

# Updates on New Statutes, LPS, and EMTALA

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# Disclaimer

- This presentation is solely for **educational purposes** and the matters presented herein do not constitute legal advice with respect to your particular situation.
- The presentation does not constitute legal advice, or its application to the delivery of emergency health care services.
- Attendees should consult with their own legal counsel and/or risk management for advice and guidance.

# Agenda

- **2023 Changes to the LPS Act**
  - SB 929 – the new data collection burden just grew
  - AB 2242 – care coordination plans
  - SB 1338 – the CARE Act is now underway
  - AB 2275 – the 5150 clock and due process
- **EMTALA**
  - Old law, new dilemmas amid new responsibilities for hospitals
- **2024 New Laws**
  - SB 43 – new definition of “gravely disabled”
  - AB 1376 – immunity for private providers of ambulance services
- **LPS Changes: From the patients’ point of view**



## SB 929 – Data Collection

### **BHIN 23-015** – April 2023

- First phase of data collection
  - Items 1, 2, 3 and 4

### **BHIN 23-067** – November 2023

- Summarizes updates from AB 118 (July 10, 2023), including a \$50/day fine for late submission of data to the County and to DHCS



## SB 929 – Data Collection (cont.)

WIC §5402(a) (amended) – current data being collected:



- (1) Number of persons in designated and approved facilities
  - admitted or detained for 72-hour evaluation and treatment,
  - admitted for 14-day and 30-day periods of intensive treatment, and
  - admitted for 180-day post-certification intensive treatment in each county.
- (2) Number of persons transferred to mental health facilities pursuant to section 4011.6 of the Penal Code in each county.
- (3) Number of persons for whom temporary conservatorships are established in each county.
- (4) Number of persons for whom conservatorships are established in each county.

## SB 929/SB 43 – Data Collection

- May 1, 2024: New data requirement added (Item 18)
  - (18) Number of persons admitted or detained, including 72-hour evaluations and treatment, 14-day and 30-day periods of intensive treatment, and 180-day post-certification intensive treatment, for each of the following conditions:
    - danger to self
    - danger to others
    - grave disability due to a mental health disorder
    - grave disability due to a severe substance use disorder
    - grave disability due to both a mental health disorder and a severe substance use disorder

## AB 2242 – Care Coordination Plans

### **Are we doing what the law has required since January 1?**

- At release from involuntary hospitalization (5151, 5250, etc.) and at termination of LPS Conservatorship
- Collaboration between individual, the county behavioral health department, the health care payer (if different from the county), the facility
- First follow-up appointment with an appropriate behavioral health professional

*Who needs to do what?*



## AB 2242 – Care Coordination Plans (cont.)

*Are we remembering federal and state confidentiality rules when participating in multi-disciplinary sharing of PHI?*



If the plan involves non-treatment providers, e.g., a family member who will provide a ride, or housing, or social services, or the County (in the case of private pay patient), **are you getting written authorization from the patient?**

# SB 1338 – The CARE Act

## Judicial Council Forms

- **CARE-050-INFO**
  - Information for Petitioners – About the CARE Act
- **CARE-060-INFO\***
  - Information for Respondents – About the CARE Act
- **CARE-100\***
  - Petition to Commence CARE Act Proceedings

Available at: <https://www.courts.ca.gov/forms.htm> (search “CARE”)



### Community Assistance, Recovery, and Empowerment (CARE) Act

The CARE Act ensures mental health and substance use disorder services are provided to the most severely impaired Californians who too often languish – suffering in homelessness or incarceration – without the treatment they desperately need.

# AB 2275 – The 5150 Clock and Due Process

## **72-hour clock starts when the custodial hold is placed at WIC §5150**

- §5151 specifically notes the start time from when detention first begins at §5150

## **New due process rights begin:**

- when the clock “strikes” 72 hours, and
- the patient still meets the criteria, and
- is unwilling to receive voluntary services, and
- is in a non-designated facility



# 5150 Application Form (rev. 9-2023)

- **BHIN 23-051** (Sept. 2023)
  - Note: there is a BHIN 23-055, issued Oct. 2023 that supersedes BHIN 23-051; no impact on the updated form
- **Adds crucial, helpful info to page 1 of the form:**

