

METHODOLOGY FOR SHOWING THE CHANGES TO PROPOSED AMENDMENTS

Changes to the amendments to California Code of Regulations, Title 22 as originally presented in the 45-day Public Notice are now being made available for a second 15-day review and comment period. Only the regulation sections containing the additional proposed changes are contained in the attached document. Rulemaking documents made available prior to this second Availability of Post Hearing Changes are available on the Department's website at:

<http://www.cdph.ca.gov/services/DPOPP/regs/Pages/DPH-05-010ScopeofPracticeinLicensedHealthFacilities.aspx>

The proposed changes are indicated as follows:

Text proposed to be added to the regulation and shown in single underline was made available for comment in the 45-day Public Notice document.

Text proposed to be deleted from the regulation and shown in ~~single strikeout~~ was made available for comment in the 45-day Public Notice document.

Text proposed to be added to the regulation and shown in double underline was made available for comment in the first 15-day Availability of Post Hearing Changes.

Text proposed to be deleted from the regulation and shown in ~~double strikeout~~ was made available for comment in the first 15-day Availability of Post Hearing Changes.

Text currently proposed to be added to the regulation which is being made available for comment in this second 15-day availability is shown in highlight with double underline.

Text currently proposed to be deleted from the regulation which is being made available for comment in this second 15-day availability and is shown in highlight and double strikeout.

(2) Amend Section 70577 to read as follows:

Section 70577. Psychiatric Unit General Requirements.

(a) Written policies and procedures shall be developed and maintained by the person responsible for the service in consultation with other appropriate health professionals and administration. Policies shall be approved by the governing body. Procedures shall be approved by the administration and medical staff where such is appropriate.

(b) The responsibility and the accountability of the psychiatric service to the medical staff and administration shall be defined.

(c) The psychiatric unit shall be used for patients with the diagnosis of a mental disorder requiring hospital care. For purposes of these regulations "mental disorder" is defined as any psychiatric illness or disease, whether functional or of organic origin.

(d) Medical services.

(1) Psychiatrists or clinical psychologists, acting within the scope of their licensure and subject to the rules of the facility, shall be responsible for the diagnostic formulation for their patients and the development and implementation of each patient's treatment plan.

(2) Medical examinations shall be performed as often as indicated by the medical needs of the patient ~~as determined by the patient's attending psychiatrist or psychologist licensed healthcare practitioner acting within the scope of his or her professional licensure~~. Reports of all medical examinations shall be on file in the patient's medical record.

(3) A psychiatrist shall be available at all times for psychiatric emergencies.

(4) An appropriate committee of the medical services shall:

(A) Identify and recommend to administration the equipment and supplies necessary for emergency medical problems.

(B) Develop a plan for handling and/or referral of patients with emergency medical problems.

(C) Determine the circumstances under which electroconvulsive therapy may be administered.

(D) Develop guidelines for the administration of a drug when given in unusually high dosages or for purposes other than those for which the drug is customarily used.

(e) Psychological services shall be provided by clinical psychologists within the scope of their licensure and subject to the provisions of Section 1316.5 of the Health and Safety Code. Staff physicians shall assume responsibility for those aspects of patient care which may be provided only by physicians.

~~(1) Facilities which permit clinical psychologists to admit patients shall do so only if there are staff physicians who will provide the necessary medical care to the patients.~~

~~(2) Only staff physicians shall assume responsibility for those aspects of patient care which may be provided only by physicians.~~

(f) Provision shall be made for the rendering of social services by social workers at the request of a patient's attending ~~physician or psychologist~~ licensed healthcare practitioner acting within the scope of his or her professional licensure ~~physician or psychologist~~.

(g) Therapeutic activity program.

(1) Every unit shall provide and conduct organized programs of therapeutic activities in accordance with the interests, abilities and needs of the patients.

(2) Individual evaluation and treatment plans which are correlated with the total therapeutic program shall be developed and recorded for each patient.

(h) Education.

(1) No hospital shall accept children of school age who are educable or trainable and who are expected to be a patient in the unit for one month or longer unless an educational or training program can be made available for such children in accordance with their needs and conditions.

(2) Educational programs provided in the facility shall follow those programs established by law, and shall be under the direction of teachers with California teaching credentials.

(3) If children attend community schools, supervision to and from school shall be provided in accordance with the needs and conditions of the patients.

(4) Transportation to and from school shall be provided where indicated.

(i) The medical records of all patients admitted to the unit shall contain a legal authorization for admission. Release of information or medical records concerning any patient shall be only as authorized under the provisions contained in Article 7 (commencing with Section 5325; and Section 5328 in particular) Part 1, Division 5 of the Welfare and Institutions Code.

