

# Advocacy Tools

## Facilities Monitoring

*Each local mental health director shall appoint, or contract for the services of, one or more county patients' rights advocates. The duties of these advocates shall include, but not be limited to, the following:*

*(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 or rights guaranteed under the provisions of Division 5 (commencing with Section 5000).*

*(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.*

*(d) To insure 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 the Patients' Rights Office.*

**California Welfare and Institutions Code §5520**

### ***Empowerment Resources #06***

Monitoring is the observation/review of a mental health facility, its staff, its patients and/or its records. It is intended to get information about the way an institution functions, and why. It identifies institutional policies and practices, analyzes how they affect patients, and asks how they can be changed to improve life for patients. Monitoring usually focuses on finding patterns as opposed to one-time occurrences, looking at patients' problems in the aggregate rather than individually. Although the process may be initiated by an individual complaint or informal observation, monitoring focuses on the institution's practices and may make recommendations for institutional change. Monitoring should have a high degree of organization, formality and objectivity in the investigation, documentation and use of information. It is a kind of research--a scientific, methodical study of the institution.

Monitoring is based on the idea that presenting solid, detailed evidence about life at the institution and institutional practices provides the best information about how an institution may need to change. Monitoring may help to settle factual disputes about whether an egregious incident is a one-time occurrence or an ongoing problem. It allows the advocate to analyze whether a specific problem warrants corrective measures. The organized, formalized, and empirical nature of monitoring makes it more consistent with the clinical perspective, thus addressing the objections of mental health personnel to the abstract and rhetorical quality of advocacy.

The success of a particular monitoring project will be determined by the quality of the evidence, the credibility of the monitor, and the quality of the final product. Learning to identify, document and report problems is a valuable skill in increasing the overall effectiveness of the advocate.

## ✦ **STEP 1 – LOCATE YOUR COUNTY’S MONITORING PROTOCOL**

Many counties have a protocol that will help you know who to notify and the particular steps to follow. If your county has a protocol, you may want to compare it with the example provided and, if necessary, make suggestions for change. If your county doesn't have a protocol, we encourage you to use the monitoring protocol attached as Exhibit A. Following a protocol will add credibility to your work.

**\*\*Note-** make sure you ask your mental health director how issues or patients’ rights violations discovered as a result of the monitoring should be handled.

## ✦ **STEP 2 – DEVELOP A PLAN**

The advocate's first task is to set the goals and priorities for the monitoring project. Considerations of time, resources (e.g., experience, money, staffing) and suspected seriousness and pervasiveness of the problem will all be relevant to determining goals. Although a full-scale review of a facility for compliance with all legal requirements can be effective, it is time-consuming and may not be practical to undertake. Focusing on a specific issue enables the advocate to target a particular area of concern and potentially undertake a more detailed review. For more detailed information on how and what to monitor, see Exhibit B.

Once the goals and priorities are established, the advocate should identify the personnel who will be involved, establish the procedures that will be followed, develop a timeline, and create the monitoring instruments that will be used. The Central Office of Patients’ Rights can provide you with sample monitoring instruments.

As part of the plan, the advocate should also identify the sources of information that will be accessed as part of the monitoring. Sources of information include interviews with patients, review of patient records, observing the facility, interviews

with facility staff, and review of facility policies and procedures. It is a good practice to check more than one source of information.

### ✦ **STEP 3 – DEVELOP THE TOOL/INSTRUMENT**

Even simple monitoring projects can benefit from using a standard tool on which to collect information. The tool helps to organize and standardize the record review, interview or observation, and keeps the monitor on track and establishing objectivity and credibility for the exercise. Tools can be designed as checklists, grids, or questions and answers. Often it is helpful to identify the standard (i.e., HCFA regulations, JCAHO standards) and the ways the facility can demonstrate it complies with the standards. They should be developed with a format that follows the flow of information to be retrieved and be usable and readable by both the collector and the analyzer of the information.

