New Laws Regarding Mental Health Patients, Part 2

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5150: “Serial Holds” and Other Inventions – 1st Challenge: When Does the 72 Hour Clock Start?

• **W&I 5150**: the moment the custodial hold begins?
• **W&I 5151**: the moment the person is admitted into a designated LPS-facility?

If the 72-Hour Clock Starts at 5150… and Hour 73 is Approaching

• What do you do when the patient is still in your ED awaiting test results, or has been medically cleared (is medically “stable” but psychiatrically “unstable”) and you have still been unable to find a psych bed in a locked facility?
• What if you’ve found a bed, but the transfer is to a location far away, out of county, and you haven’t been able to arrange for safe transport?
When the Clock Runs Out in Your ED …

- Some County Counsel have told their MH Directors to write policies that allow them to “refresh the hold” or “extend the hold” (re-assess, document continuing probable cause reasons, etc.)
- Others have recommended a brand new hold, aka a “serial hold(s)” (new 5150 application, new probable cause, etc.)
- Others have changed their mind about the clock start time and decided that clock starts at 5151, and the time spent in your ED is not counted

When the Clock Runs Out in the ED …

- Health and Safety Code 1799.111 - “hold” initiated by hospital staff
  - Meant to be used as a safety-gap measure when there is probable cause that a person is a danger to self or others, or gravely disabled (W&I 5150 criteria) and the person cannot be safely released, but no one with authority to “write a 5150 hold” is available

H&S Code 1799.111

- Applies only in non-LPS designated hospitals
- Allows licensed professional staff of those hospitals, or any physician and surgeon providing emergency medical services in any department of those hospitals, to detain a person receiving treatment at that hospital for up to 24 hours
- Staff doing this must have made and documented repeated unsuccessful efforts to find appropriate mental health treatment for the person
H&S Code 1799.111 (cont.)

- Telephone calls or other contacts must “commence at the earliest possible time” once the treating doctor has determined when the person will be medically stable for transfer
- If person is detained beyond 8 hours, the reason for the detainment must be due to the need for continuing and ongoing care, observation and treatment that the hospital is providing, and in the opinion of the treating physician, or a clinical psychologist with staff privileges, the person, as a result of a mental health disorder, is still a danger to him/herself or others, or is gravely disabled. (Document this!)

H&S 1799.111 – Use CHA form 12-12

- Provides immunity to hospital staff that initiated the "detainment" from liability for false imprisonment
- Provides that the patient be "credited" with time spent detained pursuant to 1799.111, should the person be placed on a subsequent 72-hour hold
- The “credit” language of H&S 1799.111 suggests that it cannot be used sequentially to follow a 5150 when the clock has run “out” because 72 hours have passed
When “The Clock Has Run” – Some Final Thoughts

- Unfortunately, the Legislature still has not provided direction on which clock is correct, so it is up to us to figure out what is right legally and ethically
- You need to have a good plan and policy on this because it will surely happen to you at some point (if not already)
- And, try to coordinate with others in your area so that everyone agrees

So, When Time Runs Out, You Need to Decide:

- Are you going to “extend the hold”? or
- Write a new one (“serial hold”)? or
- “Ignore the clock” (start it at 5151)? or
- Just let a person who is at risk walk out the door at 72 hours? (NOT recommended)

The “5150 Clock” Problem – Suggestions

- Work with community partners, including:
  - County mental health agency
  - Local crisis stabilization units
  - Your county Patients’ Rights Advocate
  - Law enforcement
  - Transport staff
  - Volunteers and NAMI
5150 Clock “Solutions” – Options When Time Runs Out, and Issues to Consider

- **Option 1** - Ignore the clock (clock starts at 5151)
- **Option 2** – Time’s up (clock started at 5150)
  - “Extend” the initial hold? How will you document this?
  - Write a new hold (“back to back” or “serial hold”)?
    - Who has authority to write a new hold?
    - How will you notify them?
    - What if they don’t come?

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5150 Clock “Solutions” – Options When Time Runs Out, and Issues to Consider

- **Option 3** – “Parking Lot hold” (gap in time separates events)
  - Let the person walk out the door, thereby ending the first “hold” (but follow them); then, quickly stop them and write a brand new hold; or,
  - Discharge them on paper, and “virtually” let them “walk out the door” – safer option
  - If no one is there to write a new hold, consider using H&S 1799.111, since you are now in a totally new time frame (at least on paper)?

