**California Office of Patients’ Rights**

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# MEMORANDUM

TO: Interested Persons

FROM: California Office of Patients’ Rights

RE: Discharge of Patients after Certification Hearings

DATE: October 30, 2014

The California Office of Patients’ Rights (COPR), under contract with the Department of State Hospitals,[[1]](#footnote-1) provides technical assistance and training to county patients’ rights advocates, conducts program reviews of county patients’ rights programs, and investigates patients’ rights complaints that the county patients’ rights advocate has been unable to resolve.[[2]](#footnote-2)

The California Office of Patients’ Rights has received inquiries from advocates recently regarding discharge of patients after they prevailed at their certification review hearings. Although these issues are not new and have been previously addressed, given the problems currently being raised, they bear addressing again.

Of specific concern are the denial of appropriate aftercare planning, transportation arrangements, and/or discharge medication when patients elect to leave the facility “against medical advice” after prevailing at a certification review hearing. Advocates have reported patients being told by facility representatives that if they challenge their involuntary hold and prevail at their certification they will be “discharged to the curb” or denied take-home medication, or both.

The patients’ rights related to aftercare plans, appropriate/safe transportation at discharge, and appropriate assessment for “take-home” medication are outlined briefly below, followed by a discussion of the ways in which these issues arise and how advocates can address the punitive denial of these rights.

**Aftercare Plan**

A voluntary patient may leave the hospital at any time “by giving notice of his or her desire to leave to any member of the hospital staff and completing normal hospital departure procedures.” “Normal hospital departure procedures” include provision of a written aftercare plan. Aftercare plans are required for “any patient” in the mental health facility, regardless of the circumstances of their departure. Welf. & Inst. Code, sections 6000(a)(2), 6002.

These aftercare plans include appropriate referrals. A referral is considered complete when “the agency or individual to whom the person has been referred accepts responsibility for providing the necessary services.” Referrals may include “…personal escort or arranging for transportation when necessary.” Health & Safety Code, section 1262; Welf. & Inst. Code sections 5622 and 5585.57; 5008(d).

Additionally, there are separate federal discharge planning duties for hospitals receiving Medicaid and/or Medicare funds. The Medicare discharge planning requirements apply to all patients in the hospital receiving federal financial participation, whether or not the individual patient is a Medicare or Medi-Cal beneficiary. 42 U.S.C. § 1395x(ee); 42 C.F.R. §§ 482.21(b), 482.43.

Under the Medicare regulations, discharge planning should begin the day of admission. 42 C.F.R.§ 482.43(a). And the hospital “must arrange for the initial implementation of the patient's discharge plan." 42 C.F.R. § 482.43(c)(3).

**Transportation at Discharge**

The California Hospital Association (CHA) directly addresses the issue of post-hospital transportation for patients who elect to leave the hospital against medical advice. In its *Consent Manual,* CHA advises, “The hospital should take proper precautions to ensure that the patient leaves the hospital in a safe manner. The responsible physician should be involved in the arrangements, as physicians are required to take reasonable steps to protect the patient…”

The CHA goes on to recommend the facility make transportation arrangements for patients’ leaving AMA appropriate to their situation or condition, “It may be prudent to arrange for transportation that is appropriate in view of the patients’ condition (e.g. a taxi or an ambulance)…”

*Consent Manual* 39th Ed., California Hospital Association (2012) p. 5.6.

The obligation to ensure a safe departure from the facility is particularly cogent for individuals being discharged after an involuntary psychiatric hold. Many of these patients have been picked up in their communities and transported against their will to facilities miles from their homes. Abandoning such patients at the curb, fulfills neither the legal or ethical obligations of the treating physician and facility. Facilities should provide assistance in arranging for post-hospital transportation based on individual need.

**Medication at Discharge**

As mentioned, these issues are not new. Indeed, over 20 years ago the then Medical Director of Los Angeles County Mental Health, Rodney W. Burgoyne, felt it necessary to remind administrators and medical directors at LPS-designated facilities in Los Angeles County of their responsibility to evaluate patients for appropriate discharge medication, regardless of the circumstances surrounding the patient’s discharge. Dr. Burgyne’s words are as true today as they were 20 years ago:

The legal process to evaluate and treat psychiatric patients involuntarily, under the Lanterman-Petris-Short Act, requires mandated on-site and/or in-court hearings to safeguard the rights of these patients. In some instances the findings from these hearings may require the release of patients from involuntary holds despite your psychiatrist's concerns that further involuntary treatment may be warranted.

In those instances where the hearings release patients from further involuntary psychiatric treatment, prudent medical practice dictates that the patient be evaluated for a supply of take-home medications. Where appropriate, a supply of discharge medications would enable the patient to link with essential aftercare referrals. Failure to provide indicated treatment that would be voluntarily accepted by the patient may be viewed as abandonment. Release by the court does not release physicians from providing ethical treatment.

R.W. Burgoyne, Medical Director to Administrators and Medical Directors of Psychiatric Units Los Angeles County Designated Facilities (July 7, 1992). Prescribing Take-Home Medication for Persons Released at Hearings.

There are of course situations where an individual may refuse a written aftercare plan or assistance in arranging for transportation, or where medications at discharge may be clinically contraindicated. Those situations are not the focus of this memo.

This memo addresses the following situations:

1) Those in which patients leaving against medical advice are denied appropriate aftercare, assistance with transportation arrangements and/or discharge medication by policy; and

2) Those in which the patient is punitively denied, or threatened with the punitive denial of, safe and appropriate discharge arrangements or discharge medication with the intent of dissuading the patient from exercising his/her right to due process, self-determination, and/or informed consent.

Issues related to appropriate and safe discharge procedures come up prior to, during, and after certification review hearings:

Prior to hearings, patients may be told that if they successfully challenge their involuntary hold at the hearing, the facility’s or their individual physician’s “policy” is not to assist with transportation arrangements or provide discharge medication. Thus patients are “encouraged” to remain on the hold and “work with their doctor” to avoid being discharged to the curb and/or sent home without necessary medication.

During certification review hearings, the facility representative may seek to present the patient’s lack of post-discharge transportation arrangements as “evidence” of grave disability. In such cases, the inability to provide for food, clothing and shelter is not “as a result of mental health disorder,” but as a result of circumstances created by the hospitalization itself. The inability of the patient to come up with a “plan” for transportation back to the food, clothing, and shelter he/she does have is not evidence of grave disability, but of the facility’s failure to fulfill its obligations to the patient.

After release at a certification review hearing, patients may again be told that if they exercise their right to depart the facility, they will be discharged to the curb and/or sent home without necessary medication in an effort to persuade the patient to remain in the hospital on a “voluntary” basis. It should be noted, however, that consent for continued treatment after release at a hearing, like all consent, must be knowingly and freely given; it may not be obtained through duress or coercion.

Patients’ rights advocacy involves activities undertaken both to protect the rights of mental health clients and to secure or upgrade treatment or other services to which they are entitled. In addition to monitoring facilities for compliance with patients’ right law, advocates are responsible for advising clients of their rights, their options for enforcing those rights, and the implications of those options and assisting the client to make an informed choice. In circumstances where safe and appropriate discharge planning is denied either by policy or for the express purpose of dissuading the individual from exercising a right, options offered the client should include assistance with filing a complaint with the facility’s licensing agency and/or professional licensing board(s) of the clinicians involved.

1. The Department of State Hospitals oversees the contract for California Office of Patients’ Rights functions related to county patients’ rights programs pursuant to an MOU with the Department of Health Care Services. [↑](#footnote-ref-1)
2. Welf. & Inst. Code §§ 5370.2 and 5510; 9 CCR § 864 [↑](#footnote-ref-2)