

What Rights and Benefits Do People with Mental Disorders Have?

Summarized by Thomas T. Thomas

Friends and loved ones of people with a brain disorder like schizophrenia are primarily concerned with caring for and providing for this person's welfare. Alameda County also has a group that represents and counsels patients directly on their rights during voluntary and involuntary mental health treatment and in receiving benefits like Social Security, Medi-Cal, and General Assistance. The speaker at our July 22 meeting was **Dan Jordan**, Director of Patients' Rights Advocacy at the Mental Health Advocates of Alameda County.

"Before 1975," Jordan said, "the county provided benefits to mental health patients through Aid to the Totally Disabled, or ATD, which included access to an individual for rights and benefits counseling. Then this funding was turned over to the state through Supplemental Security Income, or SSI, which no longer provided individual advocacy. So the county now funds our advocates program to fill this need."

Mental Health Advocates currently has 6.6 full-time-equivalent employees, who maintain a presence at most of the county's hospitals and psychiatric facilities. They will also respond to complaints at board-and-care homes. Patients' Rights Advocacy is not a regulatory agency, but they can refer problems to the appropriate licensing agency.

"I call this the power of the business card," Jordan said. "When we're sitting with a person who is applying for Social Security or another type of benefit, we find they get better treatment. Later, after the interview, we can also apply the power of the letterhead to complaints and the appeals process."

In the area of rights advocacy, the organization's main goal is that the patient gets treated with dignity and respect. "We fill a variety of roles," he said. "For example, we will monitor the patient's treatment. This means making sure things are done properly and the patient gets prompt medical treatment as well as mental health care.

"We educate, talking to care providers, administrators, and the patients themselves, to make sure everyone is operating with the same understanding of the rules.

"We are consultants. We help providers interpret their policies in light of court rulings on such matters as physical restraint, use of phones, receiving visitors, and so on. We want to make sure they make reasonable interpretations.

"And, finally, we are investigators. We look into the environment in which the patient is placed, to make sure it is safe, and review the treatment history as revealed in the patient's chart."

Jordan then described the escalating levels of restraint under which a mental health patient may be held.

The first is California Penal Code Section 5150, which is a 72 hour hold. “That’s to the minute, by the way,” he said. “It’s 72 hours from the time of admission, not three days.” A patient may be placed under hold by anyone—but usually police or hospital staff—on the grounds of being a danger to self or others, or gravely disabled.

During the 72 hours, the patient will be offered voluntary treatment and given a certification hearing to determine if the hold should be extended to the next level. “That hearing must take place within the 72 hours,” Jordan said, “so they occur on Mondays, Wednesdays, and Fridays. One of our advocates represents the patient at this hearing to make sure his or her wishes are made known.”

The next level of hold is CPC 5250, which extends the treatment for 14 days. During this time the patient may be given a capacity hearing if there is cause to believe he or she may be gravely disabled. “During any one month, Mental Health Advocates will attend about 250 certification hearings and about 25 capacity hearings,” Jordan said.

If the person is found to be gravely mentally disabled, then he or she can be held for an additional 30 days under a temporary conservatorship.

If, at the end of the first 14-day hold, the person is determined still to be a danger to self or others, he or she can be held for an additional 14 days. And, finally, at that time—after a total of 31 days—the person is released. Only if he or she is determined to be a danger to others or to the community at large can the patient be held for a longer period, usually up to 180 days.

“The irony is that a suicidal patient can only be held for 31 days,” said Jordan, “but a violent one can be held for six months.” Of course, the extent of these holds is dependent on the date of admission. If the patient goes back out on the street and gets picked up again, the hold process starts all over again.

One of the issues usually raised during the capacity hearing is the patient’s right to refuse medication. The patient can refuse any medication except under one of three conditions:

- An emergency situation. “That is,” he said, “the patient is throwing chairs or something.”
- A doctor’s petition that the patient is unaware of his or her illness and doesn’t know what’s going on, which is at the heart of “capacity.”
- A doctor’s petition that the patient is unable to give informed consent, which means that the patient is unable to understand the benefits and risks of taking the medication.

