

## OFFICE OF PATIENTS' RIGHTS

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To: All Patients' Rights Advocates

From: Office of Patients' Rights

Re: Voluntary Treatment

Date: November 23, 1999

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### **Should individuals be considered for voluntary treatment prior to being placed on an involuntary hold?**

Yes. All patients have the right to be considered for voluntary treatment prior to being placed on an involuntary hold. In addition to the broad patients' right to receive treatment in ways that are the least restrictive to the personal liberty of the individual" (Welf. & Inst. Code § 5325.1(a)), there are specific provisions which speak directly to the right to voluntary treatment.

Under Welfare & Institutions Code § 5250(c), one of the criteria which must be met prior to placing an individual on a 14-day hold is that "the person has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis." Further, the actual "Notice of Certification" form includes this: "...The above named person has been informed of this evaluation, and has been advised of the need for, but has not been able or willing to accept treatment on a voluntary basis, or accept referral to the following services:\_\_\_\_\_..." Welf. & Inst. Code § 5252. When the physician signs this form, she/he thereby affirms that she/he has offered the patient voluntary treatment. Finally, at a hearing on a Writ of Habeas Corpus, the physicians' failure to offer voluntary treatment is grounds for release from the 14-day hold. If the judge finds that the individual has "...not been advised of, or had accepted, voluntary treatment... he or she shall be released immediately." Welf. & Inst. Code § 5276.

Put simply, once the physician determines that an individual, as a result of a mental disorder, is a danger to self or other, or unable to provide for basic needs, he/she

must also determine whether that individual is willing and able to accept voluntary treatment prior to initiating an involuntary hold.

**May mental health managed care providers require that individuals be placed on involuntary holds as a prerequisite for payment?**

No. As stated above, individuals have a statutory right to treatment provided in ways that are least restrictive of personal liberty. And, involuntary holds are appropriate *only* when the individual is unwilling or unable to accept voluntary treatment. However, confusion has arisen around this issue because many managed care providers suspend the normal ‘medical necessity’ evaluation for authorization for payment when individuals are placed on involuntary psychiatric holds.

Increasingly, advocates report that physicians are placing individuals who seek voluntary treatment on involuntary holds either as a shortcut to ensure authorization for payment or out of a real fear that their patients will be inappropriately denied payment authorization for necessary treatment. Advocates should encourage physicians to adequately document their voluntary patients’ need for treatment to establish ‘medical necessity,’ rather than routinely placing them on involuntary holds in light of the following points:

Mental health clients have a statutory right to treatment in the least restrictive setting.

The code sections cited above demonstrate that there is a clear public policy preference for voluntary treatment.

An individual’s status as a voluntary or involuntary patient is not necessarily an indicator of the severity of that individual’s condition or their need for treatment.

Voluntary treatment is generally regarded as ethically superior and more therapeutically beneficial than involuntary treatment. Involuntary treatment may actually be counter-therapeutic for certain individuals.

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Due process requirements are automatically triggered at the initiation of an involuntary psychiatric hold. Placing individuals who seek voluntary treatment on involuntary holds in order to secure payment drains the time and resources of clinicians, advocates, and the court unnecessarily.

Involuntary treatment is by its nature coercive. Unnecessarily placing a patient on an involuntary hold may alienate the patient and thereby damage the therapeutic relationship. This experience may discourage that individual from seeking out treatment in the future.

Unnecessarily placing a patient on an involuntary hold may subject the patient to additional legal disabilities.

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