*Practicing.* Once the monitoring procedure and forms are developed, it is helpful to do some trial runs. In the case of record reviews, several charts should be used to test the instruments and procedure. Interviews and surveys should be tested as well. Evaluate whether you are getting the kind of information you are looking for in the format you use and in the amount of time you will have available. If the questions are repetitive or confusing or the charts aren't available when and where you thought they were, modify your plan including the tool.

### ✦ **STEP 4 – MAKE YOUR INITIAL CONTACTS**

The first letter is to the Mental Health Director. In the letter you should lay out the purpose for the monitoring, the tool or instrument you will be using, and the timeline you are expecting to follow. The second letter goes to the facility you will be monitoring. This letter also includes your authority to monitor (see Exhibit C), the purpose of the monitoring, and also the timeline. Your county protocol may require that the Mental Health Director give approval before you begin. You may wish to make an informal in-person proposal before you formalize it with the letters.

### ✦ **Step 5 – Conducting the Monitoring**

Here are some basic things to remember when you finally begin the actual monitoring.

- Plan on setting aside enough time to do a complete job, usually several days.
- When you are monitoring medical records, remember that it will take you a few charts to really understand how the charts are organized, and you may find that your tool needs to be adjusted.
- Work with the facility to find a private place that will allow you to spread out the charts if you are reviewing medical records.
- Make a second copy of any policy or procedure so that you maintain a clean copy and have a copy to write on.
- Remember you are looking for what is not there as much as what is. What is missing from the record, policy, or facility?
- Whatever you are reviewing, keep clear notes and make copies when necessary. Rather than using client names, give each record a number that you can refer to in your report. Make sure you keep a corresponding list.
- Always review policies and procedures that relate to whatever you are monitoring. Look for problems in the policies and procedures and whether the staff is following the policies and procedures.

## ✈ **STEP 6 – ORGANIZING AND ANALYZING MONITORING DATA**

After information is collected it must be organized and analyzed. This usually means counting the number of specific responses and calculating a percentage (e.g., the number of times a chart reflected a certain practice). Initial organization of the information will usually follow the structure of the forms used to collect it. As advocates work with the evidence, relationships between different sets of facts may emerge. Be on the lookout for these relationships. Try different correlates. For example, what do patients say, what do the charts show, what are the facility's policies?). In monitoring, the advocate is looking to identify patterns and trends. What constitutes a pattern or trend, "what is statistically significant," will require an analysis in each situation. A general rule is that the larger the sample, the more reliable the conclusion. But even several patients credibly indicating that a serious problem exists is important to consider. Weigh the seriousness of the issue and the accuracy and credibility of the evidence together with the actual numbers and percentages. One way to organize the information is to use a computer spread sheet or to design a chart to enter the information in a systematic way.

## ✦ STEP 7 – REPORTING YOUR RESULTS

Once information is analyzed and organized, the advocate will want to develop a presentation of the results—the final product. Putting monitoring results in writing is valuable as both a strategy and record-keeping measure. Having something in writing always makes it more important, more permanent and easier to communicate to others.

Reports of monitoring activities are not necessarily long. Some of the best monitoring reports are short and uncomplicated. For longer reports, it is suggested that there be a single concise summary—an accurate representation of the material in the body of the report. Needless to say, reports that are well written, that are proofread, and that look professional are more appealing than poorly presented documents. Remember that presentation is also a matter of the language used. A report should be just that—a report of your finding, your conclusions and your suggestions. Avoid proselytizing or patronizing. A report should include:

- An introduction—what is the issue, why was the project undertaken, and a statement of the advocates authority to conduct the exercise;
- An explanation of the methodology including a description of the protocol, a copy of the form used, and any special analytic procedure followed;
- A statement of findings including description and graphics, if desired, as well as some notable examples;
- An analysis of the findings—what they suggest and why;
- A statement of relevant law—including cites;
- A list of recommendations;
- A summary and conclusion

A good report will emphasize serious problems and may mention smaller, unimportant problems. Trivial documentation errors may not be worth arguing about when there are real issues to address. Give credit when and where it is due. Don't overlook good performance of an employee who is trying hard. Mention it in the report and point it out as an example of good work that can be done. Refer to and empathize with problems facing staff and administration, including cost constraints, poor working conditions, bureaucratic mandates. If possible, show how your suggestions can positively address those problems.