(j) Restraint of patients.

(1) Restraint shall be used only when alternative methods are not sufficient to protect the patient or others from injury.

(2) Patients shall be placed in restraint only on the written order of the ~~physician~~ licensed healthcare practitioner acting within the scope of his or her professional licensure. This order shall include the reason for restraint and the type of restraint to be used. In a clear case of emergency, a patient may be placed in restraint at the discretion of a registered nurse and a verbal or written order obtained thereafter. If a verbal order is obtained it shall be recorded in the patient's medical record and be signed by the ~~physician~~ licensed healthcare practitioner on his or her next visit.

(3) Patients in restraint by seclusion or mechanical means shall be observed at intervals not greater than 15 minutes.

(4) Restraints shall be easily removable in the event of fire or other emergency.

(5) Record of type of restraint including time of application and removal shall be in the patient's medical record.

(k) Patients' rights.

(1) All patients shall have rights which include, but are not limited to, the following:

(A) To wear his own clothes, to keep and use his own personal possessions including his toilet articles; and to keep and be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases.

(B) To have access to individual storage space for his private use.

(C) To see visitors each day.

(D) To have reasonable access to telephones, both to make and receive confidential calls.

(E) To have ready access to letter writing materials, including stamps, and to mail and receive unopened correspondence.

(F) To refuse shock treatment.

(G) To refuse lobotomy.

(H) To be informed of the provisions of law regarding complaints and of procedures for registering complaints confidentially, including but not limited to, the address and telephone number of the complaint receiving unit of the Department.

(I) All other rights as provided by law or regulations.

(2) The ~~physician~~ licensed health care practitioner acting within the scope of his or her professional licensure who has overall responsibility for the unit or his or her designee, may for good cause, deny a person any of the rights specified in (1) above, except those rights specified in subsections (F), (G) and (I) above and the rights under subsection (F) may be denied only under the conditions specified in Section 5326.4, Welfare and Institutions Code. The denial, and the reasons therefore, shall be entered in the patient's medical record.

(3) These rights, written in English and Spanish, shall be prominently posted.

(l) Psychiatric unit staff shall be involved in orientation and in-service training of hospital employees.

(m) Periodically, an appropriate committee of the medical staff shall evaluate the services provided and make appropriate recommendations to the executive committee of the medical staff and administration.

NOTE: Authority cited: Sections ~~208(a) and~~ 1275, 100275 and 131200, Health and Safety Code. Reference: Sections 1255, 1276, and 1316.5, 131050, 131051 and 131052, Health and Safety Code.

(3) Amend Section 70703 to read as follows:

Section 70703. Organized Medical Staff.

(a) Each hospital shall have an organized medical staff responsible to the governing body for the adequacy and quality of the medical care rendered to patients in the hospital ~~subject to the bylaws, rules and regulations of the hospital.~~

(1) The medical staff shall be composed of physicians and, where dental or podiatric services are provided, dentists or podiatrists.

(2) As required by section 1316.5 of the Health and Safety Code:

(A) Where clinical psychological services are provided, by clinical psychologists, may be appointed to clinical psychologists shall be included on the medical staff subject to the by-laws, rules and regulation of the hospital.

in a health facility owned and operated by the state, the facility shall establish rules and medical staff bylaws that include provisions for medical staff membership and clinical privileges for clinical psychologists within the scope of their licensure as psychologists.

(B) Where clinical psychological services are provided by clinical psychologists, in a health facility not owned or operated by this state, the facility may enable the appointment of clinical psychologists to the medical staff.

(b) The medical staff, by vote of the members and with the approval of the governing body, shall adopt written by-laws which provide formal procedures for the evaluation of staff applications and credentials, appointments, reappointments, assignment of clinical privileges, appeals mechanisms and such other subjects or conditions which the medical staff and governing body deem appropriate. The medical staff shall abide by and establish a means of enforcement of its by-laws. Medical staff by-laws, rules and regulations shall not deny or restrict within the scope of their licensure, the voting right of staff members or assign staff members to any special class or category of staff membership, based upon whether such staff members hold an M.D., D.O., D.P.M., ~~OR~~ or D.D.S. degree or clinical psychology license. ~~The medical staff bylaws, rules, and regulations shall provide for the award of all clinical privileges that are within the scope of practice of each category of licensee represented on the medical staff. The medical staff shall award such clinical privileges on terms and conditions that~~

~~do not discriminate between medical staff members in different license categories. Failure of the medical staff to approve or deny a request for clinical privileges within reasonable time frames provided in the medical staff bylaws, but in no case to exceed six (6) months from the date of submission of a completed application, shall constitute a limitation or restriction on a basis other than the competence of the individual practitioner.~~

(c) The medical staff shall meet regularly. Minutes of each meeting shall be retained and filed at the hospital.

