



**TO:** CHA Members

**FROM:** Kirsten Barlow, Vice President, Policy

**DATE:** September 29, 2023

**SUBJECT: Hospital Obligations Under AB 2275 (Wood, Statutes of 2022) for Individuals on Involuntary Psychiatric Holds**

The purpose of this memo is to provide guidance to CHA members about new requirements established in the Lanterman-Petris-Short (LPS) Act pursuant to AB 2275, which took effect on Jan. 1, 2023, and provides new patient protections for individuals placed on involuntary psychiatric holds in California. In the event the Department of Health Care Services (DHCS) releases administrative guidance on the implementation of AB 2275, CHA will notify members and provide an updated memo.

**Contacting the County Patients’ Rights Advocate After 72 Hours**

As a result of AB 2275 amendments to subdivision (a) of Welfare & Institutions Code (WIC) §5150, the 72-hour detainment period under the LPS Act begins at the time a person is first detained. Additionally, all facilities to which an involuntarily detained individual has been transported must notify the county’s patients’ rights advocate if the person has not been released within 72 hours of being detained.<sup>1</sup>

This notification requirement applies to all facilities to which an involuntarily detained person has been transported, even if the facility is not designated by the county for evaluation and treatment pursuant to WIC §5150. This includes but is not limited to crisis stabilization units, psychiatric health facilities, inpatient psychiatric hospitals, general acute care hospitals with inpatient psychiatric units, and general acute care hospitals with emergency departments.

A directory of county patients’ rights advocates is available [online](#).

While AB 2275 did not prescribe notification methods to be used, we encourage all facilities to determine which facility representative will make the patients’ rights advocate notifications and which method will be used (e.g., telephone, fax, e-mail).

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<sup>1</sup> Welf. & Inst. Code, §5150, subd. (k)

## **Implementing Due Process Requirements**

As a result of AB 2275 amendments to WIC §5256, a certification review hearing must be held within seven days of the date a person was initially detained if a person has not been certified for intensive treatment (of up to 14 days pursuant to WIC §5250) but remains involuntarily detained under WIC §5150.

This certification review hearing applies to all individuals involuntarily detained, even if the facility to which the individual has been transported is not designated by the county for evaluation and treatment, pursuant to WIC §5150.

The purpose of this certification review hearing is to determine whether continued detention pursuant to WIC §5150 is justified based on a probable cause determination by a "neutral" hearing officer. Specifically, the hearing officer will determine whether the person still meets WIC §5150 criteria and, if so, whether the person is willing to accept treatment voluntarily.

AB 2275 did not provide explicit instructions on the roles, responsibilities, or funding sources for these hearings. Additionally, administrative guidance has not been released by DHCS. However, CHA staff have conducted research and obtained expert opinions in order to provide the following guidance to CHA members.

### Hearing Arrangements

The county behavioral health department should be involved in arranging and scheduling the certification review hearings required by WIC §5256. These certification hearings shall be held in accordance with the requirements of WIC sections 5256.1 through 5256.8, inclusive. The certification hearing must occur within seven (7) calendar days from the date the person was initially detained, as indicated on DHCS Form 1801, "Application for Up to 72-Hour Assessment, Evaluation, and Crisis Intervention or Placement for Evaluation and Treatment."

All facilities, including both designated and non-designated, should provide reasonable access to attorneys, patients' rights advocates, hearing officers, or other individuals who are helping conduct and prepare the individual for the certification hearing. In recognition of involuntarily detained individuals' due process rights, all facilities in which a person is detained should identify an appropriate method and location within the facility where certification hearings can occur.<sup>2</sup>

At the certification review hearing, the evidence in support of the detention decision shall be presented by a person delegated by the director of the facility. Existing law requires all evidence that is relevant to establishing the person is or is not as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled, shall be admitted at the hearing and considered by the hearing officer.<sup>3</sup> Therefore, all designated and non-designated facilities in which individuals are involuntarily detained should determine the facility representative(s) who will provide evidence during certification hearings.

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<sup>2</sup> Welf. & Inst. Code, §5256.1

<sup>3</sup> Welf. & Inst. Code, §5256.4

### Rights of a Detained Person

Pursuant to subdivision (b) of WIC §5256, the county patients' rights advocate shall ensure an attorney or county patients' rights advocate meets with the person to discuss the commitment process, and to assist the person in the preparation of the certification hearing, or to answer questions or otherwise provide assistance, as appropriate.