Detainment Start Date \_\_\_\_\_

Detainment Start Time \_\_\_\_\_

State of California Health and Human Services Agency		Department of Health Care Services
<b>APPLICATION FOR UP TO 72-HOUR ASSESSMENT, EVALUATION, AND CRISIS INTERVENTION OR PLACEMENT FOR EVALUATION AND TREATMENT</b>		<b>DETAINMENT ADVISEMENT</b>
<i>Confidential Client/Patient Information</i> Welfare and Institutions Code (W&I Code), section 5150 (g)(1), requires that each person, at the time they are first taken into custody under this section, shall be provided, by the person who takes them into custody, the following information orally in a language or modality accessible to the person. If the person cannot understand an oral advisement, the information shall be provided in writing.		My name is _____ I am a (peace officer/mental health professional) with (name of agency). You are not under criminal arrest, but I am taking you for examination by mental health professionals at (name of facility). You will be told your rights by the mental health staff.
<input type="checkbox"/> Complete Advisement <input type="checkbox"/> Incomplete Advisement Date of Advisement/Attempt: _____ Good Cause for Incomplete Advisement: _____		<b>If taken into custody at their residence, the person shall also be told the following information:</b> You may bring a few personal items with you, which I will have to approve. Please inform me if you need assistance turning off any appliance or water. You may make a phone call and leave a note to tell your friends or family where you have been taken.
Advisement Completed/Attempted By: _____	Position: _____	Language or Modality Used: _____
To (name of 5150 designated facility): _____ Application is hereby made for the assessment and evaluation of _____, date of birth of _____, and residing at _____, California, for up to 72-hour assessment, evaluation, and crisis intervention, or placement for evaluation and treatment at a designated facility pursuant to Section 5150, et seq. (adult) or Section 5585 et seq. (minor), of the W&I Code.		
<b>Detainment Start Date:</b> _____ <b>Detainment Start Time:</b> _____ (The 72-hour period begins at the time when the person is first detained.)		
If authorization for voluntary treatment is not available for a minor/conservatee, indicate to the best of your knowledge who has legal authority to make medical decisions on behalf of the minor/conservatee: (name and contact information, if available)		
(Check one): <input type="checkbox"/> Parent(s) <input type="checkbox"/> Legal Guardian(s) <input type="checkbox"/> Conservator <input type="checkbox"/> Other: _____ Indicate to the best of your knowledge whether the minor is under the jurisdiction of the juvenile court: (Check one): <input type="checkbox"/> W&I Code 300 (dependent) <input type="checkbox"/> W&I Code 601, 602 (ward)		
The detained person's condition was called to my attention under the following circumstances: _____ _____		
Specific facts that I have considered that lead me to believe that this person is, as a result of a mental health disorder, a danger to others, a danger to self or gravely disabled: _____ _____		
<input type="checkbox"/> I have considered the historical course of the person's mental disorder as follows: _____ _____		
<input type="checkbox"/> No reasonable bearing on determination <input type="checkbox"/> No information available because: _____		
DHCS 1801 (Revised 09/2023)		Please Note: A copy of this application shall be treated as the original. Page 1 of 2



# AB 2275 – The 5150 Clock and Due Process

## **New due process rights at 72 hours include:**

- Notification of Patients' Rights Advocate
- Notification of the individual designated by the county to provide information to the patient
- Scheduling of hearing to occur before end of Day 7
- Provision of assistance (attorney, PRA) to the patient in preparing for the hearing

**Yes,** AB 2275 applies to minors (when detention began at WIC 5585.5)

**Yes,** only the patient or patient's attorney/representative can postpone the hearing

## AB 2275 – Old Questions



What happens to the 5150 application (custodial hold) if patient has to be admitted to general acute care hospital for care?



What if patient refuses medical clearance diagnostic testing?



Who is responsible for patient care once patient arrives in the ED? After medical clearance has been completed?

## AB 2275 – New Questions



Should serial holds be written?



When does the 5250 14-day clock start?



Should there be a second certification review hearing if a hearing in the non-designated facility has already happened?



Should there be a second hearing if person still hasn't been placed after 7 more days? (What is person's status at that point?)

# EMTALA Refresher





# EMTALA Core Obligations

- Medical screening examination
- Further examination and stabilizing treatment for a patient with an emergency condition
- On-call coverage
- Transfer/discharge of patients
- Acceptance of unstabilized ED patients requiring a higher level of care
- No delay of required services for insurance or payment reasons

# Application of EMTALA Rules to Psychiatric Patients

## Basic Principles:

- CMS considers medical and psychiatric EMCs to be co-equal
- EMTALA rules and guidance do not address involuntary holds

“Hospitals are not relieved of their EMTALA obligation to screen, provide stabilizing treatment and/or an appropriate transfer to individuals because of prearranged community or State plans that have designated specific hospitals to care for selected individuals (e.g., Medicaid patients, psychiatric patients, pregnant women).”

- *Int. Guidelines, Tag A-2406/C-2406*

## Psychiatric Emergency Medical Condition v. 5150 Hold

- A 5150 hold is based on **probable cause** by a peace officer or a county-authorized professional as a legal mechanism to take a person involuntarily to a designated facility for an assessment of a behavioral health condition
- Psychiatric Emergency Medical Condition (EMC) is based on a **clinical judgment** of an ED physician or other qualified professional designated by the hospital medical staff

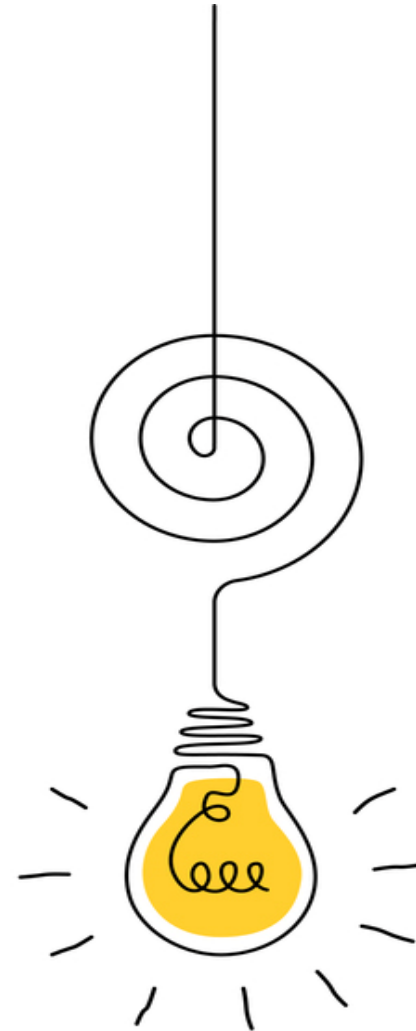
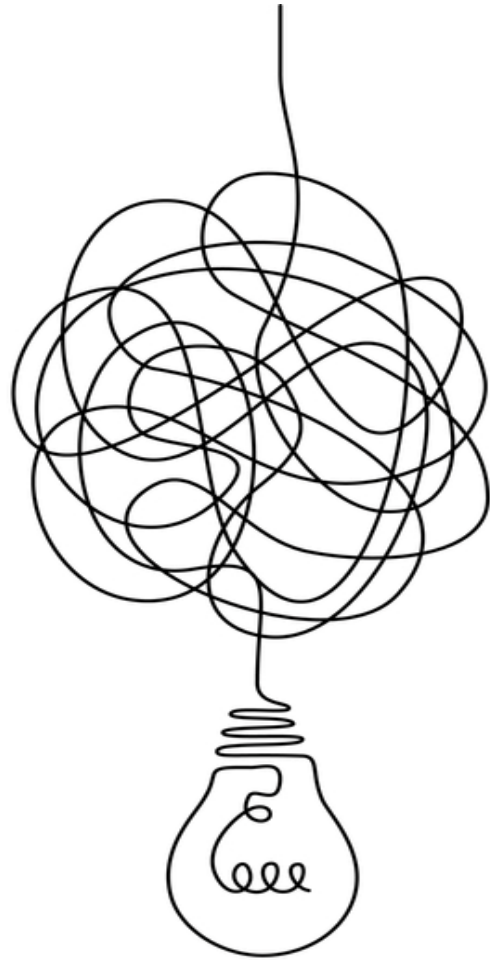
## Psychiatric EMC v. 5150 Hold (cont.)

### **The practical reality – stabilized or unstabilized? transfer decisions?**

- ED physician must determine if psychiatric EMC is stabilized
- If the psychiatric EMC is unstabilized, and the hospital cannot stabilize, must conduct an appropriate transfer



Putting it all together...



## Hypothetical #1 – Non-LPS Designated Facility

An individual is brought to the Emergency Department of a non-LPS designated facility. Police wrote 5150 following serious threats to her family (whom she lives with) and for being combative toward police. The facility medically clears the individual. However, the non-LPS designated facility is unable to find placement for the individual.

**What does the facility need to do? At 72 hours?  
Before 7 days?**

## Hypothetical #2 – Non-LPS Designated Facility

An individual was brought to the Emergency Department of a non-LPS designated facility. Police wrote 5150 following serious threats to her family (whom she lives with) and for being combative toward police. *The individual also suffers from uncontrolled diabetes that had previously resulted in a below-the-knee amputation. Non-LPS designated facility is unable to immediately transfer due to lack of medical clearance. The individual is refusing all lab work, medication, and treatment, and is demanding to leave.*

**What should be considered by the facility?**

## Hypothetical #3 – Release of Patient?

Designated staff at a non-LPS designated facility placed a minor on a 5585 hold. The facility did not have resources to work on placement, so the County crisis worker searched for placements. After two days, the facility released the patient to their parent and told the parent that the minor could wait there for placement. Crisis worker found placement ultimately, but psychiatric hospital was told patient would need to be in an emergency department to be eligible for transfer.

*What issues are raised here?*



## Hypothetical #4 – LPS Designated Facility

An individual, on a 5150 hold, is taken by police to a non-LPS designated facility on December 1, 2023. Due to a lack of bed space, the individual is held at that facility and has an AB-2275 hearing on December 6, 2023. The individual was subsequently transferred to an LPS-designated facility on December 10, 2023.

*What should happen first?*

## Hypothetical #5 – Minor/5585

A minor was brought into a non-LPS designated facility following a suicide attempt (5585 hold initiated in the field by police).

### *What should be considered by the facility:*

- When did 5585 time/clock begin?
- If parents/guardians are available, are they amenable to treatment?
- If the patient is voluntary (parent consents), does the minor get an AB 2275 hearing?

## Hypothetical #6 – LE Cooperation

An individual on a 5150 hold written by law enforcement comes to a non-LPS designated facility. The individual also has serious pending legal issues and is combative.

*What can the facility do?*

*Can the individual go to jail first and be treated there?*

## Coming up...

- **SB 43** – new definition of “gravely disabled”
- **AB 1376** – immunity for private providers of ambulance services



## SB 43 and Involuntary Holds

(h) (1) For purposes of Article 1 (commencing with Section 5150), Article 2 (commencing with Section 5200), *Article 3 (commencing with Section 5225)*, and Article 4 (commencing with Section 5250) of Chapter 2, and for the purposes of Chapter 3 (commencing with Section 5350), "gravely disabled" means **either any** of the ~~following:~~ *following, as applicable:*

(A) A condition in which a person, as a result of a mental health disorder, *a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder*, is unable to provide for ~~his or her~~ *their* basic personal needs for food, clothing, ~~or shelter.~~ *shelter, personal safety, or necessary medical care.*

## SB 43 and Involuntary Holds (cont.)

- **Severe SUD** is defined as a diagnosed substance-related disorder that meets the diagnostic criteria of ‘severe’ as defined in the most current version of the DSM.
- **Personal safety** is defined as the ability of one to survive safely in the community without involuntary detention or treatment.
- **Necessary medical care** is defined as care that a licensed health care practitioner determines to be necessary to prevent serious deterioration of an existing physical medical condition which, if left untreated, is likely to result in serious bodily injury.

# AB 1376 and EMS

## **Provides civil and criminal immunity for:**

- Private licensed ambulance providers and their employees
- For the continued detainment of a person when requested by a peace officer, facility staff, or other professionals authorized to detain persons, including the:
  - transportation to a county-designated facility (from the field or another facility) for evaluation and treatment
  - transportation to a county-designated facility from a facility for psychiatric treatment, if ordered by attending physician or professional staff person in charge of county-designated facility





2023

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BEHAVIORAL HEALTH CARE

SYMPOSIUM

SACRAMENTO

# Questions





# Thank You

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