Provide the reader with extensive evidence and support for your position. If possible, anticipate responses to your position and address them in the report. Be

creative in developing and presenting support—extrapolate from related principles, demonstrate your analysis step-by-step and contrast the facts and law where illuminating. Explain the practical reasons for the policy. Where appropriate, reference statutes or regulations to support your argument.

## ✦ **STEP 8 – PRELIMINARY REPORTS AND MEETINGS**

Send out a preliminary report and set up a meeting to over your results. Hopefully the facility will have reviewed your recommendations and will have a corrective plan of action. The meeting can serve as another way to let the facility know you see the things they are doing right and to underline the changes that need to be made and why. Sometimes the facility will feel that something in your report is incorrect, and if this is true, the meeting gives you a chance to correct the information before it goes to the Mental Health Director. It also gives the report more weight and a timeline for when the changes will be made if the facility's corrective plan is included.

## ✦ **STEP 9 – FINAL REPORT**

The final report incorporates the agreed-upon changes from the meetings you have with the facility and any final recommendations you may have. This is sent to the Mental Health Director (and whoever else is required by the county protocol). This is what you will refer to at a later date to either do follow-up monitoring to formally re-evaluate the problem areas or to informally monitor the facility for improvements in patients' rights.

This information was put together with the help of Kyra Kazantzis, Mental Health Advocacy Project and Janet Wilson, Mental Health Consumer Concerns from a 1997 Patients' Rights Training.

## **EXHIBIT A**

### **SAMPLE MONITORING PROTOCOL**

1. Notify the Mental Health Director and/or his/her designee of the need for a monitoring at a designated facility. Notification shall include the following:
  - a) Purpose of monitoring
  - b) Date monitoring will begin
  - c) Projected date for completion of final report.
  
2. Upon approval from the Mental Health Director, notify facility in writing of the following:
  - a) Purpose of monitoring
  - b) Legal basis for monitoring
  - c) Date monitoring will begin
  - d) Projected date for completion of final report.
  
3. If the person responsible for the monitoring finds serious patients' rights violations prior to the conclusion of the monitoring process, those will be reported to the facility and the Mental Health director and/or his/her designee at the time they are found.
  
4. A copy of the draft monitoring reports shall be provided to the facility director for review prior to being presented to the hospital. If the report contains serious patients' rights violations, the Mental Health Director's designee will participate in meetings held between the facility and advocacy staff. A copy of the final report shall be provided to the mental health director with the hospital's corrective plan
  
5. The monitoring shall be conducted utilizing a team comprised of a representative the Patients' Rights Office, the Mental Health Administration, and the facility that is being monitored. (This can include PR office only.)
  
6. A monitoring tool shall be developed by the Patients' Rights Advocate in accordance with guidelines established by the California Office of Patients' Rights.
  
7. Any patients' rights violations shall be corrected within 60 days of the final monitoring report. Patients' rights violations of a life-threatening nature shall be corrected immediately.

## **EXHIBIT B HOW AND WHAT TO MONITOR**

### **Records**

Although the mere fact that activities have been documented does not ensure that they have been effectively accomplished, the written record is an important indicator of whether the facility recognizes its obligations and has made attempts to comply.

In reviewing records, the advocate is looking for two things—what the records say and what the records fail to say that they are supposed to say. The advocate is interested both in the form of the record (i.e., whether information is provided and is accurate and accessible) as well as the substance of the record (i.e., whether the information provided shows that the facility has performed up to the standards it is required to by law). A good general principle is that records speak for themselves. Advocates should presume that a particular word means what it says; when a record is silent as to a particular event, that event has not occurred. The burden is on the facility to explain a different meaning or that an event has occurred and why it was not documented.

The most important principle in chart reviews is to remain alert and flexible. Avoid becoming routinized in the review; follow-up on unusual comments or notations. Read progress notes of all involved staff carefully.