Denial of any of a patient’s rights, Jordan explained, may only take place if the restriction meets the criteria of “good cause.” This means that granting the right would pose a physical danger to the patient, would seriously infringe on the rights of others, or would pose serious damage to the facility. Punishment, discipline, or staff convenience do not constitute good cause.

Many times the family and friends of an adult patient are unable to get treatment information, such as use of prescribed medications, from facility staff on the grounds of confidentiality. “The law says that if you are over 18,” Jordan explained, “you can withhold this information. This is based on a release form that

the patient signs on admission. If you are calling from outside, make sure the staff has checked with the patient and determined what he or she really wants. Too often, 'confidentiality' is an easy way for the staff to get you off the phone."

However, it takes a doctor's order—based, again, on "good cause"—in order for you to be denied the right to visit your relative while he or she is in detention.

Some of the other rights a patient has include:

- Wearing his or her own clothes and using personal toilet articles.
- Keeping personal possessions and having a safe place to store and have access to them, like a locker.
- Spending reasonable amounts of his or her own money for small purchases.
- Receiving unopened mail and having access to letter writing materials, including stamps.
- Using the phone and seeing visitors.
- Having access to adequate medical treatment in a timely fashion.

"The job of the patients' rights advocate," Jordan said, "is to mirror what the patient wants."

In the area of benefits, Mental Health Advocates works with patients to provide information and referral and, when necessary, to serve as a representative during the administrative process. "When people have to deal with the benefits system, they are usually not at their best," he said. To facilitate the process of filing for benefits or disputing a change in benefits, the organization has a Social Security administrator in the office on Tuesdays.

"Social Security is designed to help people who are so disabled that they cannot work in the national economy," Jordan said. "That means they cannot hold any job—not just the last job the person may have had. The rule is that you have to be unable to work for 12 months or longer or unable to earn more than \$500 a month.

"So, in reviewing applications for benefits, the administrators will look for signs that the person may not be all that disabled. This would be things like the ability to socialize with friends or get an education, which Social Security tends to equate with the ability to hold a job.

"We help patients exhaust the appeals process by helping them interpret the administrator's forms and language. We take them from the initial application, through the levels of internal appeal, right up to the filing for reconsideration before an administrative law judge."

Jordan explained the differences between the two kinds of income support available, Supplemental Security Income (SSI) and Social Security Disability Income (SSDI). Both are funded by the federal Social Security Administration.

SSI is based on need. A patient applies for it when he or she does not have an earnings history. The patient receives \$650 a month and, if disabled, is immediately and automatically eligible for Medi-Cal benefits. To get SSI, the patient must meet the following resource limits:

- Have no more than \$2,000 in assets.
- Not own a house unless he or she lives in it.

- Not own a car worth more than \$4,500 unless it is used for medical purposes (which means traveling to doctor visits or picking up prescriptions at least four times a year).

The person can earn or receive in gifts amounts up to \$65 a month. Anything over that is deducted at a rate of 50 percent from future benefits checks. That is, if the person gets \$75 in one month—\$10 over the limit—a future check will be docked \$5.

SSDI is an earned benefit. The patient qualifies for a level of support that depends on past earnings, based on Federally Insured Contributions Act (FICA) deductions from his or her paycheck. The law requires that the patient has made these contributions during five of the past ten years (officially, 20 of the past 40 quarters). To see if a patient qualifies, call the Social Security office toll free at 1-800-772-1213 from 7a.m. to 7 p.m. “Be sure to record the name of the person you talk to and the date and time you called,” Jordan says, “because different administrators may give you different answers.”

There is not asset limit, because SSDI is an earned benefit. The person is eligible for Medicare benefits within two years, if disabled. The program includes incentives to get the patient back to work, including a nine-month trial period during which he or she can earn more than \$500 a month.

“Mental Health Advocates has a lot of ways to help you deal with the benefits process,” Jordan concluded.