



Monterey County Behavioral Health Policy and Procedure

Policy Num	
Policy Title	Patient's Rights
References	Welfare And Institutions Code, Division 5, PART 1; Title 9, California Code Of Regulations, Division 1, Chapter 4, Article 6
Form	Grievance Process Handbook Of Grievance Process Patient's Rights Poster Patient's Rights Handbook
Effective	March 1, 1991 Revised: February 1, 1999 Revised: March 1, 2009

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Policy

The Monterey County Behavioral Health Division (MCBHD) recognizes the legislative intent of the Lanterman Petris Short Act. That intent shall be considered in the implementation of all policies and practices concerning mental health treatment. In particular, services shall be provided in ways that best meet the following goals:

- A. To prevent the inappropriate, indefinite, and involuntary commitment of mentally disordered persons who receive services through this Division;
- B. To provide prompt evaluation and treatment of persons with serious mental disorders;
- C. To guarantee and protect public safety;
- D. To safeguard individual rights through judicial review;
- E. To provide individualized treatment, supervision, and placement services by a conservatorship program for gravely disabled persons;
- F. To encourage the full use of all existing agencies, professional personnel and public funds to accomplish these objectives and to prevent duplication of services and unnecessary expenditures;
- G. To protect mentally disordered persons from being victims of criminal acts.

Source: Welfare & Institutions Code Section 5001

This policy shall apply to all outpatient programs in the Division including all contractors, their employees, volunteers and interns.

DEFINITIONS:

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33 Consumer/Client – Any person who seeks information, referral, treatment or assistance from the
34 Division.

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36 System – Monterey County Behavioral Health Division, all employees and contractor providers.

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38 Patient – Any person who receives treatment services from the Division

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40 Patients' Rights Advocate – The person(s) hired by the County or on contract to the County to
41 provide Advocacy Services under Title 9 of the California Code of Regulations and Section
42 5520 of the Welfare & Institutions Code, herein known as the Advocate.

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44 Program – All services provided directly by the County or by contract which are part of the Short-
45 Doyle Plan for Monterey County.

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47 Providers – Clinicians, clerical and administrative staff, conservators and public payees who are
48 employed in the Division, contract employees, and contractor agencies that provide services under
49 the Short-Doyle plan; volunteers and interns who provide services under the supervision of the
50 above.

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52 I. Patient's Rights:

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54 A. No practice or policy of this Division shall be applied in any way as to limit the right of any
55 person to make voluntary application at any time to any public or private agency or practitioner for
56 mental health services, either by direct application in person, or by referral from any other public or
57 private agency or practitioner.

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59 Source: Welfare & Institutions Code Section 5003

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61 B. Persons receiving evaluation or treatment shall be given a choice of physician or other
62 professional person providing such services, in accordance with the policies of each agency
63 providing services, and within the limits of available staff in the agency

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65 Source: Welfare & Institutions Code Section 5009

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67 C. Persons with mental illness have the same legal rights and responsibilities guaranteed all other
68 persons by the Federal Constitution and laws and the Constitution and laws of the State of
69 California unless specifically limited by federal or state law or regulations. No otherwise qualified
70 person by reason of having been involuntarily detained for evaluation or treatment under provisions
71 of the LPS Act or having been admitted as a voluntary patient to any health facility, as defined in
72 Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered
73 shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination
74 under any program or activity, which receives public funds.

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76 It is the intent of the legislature, and it shall be the policy of this Division, that persons with mental
77 illness shall have rights including, but not limited to, the following:
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- 79 1. A right to treatment services which promote the potential of the person to function independently.
80 Treatment should be provided in ways that are least restrictive of the personal liberty of the
81 individual.
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83 2. A right to dignity, privacy, and humane care.
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85 3. A right to be free from harm, including unnecessary or excessive physical restraint, isolation,
86 medication, abuse, or neglect. Medication shall not be used as punishment, for the convenience of
87 staff, as a substitute for program, or in quantities that interfere with the treatment program.
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89 4. A right to prompt medical care and treatment.
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91 5. A right to religious freedom and practice.
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93 6. A right to participate in appropriate programs of publicly supported education.
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95 7. A right to social interaction and participating in community activities
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97 8. A right to physical exercise and recreational opportunities.
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99 9. A right to be free from hazardous procedures.

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101 Source: Welfare & Institutions Code 5325.1
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103 D. Each person involuntarily detained for evaluation and treatment and each person receiving
104 services from the Division as a voluntary patient shall have the following rights:
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- 106 1. To see and receive the services of the patient advocate who has no direct or indirect clinical or
107 administrative responsibility for the person receiving mental health services.
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109 2. Other rights, as specified by regulation.
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111 3. The rights specified in this section may not be waived by the person's parent, guardian, or
112 conservator.
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114 Source: Welfare & Institutions Code 5325
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116 E. When a patient is admitted to an acute inpatient, residential or skilled nursing facility which
117 provides services under the Short-Doyle plan, the patient shall have the statutory rights which are
118 listed in Section 5325 of the Welfare & Institutions Code.
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120 F. The professional person in charge of the facility or his/her designee may, for good cause, deny a
121 person any of the rights under Section 5325, except under subdivisions (g) and (h) and the rights
122 under subdivision (f) may be denied only under the conditions specified in Section 5326.7.
123 Denials of rights shall be made only as allowed by law and State Department of Mental Health
124 regulations. Denial of a person's rights shall in all cases be entered into the person's treatment
125 record and shall be reported as required by law.
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II. Access to Advocate