Record reviews are an excellent opportunity to see how well a facility understands and follows required procedures. They can be conducted as part of a special visit to the facility, monitored as part of the advocate's preparation for the certification review or capacity hearing, or other advocacy functions.

### **Policy and Procedure Review**

Review of policies and procedures for a general facility review should include (but are not limited to) an analysis of the following provisions:

- Cal. Welf. & Inst. Code §§5325-5325.1 rights are addressed within the policies;
- Rights are denied only for "good cause" as defined in Cal. Code Regs. Title9, §865.2 (check examples, if any) and only when less restrictive alternatives are not available;

- Rights denied are related to the specific behavior complained of and are to be restored when "good cause" no longer exists;
- Rights are not denied on a programmatic basis, as a condition of admission, as a punishment, as part of a treatment program, or treated as a privilege to be earned;
- Rights denials are documented in the record according to Cal. Code Regs. Title 9, §865.3;
- Rights denials are documented in reports submitted quarterly to the Office of Patients' Rights;
- Involuntary Detention and Treatment Standards and Procedures are consistent with legal requirements;
- Informed consent and capacity hearing procedures are consistent with legal requirements;
- Voluntary status is offered to all patients who are willing and able to accept treatment;
- Seclusions and/or restraints are used only under the conditions set forth in Cal. Code Regs. Title 9, §865.4 and relevant provisions of Cal. Code Regs. Title 22, HFCA or JAHCO (if applicable);
- Electroconvulsive therapy is administered only under the conditions set forth in Cal. Welf. & Inst. Code §5326.7 et seq.;
- Policies provide for appropriate investigation and reporting of special incidents, including alleged sexual assaults;
- Patients are permitted access to their treatment record (Cal. Health and Safety Code §123110);
- Patients are given proper information about their treatment and denials of access are consistent with the statute (Cal. Welf. & Inst. Code §5326.2).

## **Interview**

There are occasions when interviews will be the best or the only way in which to get information. One example of this strategy is a patient survey. This can be a useful device for ascertaining the subjective experience of the patient. A great deal of what goes on in a psychiatric facility is known only to the patients. While many mental health clinicians may be skeptical of the individual patient's opinion, they are less inclined to argue with the collective assessment. Ask patients:

- Whether they have received handbooks or were given information about their medications;

- Whether they were given an opportunity to be on voluntary status, give or withhold informed consent or participate in treatment planning;
- How long their individual therapy sessions lasted;
- Whether their conservators have visited them;
- What is their general satisfaction with the safety, sanitation, comfort and therapeutic quality of the facility;
- If they were restrained and/or secluded, what was their experience;
- What their suggestions are for improving the facility and treatment program.

## **Site Reviews**

Regular observation of a facility is a component of all good advocacy work. Direct, personal observation serves to check that the information obtained in record reviews and interviews accurately represents life at the facility. It also helps "round out" statistical data and personalize the advocate's understanding of the implications of problems for patients. Finally, observation alone may be the only way to get information and provide valuable data.

Observations can be recorded on forms or in journal fashion with time and place in specific entries. Facility site reviews can include a check that:

- patients' rights posters are current, in threshold languages and prominently placed;
- patients' rights handbooks are available;
- private telephones are available and working;
- visiting hours are posted and observed;
- patients are allowed to wear their own clothing;
- patients have their individual storage space to which they have access;
- patients have their own spending money and personal possessions;
- property entrusted to facility's care is properly safeguarded;
- patients have access to outdoors;
- patients have privacy;
- patients are treated with dignity and respect;
- patients are provided information about their medication, patients' rights and commitment process;
- patients have activities in which to participate;
- patients are receiving appropriate and desired medical treatment;
- how seclusions and/or restraints are initiated and carried out;

- patient census is within limits;
- facility, including seclusion rooms, is clean and free of hazards;
- facility is comfortable to the extent possible.

It is sometimes possible and very effective to collect photos as part of the monitoring exercise. Photos labeled as to date and place give a graphic demonstration of physical plant problems, especially when produced in a series or over time. Care should be taken, however, to protect the confidentiality of the patients. Generally, this means that patients should not be photographed.

Physical evidence and demonstration are other types of evidence available to the advocate. Showing an administrator 10 broken beds or a telephone that is out of service is better than simply telling him. By producing a used syringe an advocate can show how they are being improperly discarded. Cockroaches in a jar, mildewed pillows and soured milk are all examples of physical evidence that can be used effectively to resolve problems.

## **Other Sources of Information**

Many agencies conduct investigations and collect information about psychiatric facilities, including the facilities themselves. Find out about internal quality assurance methods, audits and medical reviews conducted by the facility or its parent organization. Ask to see the most recent reports or findings. These functions are often conducted by different departments that are less invested in and protective of the information. Get it and review it.

Always ask the facility for the latest report of the State Department of Health, Licensing and Certification division (or the county Health Department or Department of Social Services, if appropriate). Contact the department directly for more complete information about the latest licensing review or investigation. If specific problems are suspected, contact the state Office of the Attorney General, Bureau of Medi-Cal Fraud; the Occupational Safety and Health Administration; or, in the case of particular medical personnel, the state Board of Medical Quality Assurance for their findings or to confirm a pending investigation. Finally, many police, sheriff departments, and district attorney's offices have information about psychiatric facilities that reveal deficiencies.

# EXHIBIT C

## OFFICE OF PATIENTS' RIGHTS

### Protection & Advocacy, Inc.

100 Howe Avenue, Suite 240N

Sacramento, CA 95825-8202

Telephone (916) 575-1610

Toll Free (800) 254-5166

FAX (916) 575-1613

TTY/TDD (916) 575-1614

## MEMORANDUM

TO: Interested Persons

FROM: Darla Rucker, Patients' Rights Specialist

RE: Patients' Rights Advocate Access to Health Records  
for the Purpose of Monitoring

DATE: May 16, 2001

As outlined below, the county patients' rights advocate has authority to review client health records as part of their monitoring responsibilities.

The statutory authority governing patients' rights advocates is set out in Division 5, Part 1, Chapter 6 of the Welfare and Institutions Code. See Welf & Inst. Code, §§5500 *et seq.* Section 5520, which contains a list of duties of patients' rights advocates, provides in pertinent part:

The duties of [patients' rights] advocates shall include, but not be limited to, the following:

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(b) To monitor mental health facilities, services and programs for compliance with statutory and regulatory patients' rights provisions. Welf. & Inst. Code, §5520(b).

Section 5545 sets out the specific access authority of patients' rights advocates for the purposes of monitoring:

Nothing in this chapter shall be construed to limit access to recipients of mental health services in any mental health facility, program or service or to information or records of recipients of mental health services for the purposes of subdivision (b) of Section 5520 or when otherwise authorized by law to county patients' rights advocates or other individuals who are not county patients' rights advocates. (Emphasis added)

As the state agency responsible for overseeing the patients' rights law in California, the Department of Mental Health (DMH) has consistently taken the position that advocates may access confidential information and records, without the patients' consent, for the purposes of conducting monitoring (see DMH Memorandum dated 3/26/99).

In addition to this statutory authority, many county patients' rights advocates contract with their local mental health directors to do monitoring. These contracts may designate the advocate as the local mental health director's representative in matters pertaining to patients' rights, giving the advocate all the rights of access provided to the director. Welfare and Institutions Code Section 5326.1 provides access to the director and his/her designee to all information pertaining to denials of rights including consent forms, required documentation for convulsive treatment, documentation regarding the use of restraints and seclusion, physician's orders, nursing notes and involuntary detention and conservatorship papers.

In summary, county patients' rights advocates have authority under state statute (and in some cases under county contract as well) to access confidential mental health records without the consent of the patient or the patient's conservator in the course of conducting monitoring of psychiatric facilities.

Please call the Office of Patients' Rights if you have a question that is not answered in this memorandum or if you need additional information.