBCMHP) to comply with all relevant state and federal laws, regulations, and other requirements relating to the provision of patient rights advocacy, including provision of one or more staff acting as Patients' Rights Advocate. The Patients' Rights Advocate will assist consumers in order to protect their rights or to secure or upgrade treatment or other services to which they are entitled.

Legal Citation: Welfare & Institutions Code §5500 *et seq.*

PROCEDURE:

A. Training

1. In keeping with WIC §5512, training of county Patients' Rights Advocates shall be provided by California Office of Patients' Rights (COPR), which is contracted with the State to provide protection and advocacy services to persons with mental disabilities.
2. SBCMHP Patients' Rights Advocates will take advantage of such training as available in order to ensure that they possess the knowledge specified in WIC 5512, including:
 - a. Knowledge of the service system, financial entitlements, and service rights of persons receiving mental health services. This knowledge shall include, but need not be limited to, knowledge of available treatment and service resources in order to ensure timely access to treatment and services.
 - b. Knowledge of patients' rights in institutional and community facilities.
 - c. Knowledge of civil commitment statutes and procedures.
 - d. Knowledge of state and federal laws and regulations affecting recipients of mental health services.

- e. Ability to work effectively and respectfully with service recipients and providers, public administrators, community groups, and the judicial system.
- f. Skill in interviewing and counseling service recipients, including giving information and appropriate referrals.
- g. Ability to investigate and assess complaints and screen for legal problems.
- h. Knowledge of administrative and judicial due process proceedings in order to provide representation at administrative hearings and to assist in judicial hearings when necessary to carry out the intent of Section 5522 regarding cooperation between advocates and legal representatives.
- i. Knowledge of, and commitment to, advocacy ethics and principles.

B. Responsibilities of Patients' Rights Advocates

1. Patients' Rights Advocates are responsible for the following activities:
 - a. To receive and investigate 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 WIC §5000 *et seq.*
 - b. To monitor mental health facilities, services and programs for compliance with statutory and regulatory patients' rights provisions.
 - c. To provide training and education about mental health law and patients' rights to mental health providers in County-operated and contracted programs.
 - d. To ensure that recipients of mental health services in all licensed health and community care facilities are notified of their rights.
 - e. To exchange information and cooperate with COPR.
2. Consumers have the right to representation by public or private legal counsel. Patients' Rights Advocates will cooperate with legal counsel, but will not duplicate, replace, or conflict with legal representation.
3. County patients' rights advocates may conduct investigations if there is probable cause to believe that the rights of a past or present recipient of mental health services have been, may have been, or may be violated.
 - a. Investigations concerning violations of the rights of a former consumer will be limited to cases involving discrimination, cases indicating the need for education or training, or cases having a direct bearing on violations of the rights of a current consumer.
 - i. This requirement is not intended to interfere with routine compliance monitoring, but only pertains to the investigation of specific suspected or alleged violations regarding a specific consumer.

4. Agreements with a Patients' Rights Advocate must be entered into knowingly and voluntarily by a consumer or the consumer's legal guardian.
 - a. Agreements must be in a language which the client understands.
 - b. Any such agreement may, at any time, be revoked by the client or by the legal guardian, either in writing or by oral statement to the Advocate.
 - c. A recipient of mental health services is presumed competent for the purpose of entering into an agreement with Patients' Rights Advocates for the provision of advocacy services unless found by the superior court to be incompetent to enter into an agreement with an advocate and a legal guardian is appointed for such purposes.
5. If a Patients' Rights Advocate conducts an investigation without a request for advocacy services from a consumer or a person on behalf of a consumer, the advocate will notify the Program Manager, Team Supervisor, or other administrator responsible for the program(s) providing services to the consumer that an investigation will be conducted.
 - a. Whenever the administrator or a designee is reasonably available for consultation, a Patients' Rights Advocate will interview the administrator or designee, after consulting the administrator or designee concerning the appropriate time to conduct the interview.

C. Access to Consumers and Records

1. Patients' Rights Advocates shall have access to all clients and consumers in any mental health facility, program, or service at all times as are necessary to investigate or resolve specific complaints
2. Patients' Rights Advocates shall have access to mental health facilities, programs, and services, and consumers of services provided, during normal working hours and visiting hours for other advocacy purposes.
3. Patients' Rights Advocates have the right to interview all persons providing a consumer with diagnostic or treatment services.
4. Patients' Rights Advocates may appeal any denial of access to the supervisor of any program or facility, the SBCMHP Director, or the State Department of Mental Health, or may seek appropriate relief in the courts.
5. Upon request, any SBCMHP facility or program will, to the extent possible, provide reasonable space for county patients' rights advocates to interview consumers in privacy and will make appropriate staff persons available for interview with a Patients' Rights Advocate in connection with pending matters.
6. Every consumer has a right to privacy, including the right to terminate any visit or interview with a Patients' Rights Advocate, and the right to refuse to see any Patients' Rights Advocate.

- a. Patients' Rights Advocates have access to, review, and copy as needed, any records or other information about a consumer which may be in the medical or other records of the SBCMHP or a contracted provider, if the information is related to an investigation on behalf of a consumer or regarding compliance or lack of compliance with laws and regulations governing patients' rights.
- b. Patients' Rights Advocates have access to, and may copy, Protected Health Information about a client in other records (*i.e.*, other than the medical and other records of the SBCMHP or a contracted provider) only with a written authorization from the consumer or legal guardian, subject to the provisions of HIPAA and other relevant state and federal laws and regulations.
- c. Patients' Rights Advocates may, to the extent necessary for effective advocacy, communicate information from the consumer's records to the consumer.
 - i. Information regarding another consumer, or Protected Health Information regarding a family member or other individual, may not be communicated to the consumer without appropriate written authorization from such an individual.
- d. With written authorization from the consumer or legal guardian, any written client information obtained by Patients' Rights Advocates may be used and disseminated in court or administrative proceedings, and to any public agencies or authorized officials thereof, to the extent required in the providing of advocacy services.

D. Reporting

1. The Patients' Rights Advocates (PRA) program will make a quarterly report to the Quality Improvement Committee of the following information:
 - a. The name of the facility, the nature of the complaint, and the outcome of the investigation for each complaint 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 WIC §5000 *et seq.*
 - b. The name or description of all mental health facilities, services, and programs monitored for compliance with statutory and regulatory patients' rights provisions, and a summary of the outcome of monitoring activities.
 - c. A description and statistical summary of training and education about mental health law and patients' rights delivered to mental health providers in County-operated and contracted programs, including the number of individual trained each month, with subtotals for ADMHS and CBO staff.
 - d. A summary of activities taken to ensure that recipients of mental health services in all licensed health and community care facilities are notified of their rights.

- e. A summary of investigations based on probable cause to believe that the rights of a past or present recipient of mental health services have been, may have been, or may be violated. The summary will include the Facility-Program or Network Provider investigated, a description of the rights which were or may have been violated, and the outcome of each investigation.

Assistance:

Reference:

Replaces: