

SAN MATEO COUNTY
MENTAL HEALTH SERVICES DIVISION

February 1988

MENTAL HEALTH POLICY: 88

SUBJECT: Roger S. Procedures

AUTHORITY: Divisional

Outline

1. Definitions
2. Applicability
3. Admission Process
 - a. Preliminary Report
 - b. Waivers
 - c. The Hearing
 - Preparation for the Hearing by the Minor's Counsel
 - The Hearing Setting and Decorum
 - Minor's Rights at the Hearing
 - Hearing Procedure
 - Hearing Decision
 - Termination of the Hearing Order
4. Rehearing Procedures
5. Special Circumstances
 - a. If the minor turns 14 while hospitalized.
 - b. If the minor turns 18 while hospitalized.
 - c. If the minor's legal status changes from involuntary to voluntary.
 - d. If immediate hospitalization is critically needed.
6. Implementation and Review

1. Definitions:

For purposes of these procedures, the following definitions shall apply:

- a. "Minor" means any person aged 14, 15, 16 or 17 who has not been emancipated and is not under the jurisdiction of the Juvenile Court.
- b. "Mental Health Facility" means any health facility licensed under Section 1250 of the Health and Safety Code which is operated by or under contract with the San Mateo County Department of Mental Health to provide diagnostic and treatment services for mental and emotional disorders. For these purposes, mental health facility also includes Napa State Hospital only to the extent that the proposed admission involves minors who are San Mateo County residents.
- c. "Mental Disorder" means a condition diagnosed as a mental disorder in the current edition of the American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (DSM III-R).
A minor shall not be considered mentally disordered solely for exhibiting behaviors specified under Welfare and Institutions Code (WIC) Sections 601 and 602.
- d. "Professional person" means any licensed psychiatrist, psychologist, social worker, nurse, psychiatric technician or mental health specialist who meets the qualifications of Sections 622-629 of the California Administrative Code (CAC).
- e. "Advocate" means a professional staff member of the San Mateo Patients' Rights Advocacy Office who is authorized to perform advocacy services pursuant to WIC Section 5520 et seq.
- f. "Hearing Officer" means an employee or contractor of the Superior Court appointed pursuant to WIC Section 5256.1 who is independent from any of the parties involved in the hearing and from the proposed placement facility.
- g. "Least restrictive setting" means that treatment modality or program which affords the most normal environment and the maximum amount of personal freedom – such as the freedom to be out of doors, freedom of movement, freedom to socialize, freedom to participate in the determination of one's treatment plan and freedom to partake in community and recreational activities – consistent with the effective delivery of services for the individual being treated.
- h. "Work Days", means any day that the Superior Court for San Mateo County is open.

2. Applicability

This procedure is only applicable to inpatient hospitalization that is funded through Short-Doyle or Short-Doyle/Medi-Cal.

3. The Admission Process

A minor may not be admitted for treatment to a mental health facility as defined unless*:

- a. The minor meets the criteria for involuntary commitment and is hospitalized under WIC 5150 et seq.; or
- b. The minor is under an LPS conservatorship and the conservator authorizes such placement; or
- c. The minor, after being advised by an attorney, knowingly and intelligently waives his/her right to a hearing and accepts the proposed treatment on the basis of parental/guardian voluntary consent; or

- d. There is an administrative hearing and a finding by the Hearing Officer that hospitalization is appropriate under the standards and procedures stated below

No minor may be admitted to a mental health facility unless the facility has in its possession one of the following:

- a. A valid and signed 72-hour detention form (5150);
- b. Proper conservatorship papers which authorize the conservator to place the minor in an inpatient psychiatric facility.
- c. A copy of the Hearing Officer's decision approving inpatient treatment in that facility; or
- d. A copy of the waiver of the hearing signed by both the minor and his or her counsel.

A copy of the above referenced document must be retained in the minor's treatment chart, along with a signed consent for treatment by the parent or legal guardian, if the minor is not on an involuntary hold or conservatorship.