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To Do’s – If Person Insists on Leaving …

- Have policy/training for staff when dangerous person wants to leave, has left AMA who is:
  - Still on a 5150 hold
  - Subject to Health & Safety 1799.111 detention
  - No longer considered to be “on a hold”

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To Do’s – If Person Wants to Leave

- Have policy and train staff on:
  - Non-coercive means to “buy time”
  - (Not) using restraints to hold a person on mental health hold (including locked doors) if you are not a designated facility
  - (Not) chasing a person out the door and into your parking lot, or down the street
  - When to call security, or 911, when a person leaves AMA

When EMTALA and 5150 Laws Clash – The Surveyor’s View

- State law lets law enforcement initiate a custodial hold under W&I Code 5150 based upon “probable cause” decision – it is a legal decision based upon “probable cause” criteria
- Federal law requires hospital ED to “offer” a medical screening exam, and if the person has an emergency medical condition, to offer stabilizing treatment – decisions as to whether there is an emergency, and whether/when stability has been achieved are medical decisions based upon clinical criteria

EMTALA vs. 5150 (cont.)

- Once the patient has been stabilized, the hospital no longer has an EMTALA obligation
  - So what happens when your ED doctor believes that the emergency has been stabilized but County staff disagree and refuse to “lift the hold”
  - Note: CMS surveyors may use 5150 status to conclude the psychiatric emergency is unstable, and cite you for failing to stabilize the patient prior to discharge – this conflict does not have an easy answer – so, DO document these situations as though a surveyor will read it!
EMTALA vs. 5150 (cont.)

- Things that may be persuasive when there is an impasse:
  - Things change over time and with appropriate care, crisis stabilization can and does occur (even in our EDs!)
  - Those treating the patient most recently have the most accurate “read” on stability and resolution of a psychiatric crisis (vs. someone who wrote a hold hours, or days ago)
  - County MH controls which professionals are “authorized” to “reassess” the patient on a hold to determine whether the person can be properly served without further detention; failure to “lift hold” may be entirely due to personnel issues

Another Myth – Patients on a Hold Will Always Consent to Related Medical Care

- Under EMTALA a patient has a right to refuse the medical screening exam and stabilizing treatment
- Under 5150 law the patient does not have a right to refuse admission to a locked designed LPS facility; but the facility will not admit unless the person has been medically cleared
  - What do you do when the patient refuses medical clearance diagnostic procedures (e.g., lab tests)?
  - The law simply does not address this issue (or any other issues related to “medical clearance”)

“Denial of Rights” and Patients with Mental Illness – When do These “Rights” Attach?

- LPS Act (Lanterman-Petris-Short Act) – two sets of specific rights for mental health patients*
  - W&I 5325 – rights of persons with mental illness that may be denied for good cause
  - W&I 5325.1 – “intent of the legislature” that persons with mental illness have certain rights and that these specified rights are not subject to denial

* also, other rights are afforded all patients under other laws such as HIPAA and CMS Conditions of Participation
Patients’ Rights – Who? Where?

- W&I 5325 outlines rights for:
  - Each person involuntarily detained for evaluation and treatment under the provisions of the LPS Act, and
  - Each person admitted as a voluntary patient for psychiatric evaluation or treatment to any health facility (H&S 1250) in which psychiatric evaluation or treatment is offered
  - Also, each person who is committed to a state hospital

Rights Must be Communicated to Patient by the Facility Providing Those Services

- Prominently posted in predominant languages of the community and explained in a language or modality accessible to the patient or otherwise brought to the patient’s attention by other means as the DHCS Director may designate by regulation

§ 5325 Rights Include the Right to:

- Wear own clothing, keep and use personal possessions like toilet articles, to keep and spend small sums of money
- Storage space
- Visitors each day
- Reasonable access to telephones, to make and receive confidential calls or have calls made for them
5325 Rights (cont.)

• Ready access to writing materials, including stamps, and to mail and receive unopened correspondence
• To refuse any convulsive treatment, psychosurgery
• To see and receive services of a patient advocate
• Other rights, specified by regulations; including notification of constitutional or statutory rights found by DHCS to be frequently misunderstood, ignored or denied

How?

• Each patient, upon admission, shall be offered the DHCS patients’ rights handbook
• Rights cannot be waived by parent, guardian or conservator

5325.1 – Patients’ Rights (Which Cannot be Denied)

• Treatment that is least restrictive and promotes independence
• Dignity, privacy, and humane care
• Free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse or neglect; medication cannot be used as a punishment, for convenience of staff or as a substitute for a treatment program
• Prompt medical care and treatment
• Religious freedom and practice
• To participate in appropriate programs of publicly supported education
• Social interaction and participation in community activities
• Physical exercise and recreational opportunities
• To be free from hazardous procedures
**Imbedded County PET Team in Your ED**

- Rideout Hospital and Sutter-Yuba Mental Health – experiment that is working well!
- PET team has room in the ED to assess and treat patients with behavioral health issues – they can write a hold and lift a hold, and help with arranging transfers (“getting a bed”)
- The hospital is very pleased with the results, and more behavioral health patients are being successfully stabilized without the need for intensive inpatient treatment