(d) The medical staff by-laws, rules, and regulations shall include, but shall not be limited to, provision for the performance of the following functions: executive review, credentialing, medical records, tissue review, utilization review, infection control, pharmacy and therapeutics, and assisting the medical staff members impaired by chemical dependency and/or mental illness to obtain necessary rehabilitation services. These functions may be performed by individual committees, or when appropriate, all functions or more than one function may be performed by a single committee. Reports of activities and recommendations relating to these functions shall be made to the executive committee and the governing body as frequently as necessary and at least quarterly. ~~As required by section 1316.5 of the Health and Safety Code, the medical staff bylaws, rules, and regulations shall provide that with respect to any medical staff committee whose function encompass an evaluation of the education, training, or experience of medical staff members, or the fitness, adequacy or quality of the services provided by medical staff members, the medical staff shall, if possible, on an annual basis offer membership on such committee to at least one licensed medical staff member in each category of licensure represented on the medical staff, if the activities of such category's licensees are the subject of any of the committee's functions.~~

(e) The medical staff shall provide in its by-laws, rules and regulations for appropriate practices and procedures to be observed in the various departments of the hospital. In this connection the practice of division of fees, under any guise whatsoever, shall be prohibited and any such division of fees shall be cause for exclusion from the staff.

(f) The medical staff shall provide for availability of staff physicians or psychologists for emergencies among the in-hospital population in the event that the attending physician or psychologist or his or her alternate is not available.

(g) The medical staff shall participate in a continuing program of professional education. The results of retrospective medical care evaluation shall be used to determine the continuing education needs. Evidence of participation in such programs shall be available.

(h) The medical staff shall develop criteria under which consultation will be required. These criteria shall not preclude the requirement for consultations on any patient when the director of the service, chairman of a department or the chief of staff determines a patient will benefit from such consultation.

NOTE: Authority cited: Sections ~~208(a)~~ and 1275, 100275 and 131200, Health and Safety Code. Reference: Sections 1276, 1315, 1316, and 1316.5, 131050, 131051 and 131052, Health and Safety Code.

(13) Amend Section 71503 to read as follows:

Section 71503. Organized Medical Staff.

(a) Each hospital shall have an organized medical staff responsible to the governing body for the fitness, adequacy and quality of the medical care rendered to patients in the hospital ~~subject to the bylaws, rules and regulations of the hospital.~~

(b) Medical staff membership.

(1) The medical staff shall be composed of physicians and, where dental or podiatric services are provided, dentists or podiatrists.

(2) As required by section 1316.5 of the Health and Safety Code:

(A) ~~When Where~~ clinical psychological services are provided, by clinical psychologists, may be appointed to clinical psychologists shall be included on the medical staff subject to the bylaws, rules and regulation of the hospital in a health facility owned and operated by the state, the facility shall establish rules and medical staff bylaws that include provisions for medical staff membership and clinical privileges for clinical psychologists within the scope of their licensure as psychologists.

(B) Where clinical psychological services are provided by clinical psychologists, in a health facility not owned or operated by this state, the facility may enable the appointment of clinical psychologists to the medical staff.

(c) The medical staff, by vote of the members and with the approval of the governing body, shall adopt written bylaws which provide formal procedures for the evaluation of staff applications and credentials, appointments, reappointments, assignment of clinical privileges, appeals mechanisms and such other subjects or conditions which the medical staff and governing body deem appropriate. The medical staff shall abide by and establish a means of enforcement of its bylaws. Medical staff bylaws, rules and regulations shall not deny or restrict, within the scope of their licensure, the voting rights of staff members or assign staff members to any special class or category of staff membership, based upon whether such staff members hold an M.D., D.O., or D.P.M. degree or clinical psychology license. ~~The medical staff bylaws, rules, and regulations shall provide for the award of all clinical privileges that are within the scope of practice of each category of licensees represented on the medical~~

~~staff. The medical staff shall award such clinical privileges on terms and conditions that do not discriminate between medical staff members in different license categories. Failure of the medical staff to approve or deny a request for clinical privileges within reasonable time frames provided in the medical staff bylaws, but in no case to exceed six (6) months from the date of submission of a completed application, shall constitute a limitation or restriction on a basis other than the competence of the individual practitioner.~~

(d) The medical staff shall meet regularly. Minutes of each meeting shall be retained and filed at the hospital.