***Persons who are dependent children or wards of the court may only be treated in a mental health facility if they volunteer under the provisions of WIC Section 6552, are committed involuntarily pursuant to WIC Section 5150, or are under LPS conservatorship and are placed by their conservator.**

Preliminary Report

If a mental health facility as defined in Section 1 is requested to admit a minor for inpatient mental health treatment which shall be funded through Short-Doyle or Short-Doyle Medi-Cal the facility shall inform the Mental Health Director, County of San Mateo, of the intended admission. The Mental Health Director upon such notification shall appoint a professional person to undertake a face-to-face evaluation of the minor. The professional person shall make an initial determination whether all of the following applies:

- a. The minor suffers from a mental disorder; and
 - b. The proposed 24-hour care treatment is reasonably expected to ameliorate the mental disorder; and
- c. The admission sought is the least restrictive and most appropriate and available setting which can fulfill the objectives of treatment;
- d. If these three factors are applicable, the professional person shall draw up a written report within three work days of the evaluation specifying;
- e. Those facts which substantiate that the minor has a mental disorder;
- f. That there is a reasonable expectation that treatment will improve the minor's mental disorder, and why;
- g. That the minor's proposed hospitalization is the least restrictive and most appropriate and available setting necessary to achieve the purposes of treatment and why;
- h. That the treatment program is in the minor's home community or that the benefit of placement outside the home community outweighs the detriment of separating the minor from his or her community.
- i. The preliminary treatment plan which includes:
 - the treatment regimen;
 - its short and long term goals;
 - its probable benefits and side effects;

- its duration;
 - its location;
 - the extent to which parent or significant other(s) should be involved in treatment;
 - a description of the physical surroundings, including the size and nature of sleeping quarters and recreational facilities both indoors and outdoors;
 - the number and description of other patients with whom the minors will come in contact;
 - the availability of vocational and educational facilities and programs; and
- j. The name, address and telephone number(s) where the minor and the minor's parent or legal guardian can be reached, and the times when they are available.

In the event the professional person appointed by Mental Health Division determines that inpatient treatment is appropriate, he or she shall contact the Patient's Rights Office, San Mateo County. The Patient's Rights Office shall refer the matter to the Private Defender Program for appointment of counsel for the minor who will see the minor within one working day.

Copies of the professional person's report shall be given to the minor, Private Defender Program for the minor's appointed counsel, and an appropriate representative of the facility where the minor will be treated. A copy shall also be given to the Hearing Officer, if and when that office is appointed.

Waivers

A minor may waive his/her right to a Roger S. hearing. The waiver must be voluntary, informed and intelligent. If the minor is unwilling or unable to grant this waiver, a hearing will be conducted as described in Section ____.

When the minor waives the right to the hearing, the minor's counsel shall certify in writing that the minor freely, voluntarily and intelligently waived the right to the hearing. The minor's counsel and the minor shall sign the approved "Waiver of Roger S. Hearing" form, hereinafter referred to as "Waiver."

In situations where a minor was admitted after waiving the right to a hearing and subsequently requests a hearing, the treatment staff of the facility where the minor is placed shall notify the Patient's Rights Office for San Mateo County. The Patient's Rights Office in turn will contact the Private Defender Program for investigation and any appropriate action as outlined in these procedures and under current laws.

The Hearing

If the minor does not waive the right to a hearing, the minor's counsel shall notify the Court Administrative Office. This office shall then appoint a hearing officer. The hearing will be held within three workdays after the filing of the professional person's report, unless an independent psychiatric evaluation is sought. In that event, the hearing may be postponed an additional two work days.

The hearing officer will be given a copy of the preliminary report prepared pursuant to Section _____. Notice of the hearing will be given by the hearing officer to the minor, the minor's counsel, the minor's parent or legal guardian, the professional person recommending hospitalization and the facility. The professional person and a member of a psychiatric facility who has been involved in the minor's treatment must be present and give testimony at the hearing. In both cases, that individual must have personally evaluated the minor prior to the hearing.

a. Preparation for Hearing by the Minor's Counsel:

Prior to the hearing, counsel will interview the minor and gather information, which may be used in representing him/her at the hearing. Upon the written consent of the minor, the minor's counsel shall have access to all medical, psychological and social records, and information pertinent to the disposition of the minor's proposed admission for psychiatric inpatient care, including previous treatment files.

b. The Hearing Setting and Decorum:

The hearing shall be held in an informal setting so as to minimize the anxiety of both parents and minors and promote cooperation and communication between all interested parties. It shall be situated at a location, which ensures maximum privacy. The professional person(s) participating, the hearing officer, and the minor's counsel will all be bound by the confidentiality provisions under the Welfare and Institutions Code and subject to the penalties imposed by WIC Section 5330 for violations of these statutes.

The hearing shall be closed to anyone other than the minor, his/her counsel, his/her parents or legal guardian, the hearing officer and those persons presenting evidence, unless an exception is agreed to by the minor and his/her counsel.

The hearing shall be conducted in English. However, if any of the parties do not comprehend English, the hearing officer shall request the Interpreter Service Coordinator to provide an interpreter for translation services.

c. Minor's Rights at the Hearing:

The minor shall be represented by an attorney, preferably the same person who met with him/her concerning the waiver.

The minor and his/her attorney shall have the following rights:

- To adequate written notice of the basis for the proposed action (the preliminary report can serve this purpose).
- To be present at the hearing.
- To present evidence and to call witnesses.
- To confront and cross-examine witnesses.
- To have the proceedings tape-recorded.

d. Hearing Procedure

The hearing will be conducted on an impartial and within the above guidelines, informal basis in order to encourage free and open discussion by

participants. The hearing officer may consider all evidence of probative value irrespective of whether it complies with normal rules of evidence and will not be bound by judicial rules of procedure or evidence.

The hearing officer will introduce the parties and give a brief explanation of the procedure in a manner geared to the minor's comprehension. All parties will take care to speak in terms the minor can understand and will explain any terminology with which he/she may not be familiar. All reasonable efforts shall be made to accommodate the minor and alleviate any tension.

After the introduction, the hearing officer will ask the professional person and, if the hearing officer determines additional evidence is necessary, the parent(s) or legal guardian to present evidence in support of the hospitalization. The presenter(s) shall concentrate on evidence which supports the contention that the minor is mentally disordered, that there is a likelihood that the proposed treatment will be of benefit to the minor and that the proposed treatment is the most appropriate and least restrictive alternative for the minor's condition. The presenter may refer to medical records, relate observed behavior and, if qualified, may give expert opinion. After the presentation, the attorney, and/or minor will have the opportunity to question the presenter(s) and present any evidence in the minor's behalf.

The hearing officer will listen to and consider the evidence presented by both sides and ensure that the minor and attorney also have the opportunity to listen to and reply to evidence presented in behalf of the hospitalization.

In considering the information presented, the hearing officer may request the professional person to provide him/her with any alternate treatment options which may possibly be considered suitable for the minor's condition.

If the minor has received psychiatric medication within 24 hours or such longer period of time as the hearing officer may designate, the professional person will inform the hearing officer of the fact and of the probable effects of the medication.

e. The Hearing Decision:

After considering all the evidence and fully hearing both parties, the hearing officer shall render a decision, which shall be based on a preponderance of the evidence. If the hearing officer decides that:

- The minor suffers from a mental disorder; and
- The proposed 24-hour care treatment is reasonably expected to ameliorate minor's mental disorder; and
- That the minor's proposed hospitalization is the least restrictive and most appropriate and available setting necessary to achieve the purpose of the treatment; and
- That there is no suitable alternative to hospitalization;

The hearing officer will authorize the minor's inpatient treatment in accordance with the proposed treatment plan. If the hearing officer decides negatively on any of these four considerations, the minor may not be admitted to a mental health facility. In this case, the professional person shall make appropriate referral recommendations, and arrangements if necessary, to treatment modalities other than mental health facilities as defined.

