

2024 CONSENT LAW SEMINAR

GLENDALE

Behavioral Health



Agenda

- LPS Act Refresher/Updates
 - Brief LPS Act history
 - AB 2275 and Due Process Concerns
 - Administration of antipsychotic medication
- Restraints
- Ligature Risk Reduction & Suicide Screening
- Prop 1

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The LPS Act



Involuntary Holds (*Simplified...*)

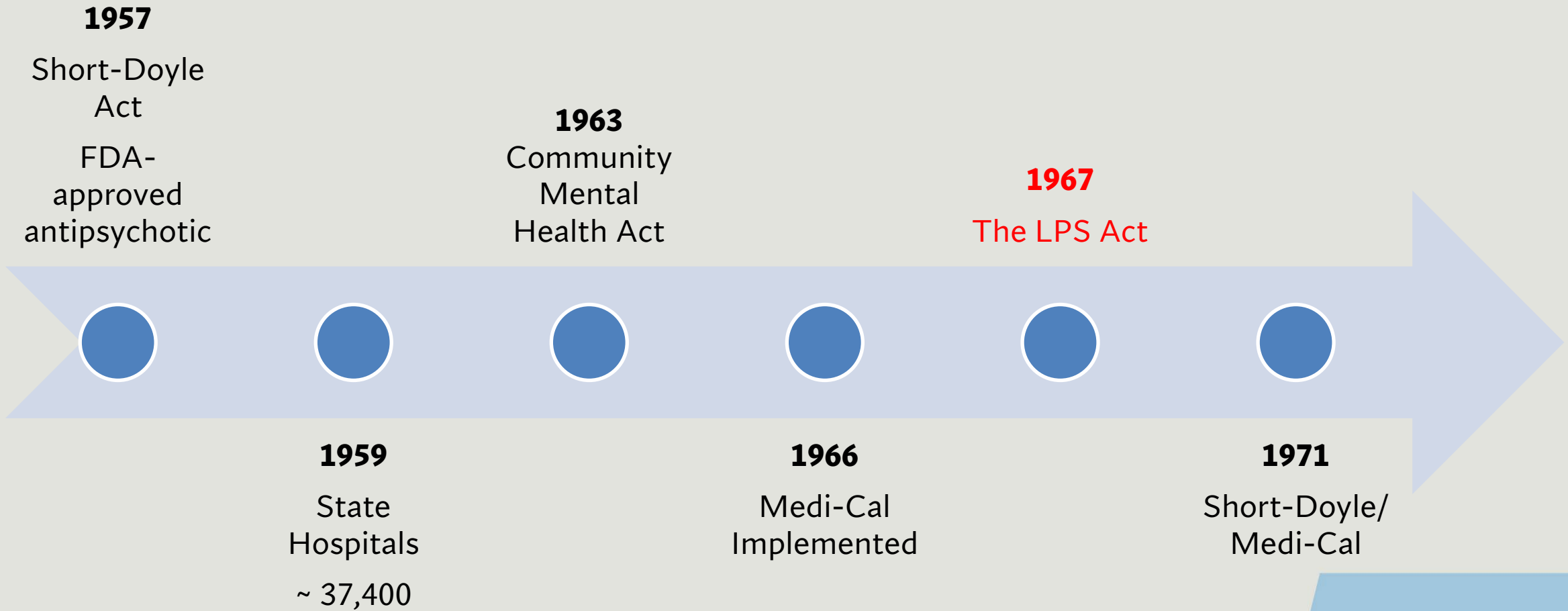
SB 43!

LPS Holds	Gravely Disabled	Danger to Self	Danger to Others
72-Hour Welfare & Institutions (W&I) § 5150	One or all may apply		
14-Day W&I § 5250	One or all may apply		
14-day W&I § 5260		X	
30-Day W&I § 5270 (if County adopts)	X		
T-Con/Conservatorship	X		

Health & Safety Code § 1799.111?



The LPS Act – History



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Involuntary Holds & AB 2275



The LPS Act vs. Reality

STEP 1: 5150 – “hold and transport” (to designated LPS facility)

Medical clearance
Placement
Arranging safe transfer

STEP 2: 5151 – “assess and admit” (for evaluation & treatment, if least restrictive alternative)

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 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 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

APPLICATION FOR UP TO 72-HOUR ASSESSMENT, EVALUATION, AND CRISIS INTERVENTION OR PLACEMENT FOR EVALUATION AND TREATMENT

DETAINMENT ADVISEMENT

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.

Confidential Client/Patient Information

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.

Complete Advisement Incomplete Advisement

Date of Advisement/Attempt: _____

Good Cause for Incomplete Advisement: _____

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.

Detainment Start Date: _____ Detainment Start Time: _____
(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): Parent(s) Legal Guardian(s) Conservator Other: _____

Indicate to the best of your knowledge whether the minor is under the jurisdiction of the juvenile court:

(Check one): W&I Code 300 (dependent) 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:

I have considered the historical course of the person's mental disorder as follows:

No reasonable bearing on determination
 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 individual designated by county to provide information to patient
- Scheduling of hearing to occur before end of Day 7
- Provision of assistance (attorney, PRA) to patient in preparing for 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

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Recent Legislative Updates



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:*

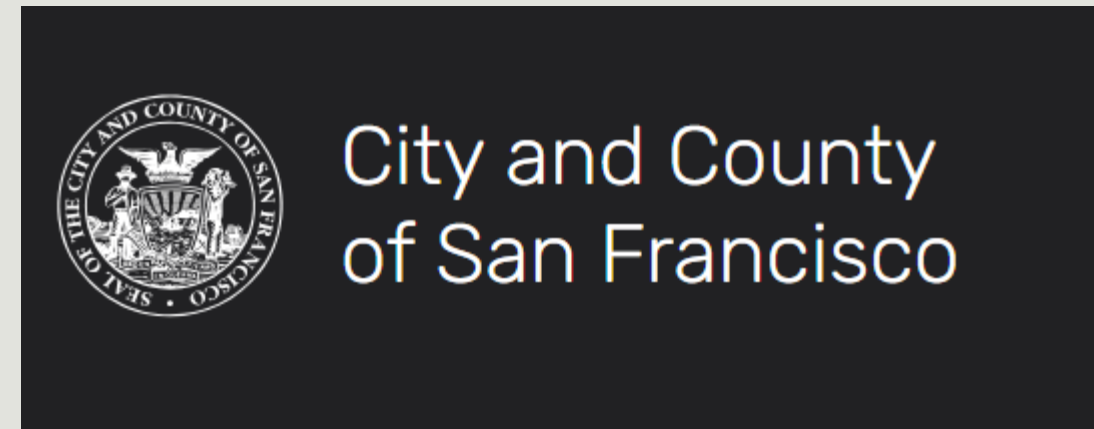
(A) A condition in which a person, as a result of a mental health disorder, *a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder*, is unable to provide for ~~his or her~~ *their* basic personal needs for food, clothing, ~~or shelter.~~ *shelter,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



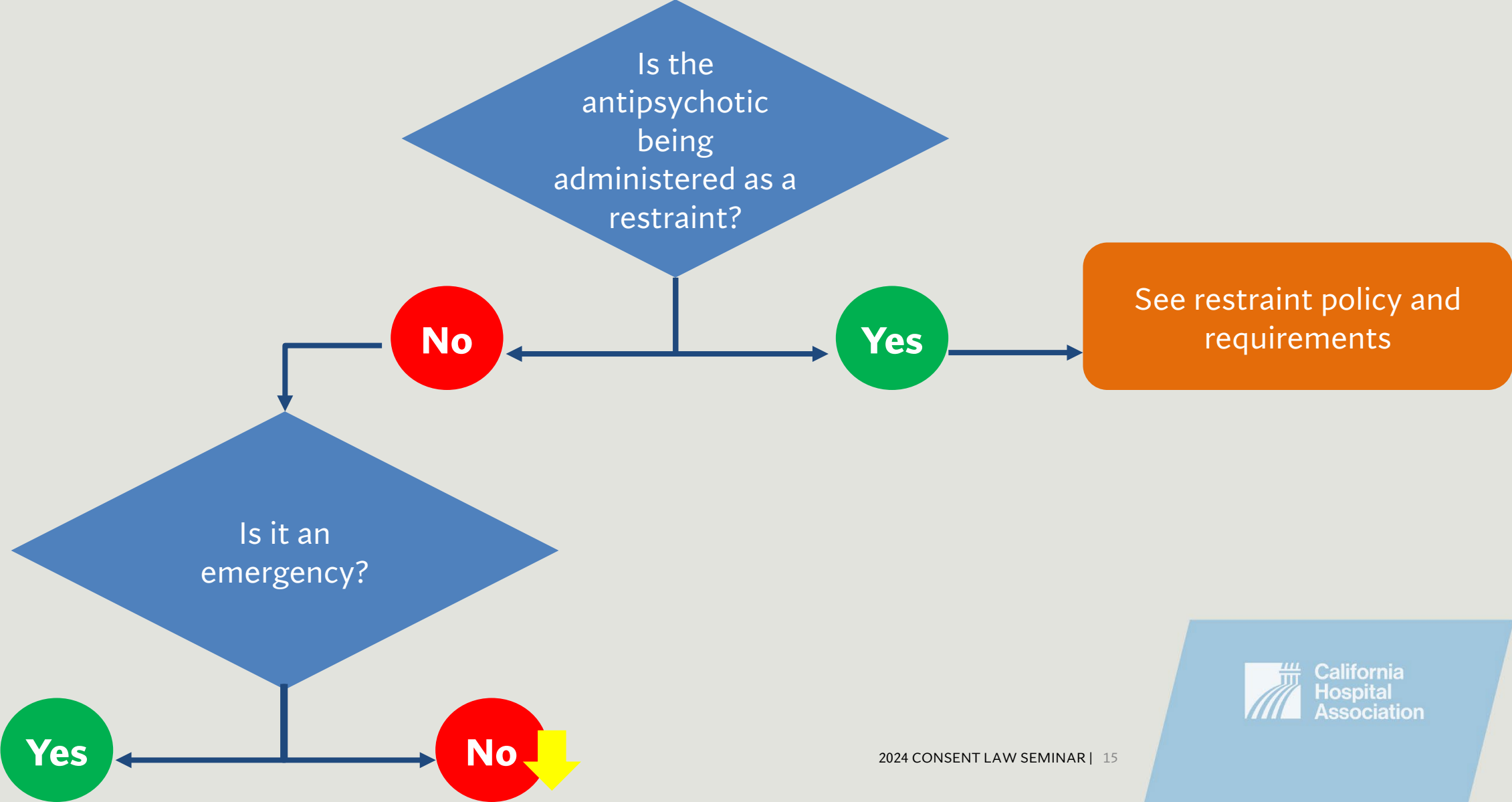
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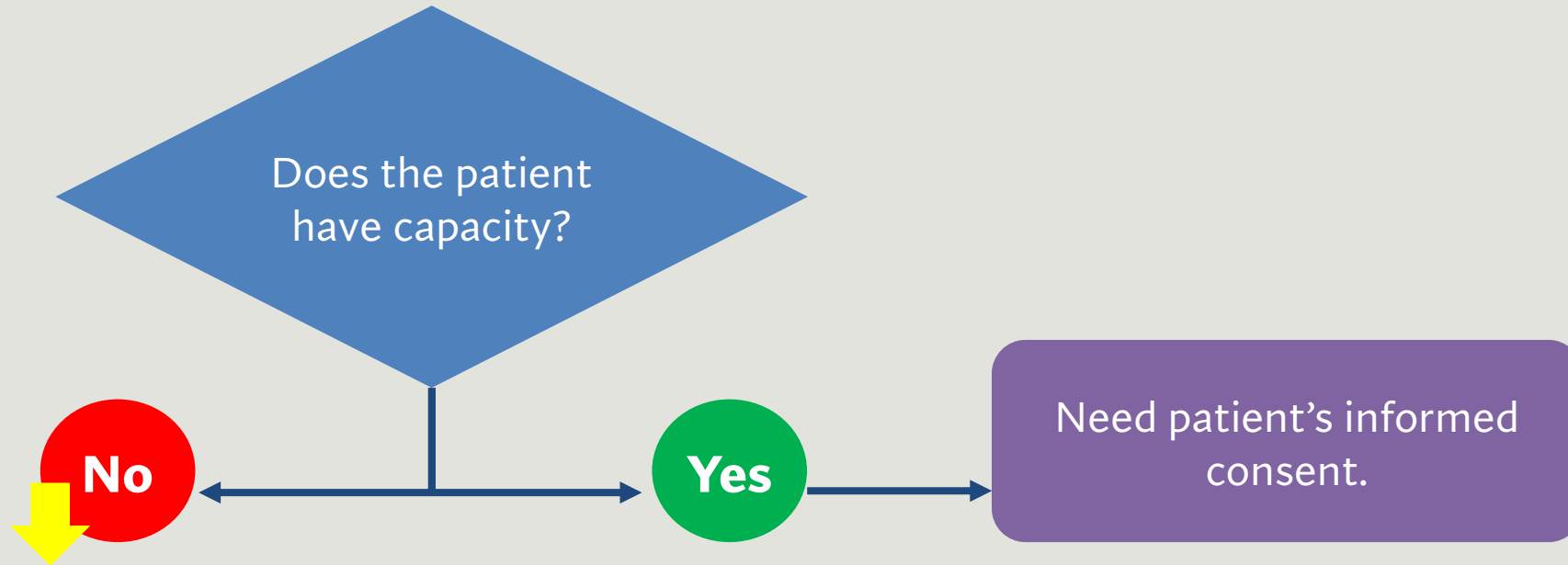
Antipsychotic Medication



Consent or Court Order

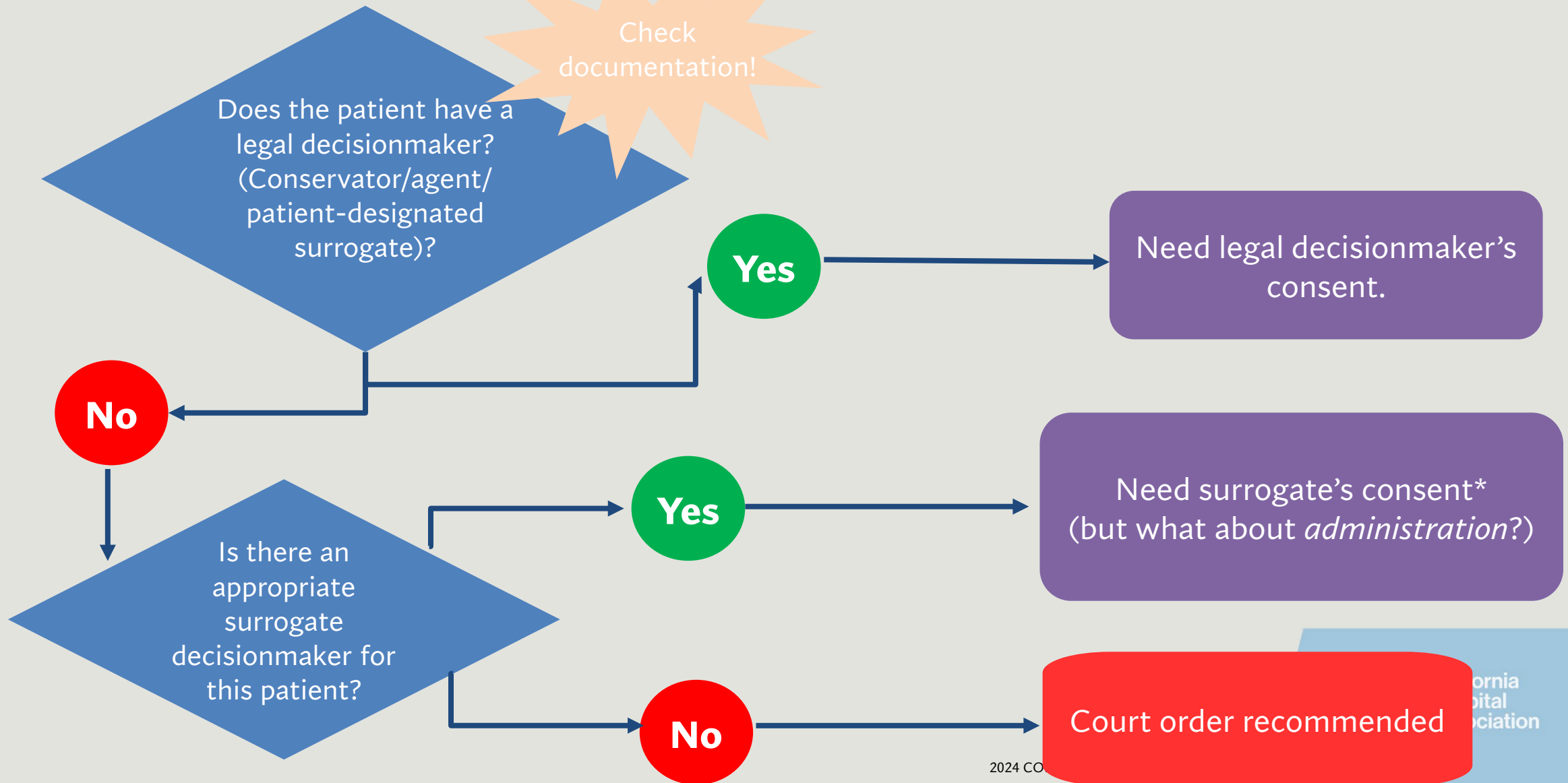


Capacity?

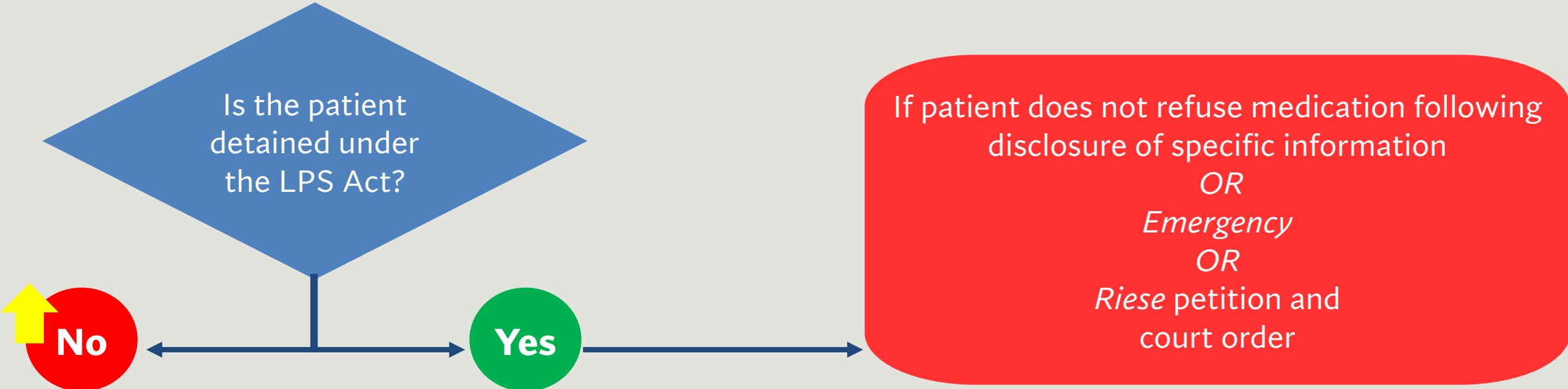


Consent or Court Order

Check documentation!



Involuntary Patients and *Riese* Petition



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Restraints & Seclusion



Definitions

- **What is a *restraint*?**

- “Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body or head freely; or,

A drug or medication when it is used as a restriction to manage the patient’s behavior or restrict the patient’s freedom of movement and is not a standard treatment or dosage for the patient’s condition”

- **What is *seclusion*?**

- Involuntary confinement of a patient alone in a room or area from which the patient is physically prevented from leaving.

Conditions on Use

- Only **used**:
 - In accordance with an order of a licensed health care practitioner (acting within scope of practice) and a written modification to the patient's plan of care;
 - In the least restrictive manner possible;
 - In accordance with safe and appropriate restraining techniques;
 - When other less restrictive alternatives have failed to protect patient or others from harm; and,
 - Ended at the earliest possible time
- Never for **coercion, discipline, convenience, or retaliation**
- Only by staff with **specific, current training and competence**
- **Face-to-Face** assessment
- Requires certain level of **monitoring or observation**

Relevant Authorities and Standards

- **Federal and state law**

- 42 C.F.R. § 482.13
- *Interpretive Guidelines* (Tags A-0154-A-0214)
- Health & Safety Code §§ 1180.1 to 1180.5

- **Standards include:**

- MD oversight
- Duration
- Type of observation
- Monitoring
- Documentation requirements
- Training
- Reporting requirements
- Quality improvement criteria



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Ligature Risk Reduction & Suicide Screening



Updated CMS Guidance: Ligature Risk and Assessment

- Medicare CoP § 482.13(c)(2) – right to receive care in a safe setting
 - Not expected to have same ligature risk configuration throughout facility
 - Focus on needs and risks of individual patients
- Three considerations in ensuring patient safety
 1. Patient Assessment
 2. Staffing/Monitoring
 3. Environmental Risk

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-16
Baltimore, Maryland 21244-1850



Center for Clinical Standards and Quality

Ref: QSO-23-19-Hospitals

DATE: July 17, 2023
TO: State Survey Agency Directors
FROM: Directors, Quality, Safety & Oversight Group (QSOG) and Survey & Operations Group (SOG)
SUBJECT: Ligature Risk and Assessment in Hospitals

Memorandum Summary

- *Patients in Medicare-certified hospitals have a right, by regulation, to receive care in a safe setting.*
- *Hospitals can demonstrate compliance with this standard through appropriate patient assessments, adequate staffing and monitoring, and mitigation of environmental risks.*

AB 1394: Suicide Screening (Jan. 1, 2025)

- *Health & Safety Code § 1259.6* – Hospitals must establish and adopt written policies and procedures to screen patients who are 12 years of age and older for purposes of detecting a risk for suicidal ideation and behavior.
- The procedures shall:
 - Identify, as part of a medical screening, a patient’s risk for suicidal ideation and behavior.
 - Document in the medical record a patient’s risk for suicidal ideation and behavior.
 - Provide to a patient who exhibits a sign of a risk for suicidal ideation and behavior a current referral list of private and public community agencies.
 - Designate the licensed staff to be responsible for the implementation of these policies and procedures.

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Prop 1 (SB 326, AB 531)



Prop 1 Reform

Infrastructure

Beds, Supportive Housing, Community Sites, Veteran Housing



Reform

MHSA, Workforce, Accountability



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Questions?



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Thank you