- A. Every inpatient program shall keep posters listing patients' rights in English and Spanish conspicuously posted in the waiting and/or treatment areas.
- B. Each inpatient program shall keep a supply of Patients' Rights Handbooks for distribution and shall keep at least one copy on display and indicate that such handbooks are available in English and Spanish.
- C. It is the responsibility of the Patients' Rights Advocate to ensure that adequate supplies are available.
- D. Advocacy services under this section (II) shall mean services which address a denial of rights under Sections 5325 and 5325.1 of the Welfare & Institutions Code or issues regarding involuntary detention under Section 5150 to 5350; informed consent under Section 5326.2 and 5327; confidentiality under Sections 5328 to 5331; conservatorship under 5350 to 5371; other advocacy services under Section 5500 to 5550 and Title 9 of the California Code of Regulations.
- E. Consumers shall be informed of the existence and right to advocacy services whenever a dispute arises between a client and a provider or whenever the consumer alleges abuse or a denial of rights.
- F. Patients shall be informed of the right to advocacy services upon admission to an inpatient facility.
- G. No person requesting information about advocacy services or access to the Advocate shall be required to give his/her name.
- H. Notwithstanding any other provision of law, and without regard to the existence of a guardianship or conservatorship, a recipient of mental health services is presumed competent for the purpose of entering into an agreement with the county patients' rights advocate 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 guardian ad litem is appointed for such purposes.
- I. Persons who seek or receive advocacy services shall be informed by the Advocate of their rights under Section 864 of Title 9 of the California Code of Regulations to complain about advocacy services.

III. Access of the Advocate within the Division

- A. County patients' rights advocates shall have access to all consumers and other recipients of mental health services in any mental health facility, program, or service at all times as are necessary to investigate or resolve specific complaints and in accord with subdivision (b) of Section 5523. County patients' rights advocates shall have access to mental health facilities, programs, and services, and recipients of service therein during normal working hours and visiting hours for other advocacy purposes. Advocates may appeal any denial of access directly to the program manager, the director of a county mental health program or the State Department of Mental Health or may seek appropriate relief in the courts. If a petition to a court sets forth prima facie evidence

175 for relief, a hearing on the merits of the petition shall be held within two judicial days of the filing of
176 the petition. The superior court for the county in which the facility is located shall have jurisdiction
177 to review petitions filed pursuant to this chapter.

178

179 County patients' rights advocates shall have the right to interview all persons providing the
180 consumer with diagnostic or treatment services. That shall include conservators, public payees,
181 support and administrative staff.

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183 The Behavioral Health Division facilities shall provide reasonable space for county patients' rights
184 advocates to interview consumers in privacy and shall make appropriate staff persons available for
185 interview with the advocates in connection with pending matters.

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187 Individual patients shall have a right to privacy which shall include the right to terminate any visit by
188 persons who have assess pursuant to this chapter and the right to refuse to see any patient
189 advocate.

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191 Notice of the availability of advocacy services and information about patients' rights may be
192 provided by county patients' rights advocates by means of distribution of educational materials and
193 discussions in groups and with individual patients.

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195 Source: Welfare and Institutions Code Section 5530

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197 B. The Advocate may conduct investigation if there is probable cause to believe that the rights of a
198 past or present recipient of mental health services have been, may have been, or may be violated.

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200 C. If the Advocate is designated by the Behavioral Health Director under Section 5326.1 of the
201 Welfare & Institutions Code, any information in a patient's treatment record shall be available to the
202 Advocate if the information is in the custody of the Division, its employees or contractors, and the
203 information pertains to a denial of rights, whether or not such assess is specifically authorized by
204 the patient. If such access is contrary to the expressed wishes or the patient, the Advocate shall
205 refrain from exercising this authority. Any disputes this matter shall be appealed under Section 864
206 of Title 9 of the California Code of Regulations.

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208 D. Under the supervisory powers listed in 5608 (c) the Behavioral Health Director has access to
209 patient-identifiable records. If the Director makes a limited delegation of this power to the Patients'
210 Rights Advocate, the Advocate shall have access to the records of all patients who are funded by
211 the Short-Doyle program and all involuntary patients for routine monitoring purposes.

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213 E. The Advocate shall have access to all policy manuals or administrative memoranda concerning
214 policies affecting patients' rights and all memoranda, regulations and guidelines routinely provided
215 to providers which are pertinent to the resolution of a complaint or a denial of rights'. Staff Training

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217 A. Every provider in the Division shall be informed by their supervisor of the policy of the Division;
218 the rights contained in Section C & D.

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220 B. Each provider will be expected to familiarize himself or herself with the rights in Section C & D.

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222 C. Each Behavioral Health Service Manager shall be responsible for ensuring that every newly
223 hired employee meets the Advocate to discuss patients' rights within five working days of
224 employment.
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226 D. The Advocate shall provide information on the following to each newly hired provider:
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- 228 1. Patients' Rights under 5001, 5325, and 5325.1.
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- 230 2. Policies of the Division regarding Patients' Rights.
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- 232 3. Distribution of posters and materials.
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- 234 4. Patients' Rights Advocacy Program.
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- 236 5. How to refer consumers and patients for advocacy services.
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- 238 6. Complaint Process and Appeals.
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- 240 7. Rights of Involuntary Patients.
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- 242 8. Resources available through the Advocate.
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263 **PROCEDURE FOR CLIENT COMPLAINTS**
264 **CONCERNING PATIENTS'**

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266 864 Complaint Procedure
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268 A. The list of rights that shall be posted, provided, or explained to the patient/resident pursuant to
269 Section 862 shall contain:

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1. Notification that any patient/resident who believes a right of his/her has been abused, punitively withheld, or unreasonably deemed 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 Behavioral 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.

If the complaint cannot be satisfactorily resolved by the local Behavioral 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 Right Specialist may be made to the Director of the State Department of Health, or his/her designee.

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