At the conclusion of the hearing, the hearing officer will make his or her decision and commit to it to writing along with the basis upon which the decision was reached. Copies shall be given to the minor, his parent or guardian, the minor's attorney, and the appropriate representative of the facility. One copy shall be retained by the hearing officer.

- f. Termination of the Hearing Order:
The authorization for admission to a mental health facility shall terminate when the minor is discharged from the facility or at the end of one year, whichever occurs first. For hospitalization beyond one year to commence, another hearing must be held unless the minor, after discussing the matter with counsel, decides to waive this right.

4. Rehearing

A minor may request a rehearing on his or her status as an inpatient for mental health treatment in a locked ward or facility after six months have expired from the hearing or waiver of hearing approving his or her initial hospitalization.

Additionally, a minor may request a hearing limited to the sole question whether or not his or her placement is the least restrictive and most appropriate and available setting which can fulfill the objectives of his or her treatment plan. A hearing on this issue may not be requested until after three months have expired from hearing or waiver of hearing approving his or her initial hospitalization.

If a minor requests either a rehearing or review of placement as discussed above, the facility shall immediately notify the Patient's Rights Office of the request. The Patient's Rights Office in turn will refer the request to the Private Defender Program for appointment of counsel to the minor.

5. Special Circumstances

- a. If the Minor turns 14 while hospitalized:
If a minor is about to reach the age of 14 while hospitalized and the mental health facility intends to continue hospitalization on a "voluntary" basis, the hospital must notify the Patients Rights Office at least two weeks prior to the minor's 14th birthday. The Patients Rights Office will refer the matter to the Private Defender Program for appointment of counsel. Appointed counsel will meet with the minor to determine whether or not the minor wishes to waive the right to a hearing. If the minor does, the waiver document will be signed by both the minor and the attorney and will be filed in the minor's treatment chart. If the minor chooses not to waive, a hearing will be held prior to the minor's 14th birthday, following the

procedures delineated above. If no hearing takes place before the minor turns 14, the minor shall be released unless he or she is held pursuant to WIC Section 5150 et seq.

b. If the Minor turns 18 while hospitalized:

If the minor attains the age of majority while hospitalized (18 years) the minor shall receive all of the rights afforded adult patients, including the ability to be a voluntary patient if he or she is able and willing pursuant to WIC Section 6000 and 6002. Once 18, the person may no longer be held on the basis of parental/guardian consent or as a result of the decision made at the administrative hearing.

c. If the Minor's legal status changes from involuntary to voluntary:

If the minor is on a legal hold pursuant to WIC Section 5150, 5250, 5260, 5300 and 5350 and the hospital intends to detain the minor on a "voluntary" basis beyond the expiration of the hold, the hospital shall notify the Patients Rights Office at least seven days prior to the expiration date. That office will refer the matter to the Private Defender Program for appointment of counsel. Within one working day, the minor's counsel shall meet with the minor to determine whether or not the minor wishes to waive the right to a hearing. If the minor does, the waiver document will be signed by both the minor and the attorney and will be filed in the minor's treatment chart. If the minor chooses not to waive, a hearing will be held prior to the expiration of the hold, following the same procedures delineated.

d. If immediate hospitalization is critically needed:

Nothing shall preclude the minor's admission to a mental health facility in an emergency on an involuntary basis pursuant to WIC 5150 et seq. providing the minor meets the criteria for involuntary commitment.

6. Implementation and Review

These procedures shall become effective on February 15, 1988, and shall not be retroactive to minors admitted to mental health facilities prior to that date unless they are hospitalized continuously more than six months beyond the date of the procedures' initiation. They will be reviewed periodically, but at least once within the initial 6 months of initiation to establish how well they are being implemented. Nothing shall preclude a change in these procedures at any time to enhance efficiency and/or rights protection.

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