(e) The medical staff bylaws, rules, and regulations shall include, but shall not be limited to, provision for the performance of the following functions: executive review, credentialing, medical records, tissue review, utilization review, infection control, pharmacy and therapeutics, and assisting the medical staff members impaired by chemical dependency and/or mental illness to obtain necessary rehabilitation services. These functions may be performed by individual committees, or when appropriate, all functions or more than one function may be performed by a single committee. Reports of activities and recommendations relating to these functions shall be made to the executive committee and the governing body as frequently as necessary and at least quarterly. ~~As required by section 1316.5 of the Health and Safety Code, the medical staff bylaws, rules, and regulations shall provide that with respect to any medical staff committee whose function encompass an evaluation of the education, training, or experience of medical staff members, or the fitness, adequacy or quality of the services provided by medical staff members, the medical staff shall, if possible, on an annual basis offer membership on such committee to at least one licensed medical staff member in each category of licensure represented on the medical staff, if the activities of such category's licensees are the subject of any of the committee's functions.~~

(f) The medical staff shall provide in its bylaws, rules and regulations for appropriate practices and procedures to be observed in the various departments of the hospital. In this connection, the practice of division of fees, under any guise whatsoever, shall be prohibited and any such division of fees shall be cause for exclusion from the staff.

(g) The medical staff shall provide for availability of a staff physician or psychologist for emergencies among the in-hospital population in the event that the attending physician or psychologist or his or her alternate is not available.

(h) The medical staff shall participate in a continuing program of professional education. The results of retrospective medical care evaluation shall be used to determine the continuing education needs. Evidence of participation in such programs shall be available.

(i) The medical staff shall provide at least one physician to participate as a member of the hospital infection control committee.

Note: Authority cited: Sections ~~208(a)~~ and 1275, 100275 and 131200, Health and Safety Code. Reference: Sections 1276, 1315, 1316, and 1316.5, 131050, 131051 and 131052, Health and Safety Code.

(24) Amend Section 72319 to read as follows:

Section 72319. Nursing Service—Restraints and Postural Supports.

(a) Written policies and procedures concerning the use of restraints and postural supports shall be followed.

(b) Restraints shall only be used with a written order of a licensed healthcare practitioner acting within the scope of his or her professional licensure ~~physician or other person lawfully authorized to prescribe care~~. The order must specify the duration and circumstances under which the restraints are to be used. Orders must be specific to individual patients. In accordance with Section 72317, there shall be no standing orders and in accordance with Section 72319(i)(2)(A), there shall be no P.R.N. orders for physical restraints.

(c) The only acceptable forms of physical restraints shall be cloth vests, soft ties, soft cloth mittens, seat belts and trays with spring release devices. Soft ties means soft cloth which does not cause abrasion and which does not restrict blood circulation.

(d) Restraints of any type shall not be used as punishment, as a substitute for more effective medical and nursing care, or for the convenience of staff.

(e) No restraints with locking devices shall be used or available for use in a skilled nursing facility.

(f) Seclusion, which is defined as the placement of a patient alone in a room, shall not be employed.

(g) Restraints shall be used in such a way as not to cause physical injury to the patient and to insure the least possible discomfort to the patient.

(h) Physical restraints shall be applied in such a manner that they can be speedily removed in case of fire or other emergency.

(i) The requirements for the use of physical restraints are:

(1) Treatment restraints may be used for the protection of the patient during treatment and diagnostic procedures such as, but not limited to, intravenous therapy or catheterization procedures. Treatment restraints shall be applied for no longer than the time required to complete the treatment.

(2) Physical restraints for behavior control shall only be used on the signed order of a physician, or, unless the provisions of section 1180.4(e) of the Health and Safety Code apply to the patient, a psychologist, or other person lawfully authorized to prescribe care, except in an emergency which threatens to bring immediate injury to the patient or others. In such an emergency an order may be received by telephone, and shall be signed within 5 days. Full documentation of the episode leading to the use of the physical restraint, the type of the physical restraint used, the length of effectiveness of the restraint time and the name of the individual applying such measures shall be entered in the patient's health record.

(A) Physical restraints for behavioral control shall only be used with a written order designed to lead to a less restrictive way of managing, and ultimately to the elimination of, the behavior for which the restraint is applied. There shall be no PRN orders for behavioral restraints.

(B) Each patient care plan which includes the use of physical restraint for behavior control shall specify the behavior to be eliminated, the method to be used and the time limit for the use of the method.

(C) Patients shall be restrained only in an area that is under supervision of staff and shall be afforded protection from other patients who may be in the area.