If a person is detained in a facility designated by the county for evaluation and treatment, the facility shall inform the detained person of their rights with respect to the hearing process, including the right to assistance to prepare for the hearing, and a right to a judicial review by habeas corpus. If a person is detained in a non-designated facility, a professional person designated by the county shall inform the detained person of their rights with respect to the hearing process.<sup>4</sup>

### Ongoing Assessment and Evaluation

Legislative intent for the LPS Act includes providing services in the least restrictive setting appropriate to the needs of each person receiving services. Therefore, counties and facilities to which an involuntarily detained individual has been transported are encouraged to make all reasonable efforts to return individuals to voluntary status as soon as practicable. After a person is taken into custody for a period of up to 72 hours, subdivisions (a) and (c) of WIC §5150 require designated facilities to provide assessment<sup>5</sup> and crisis intervention<sup>6</sup> on an ongoing basis and to determine whether the person can be properly served without being detained. Facilities to which an involuntarily detained person has been transported are not required to notify the county patients' rights advocate if it is determined within 72 hours of initial detainment that the individual can be properly served without being detained and the individual agrees to receive further treatment on a voluntary basis.<sup>7</sup>

### Funding Considerations

Existing law at WIC §5014 provides that, to the extent otherwise permitted under state and federal law and consistent with the Mental Health Services Act, counties may pay for the provision of services required by the LPS Act using:

- Funds distributed to the counties from the Mental Health Subaccount, the Mental Health Equity Subaccount, and the Vehicle License Collection Account of the Local Revenue Fund
- Funds from the Mental Health Account and the Behavioral Health Subaccount within the Support Services Account of the Local Revenue Fund 2011

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<sup>4</sup> Welf. & Inst. Code, §5256, subd. (b)

<sup>5</sup> Pursuant to Welf. & Inst. Code, §5150.4, "assessment" means the determination of whether a person shall be evaluated and treated pursuant to section 5150.

<sup>6</sup> Pursuant to Welf. & Inst. Code, §5008, subd. (e), "crisis intervention" consists of an interview or series of interviews within a brief period of time, conducted by qualified professionals, and designed to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the person or the family. The interview or interviews may be conducted in the home of the person or family, or on an inpatient or outpatient basis with such therapy, or other services, as may be appropriate. The interview or interviews may include family members, significant support persons, providers, or other entities or individuals, as appropriate and as authorized by law. Crisis intervention may, as appropriate, include suicide prevention, psychiatric, welfare, psychological, legal, or other social services.

<sup>7</sup> Welf. & Inst. Code, §5257, subd. (b)(1)

- Funds from the Mental Health Services Fund when included in county plans pursuant to §5847
- Any other funds from which the controller makes distributions to the counties for those purposes<sup>8</sup>

This is consistent with a Dec. 15, 2021, report provided to the Assembly Judiciary and Assembly Health Committees by the Legislative Analyst’s Office, which stated:

*“Funding Sources.* Notably, county behavioral health departments receive dedicated revenues to provide mental health services generally, but do not have a specific fund source dedicated to the LPS Act. They can draw on these broader fund sources—which include 1991 realignment funds, 2011 realignment funds, MHSF, federal Medicaid funds, and federal mental health block grants—to support the treatment of individuals with severe mental illness at their discretion. These funding sources are supplemented with county general funds. ...Counties have shared that they predominantly use 1991 realignment funding and federal grants to pay for direct mental health services for individuals on LPS holds.”<sup>9</sup>

We hope the information above is helpful as hospitals navigate the requirements of this new law. In addition to this memo, CHA members may find it helpful to review the following webinar recordings:

- [The Hitches & Glitches of AB 2275 – LPS Involuntary Treatment](#) – July 31, 2023 – 90 min
- [Important Legal Changes to Psychiatric Holds in 2023](#) – Jan. 23, 2023 – 80 min

Please do not hesitate to contact me with any questions you may have. I can be reached at [kbarlow@calhospital.org](mailto:kbarlow@calhospital.org).

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<sup>8</sup> Welf. & Inst. Code, §5014

<sup>9</sup> [“Overview of Funding for the Lanterman-Petris-Short Act,”](#) Legislative Analyst Office, December 15, 2021, Presented to Assembly Committee on Judiciary, Hon. Mark Stone, Chair, Assembly Committee on Health, Hon. Jim Wood, Chair. Note: “MHSF” means Mental Health Services Fund (aka “MHSA”).