**Ligature Risk Reduction Concerns**

- **Two memos from CMS**
  - December 8, 2017 – “CMS is in the process of drafting comprehensive ligature risk guidance, primarily for psychiatric units/hospitals.” In the meantime, State Survey Agencies (SA’s) should use their own judgement to identify ligature and other safety risk deficiencies.
  - July 20, 2018 – announcing cancellation of the proposed Psychiatric Care Task Force to address environmental risks related to inpatient care of patients experiencing a psychiatric illness; instead, The Joint Commission (TJC) Suicide Panel efforts to clarify and refine the issues of ligature and safety risks will be incorporated into the revisions of the new Interpretive Guidelines for State Survey Agencies.
Ligature Risk and Patient Safety – Conditions of Participation (CoPs)

• 42 CFR 482.13(c)(2) The patient has the right to receive care in a safe setting.
• 42 CFR 482.41(a) The condition of the physical plant and the overall hospital environment must be developed and maintained in such a manner that the safety and well being of patients are assured.
• The CoPs haven’t changed – the interpretive guidance has!

Ligature and Safety Risk (cont.)

• Joint Commission Journal, 2018 – Incidence and Method of Suicide in Hospitals in the US
  • No reliable estimates: from data we know to focus on hanging risk and risk of suicide immediately following discharge
  • Expert panel: agreed on terminology (e.g., ligature-resistant vs. ligature-free) and provided guidance to psychiatric settings as well as other areas of the hospital

TJC Panel Recommendations

• Inpatient psych (psych units, psych hospitals, dedicated spaces) – must be ligature resistant
• Other areas where suicidal patients might be (EDs, med/surg units, residential, partial hospitalization, etc.) do not have to be ligature resistant, but need risk assessment and appropriate steps to make environment more safe
To Do’s

• Based on prior corrective actions (1585 were reviewed), TJC Panel recommends for all facilities:
   Environmental risk assessment
   Environment of Care rounds by leadership
   Policy/procedure regarding suicide risk assessment (who, when, how, what to do if risk is there)
   Monitoring/precautionary actions
   Staff training and demonstrated competency

To Do’s (cont.)

ED of general acute care hospital – since we know that behavioral health patients (including 5150 “danger to self”) are frequently brought in, specifically look at the following:
   Does your patient safety policy specifically address the patients who come to your ED with behavioral health issues that put them at risk?
   Does your policy include ways to mitigate risk of harm; for example,
     Individual patient risk assessment
     Removal of objects that could be used to harm self or others
     1:1 monitoring

TJC Revision of National Patient Safety Goals

15.01.01

[Diagram of TJC National Patient Safety Goals]
**AB 2861 – Drug Medi-Cal Providers and Telehealth**

- Requires reimbursement to certified drug Medi-Cal provider when substance use disorder (SUD) services are provided through telehealth, when medically necessary and in accordance with state plan, to extent federal financial participation is available
- Requires DHCS to adopt regs by July 1, 2022 to implement this bill (3-1/2 years notice!!)

**Other Telepsychiatry Developments**

- California Drug Medi-Cal (DMC) Organized Delivery System Waiver (ODS) – reorganized system for treating patients with substance use disorder
  - Will pay for telemedicine services to certain populations (e.g. patients receiving Intensive Outpatient Services)
- Seeing more and more rural/frontier health facilities utilizing VSEE and other technologies in order to bring mental health assessment and care coordination to underserved communities
  - Use in EDs varies, but consultations have proven to be extremely helpful in stabilizing patients and reducing the need for inpatient beds, in some cases by 75% or more!

**Looking to the Future**

- **Mayor Darrell Steinberg** of Sacramento (formerly, President Pro Tempore, 2008-2014, CA State Senate), helped chair and start in early 2017, together with CHA and NAMI, Behavioral Health Action (formerly, “Leading the Way”) – multiple stakeholders with common goals for improvement of mental health delivery system, and reduction of stigma for those who suffer from mental illness and substance use disorder
- **Governor Newsom** in January 2019 stated that he will make “brain health” a priority for his administration and established a brain health task force to focus on Alzheimer’s Disease (with $3M annually from State Budget)
Future Legislation? A Sample of Current Issues Before the CA Legislature This Year

• **SB 428 – Youth Mental Health First Aid** – would require teachers to take CE course in order to get a teaching credential and at recredentialing; also training for lay people on recognizing and assisting youth experiencing mental health issues (many groups supporting this including Lady Gaga’s “Born This Way” foundation)

• **AB 8 – Pupil Mental Health** – school districts would have at least one MH professional/400 students by December 31, 2022

Future Legislation (cont.)

• **AB 389: Peer Navigators in EDs** – Would establish pilot program for SUD and MH peer navigators to help behavioral health patients in hospital emergency departments; if funds are there

• **SB 590: Involuntary SUD treatment** – parent, legal guardian or spouse could petition court for involuntary SUD inpatient treatment if person is “imminent danger to self or others” and “can reasonably be expected to benefit from the treatment”

Questions?