(j) When drugs are used to restrain or control behavior or to treat a disordered thought process, the following shall apply:

(1) The specific behavior or manifestation of disordered thought process to be treated with the drug is identified in the patient's health record.

(2) The plan of care for each patient specifies data to be collected for use in evaluating the effectiveness of the drugs and the occurrence of adverse reactions.

(3) The data collected shall be made available to the prescriber in a consolidated manner at least monthly.

(4) PRN orders for such drugs shall be subject to the requirements of this section.

(k) "Postural support" means a method other than orthopedic braces used to assist patients to achieve proper body position and balance. Postural supports may only include soft ties, seat belts, spring release trays or cloth vests and shall only be used to

improve a patient's mobility and independent functioning, to prevent the patient from falling out of a bed or chair, or for positioning, rather than to restrict movement. These methods shall not be considered restraints.

(1) The use of postural support and the method of application shall be specified in the patient's care plan and approved in writing by the physician, psychologist, or other person lawfully authorized to provide care.

(2) Postural supports shall be applied:

(A) Under the supervision of a licensed nurse.

(B) In accordance with principles of good body alignment and with concern for circulation and allowance for change of position.

NOTE: Authority cited: Sections ~~208(a)~~ and 1275, 100275 and 131200, Health and Safety Code. Reference: Sections 1276, 1316.5, 131050, 131051 and 131052, Health and Safety Code; and *Valdivia, et al. v. Coye*, U.S. District Court for the Eastern District of California, Case No. CIV S-90-1226.

(29) Amend Section 72453 to read as follows:

Section 72453. Special Treatment Program Service Unit—Rights of Patients.

(a) Each patient admitted to a special treatment program in a skilled nursing facility shall have the following rights, a list of which shall be prominently posted in English and Spanish in all facilities providing such services. The rights shall also be brought to the patient's attention by additional, appropriate means:

(1) To wear their own clothes; to keep and use personal possessions including toilet articles; and to keep and be allowed to spend a reasonable sum of their own money for small purchases.

(2) To have access to individual storage space for private use.

(3) To see visitors each day.

(4) To have reasonable access to telephones, both to make and receive confidential calls.

(5) To have ready access to letter writing materials, including stamps and to mail and receive unopened correspondence.

(6) To refuse shock treatment.

(7) To refuse lobotomy services.

(8) Other rights as provided by law.

(b) ~~The attending physician or psychologist licensed health care practitioner acting within the scope of his or her professional licensure~~ physician or psychologist may, for good cause, deny or limit a patient his or her rights, except the right to refuse lobotomy or shock treatment. Any denial or limitation of a patient's rights shall be entered in the patient's health record.

(c) Information pertaining to denial of rights contained in the patient's health record shall be made available on request to the Department and to the individuals authorized by law.

NOTE: Authority cited: Sections ~~208(a) and~~ 1275, 100275 and 131200, Health and Safety Code. Reference: Sections 1276, 1316.5, 131050, 131051 and 131052, Health and Safety Code, Section 5325, Welfare and Institutions Code.

(47) Amend Section 73399 to read as follows:

Section 73399. Special Disability Services—Rights of Patients.

(a) Each patient admitted to a special disability program in an intermediate care facility shall have the following rights, a list of which shall be prominently posted in English and Spanish in all facilities providing such services, and otherwise brought to his the patient's attention by such additional means as is appropriate:

(1) To wear his or her own clothes; to keep and use his or her own personal possessions including his toilet articles; and to keep and be allowed to spend a reasonable sum of his or her own money for small purchases.

(2) To have access to individual storage space for his private use.

(3) To see visitors each day.

(4) To have reasonable access to telephones, both to make and receive confidential calls.

(5) To have ready access to letter writing materials, including stamps and to mail and receive unopened correspondence.

(6) To refuse shock treatment.

(7) To refuse lobotomy.

(8) Other rights as provided by law.

(b) The attending ~~physician or psychologist~~ licensed healthcare practitioner acting within the scope of his or her professional licensure ~~physician or psychologist~~ may, for good cause, deny a patient his or her rights under this section, except the right to refuse lobotomy or shock treatment. Any denial of a patient's rights shall be entered in the patient's health record.

(c) Information pertaining to denial of rights contained in the patient's health record shall be made available, on request, to the patient, his the patient's attorney, his the patient's conservator or guardian, or the Department, members of the State Legislature or a member of a county board of supervisors.

Note: Authority cited: Sections 1275, 100275 and 131200, Health and Safety Code. Reference: Sections 1276, 1316.5, 131050, 131051 and 131052, Health and Safety Code, Section 5325, Welfare and Institution Code.