SANTA CLARA COUNTY
Behavioral Health Services
Supporting Wellness and Recovery

LANTERMAN-PETRIS-SHORT
(LPS – §§ 5150, 5585.50 & 5751.7)
DESIGNATION PROCESS MANUAL.
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DECLARATION: Facilities and individuals who meet the criteria and process requirements set forth in this document may be designated to evaluate and treat persons involuntarily detained under the Lanterman-Petris-Short (LPS) Act.

Objectives:

a. To enhance the capability and overall quality of the behavioral health delivery system in Santa Clara County.
b. To ensure proper utilization of the designation authority by granting it to only those facilities which meet specified guidelines.
c. To establish the terms of and conditions pertaining to the delegation of authority by which individuals are taken into custody under the Lanterman-Petris-Short (LPS) Act.

I. LPS DESIGNATION GUIDELINES FOR FACILITIES

A. Delegation of Authority to Involuntarily Detain and Treat

1. The authority under the LPS Act to take individuals into custody and to involuntarily treat mental health patients is vested by state law and the Local Behavioral Health Services Director.
2. In Santa Clara County, the Director of the Santa Clara County Behavioral Health Services, in his or her capacity of Local Behavioral Health Services Director, delegates authority to involuntarily detain and treat.
3. Involuntary detention under LPS Act constitutes a significant deprivation of civil liberties that is supported under limited circumstances described in law and regulation.
4. Involuntary detention and treatment is deemed necessary to protect the safety of certain individuals and the community in circumstances permitted by law.
5. These designation guidelines describe the nature, extent and processes by which authority to involuntarily detain and treat under the LPS Act is delegated to others by the Director of the Santa Clara County Behavioral Health Services.

B. Request for Waiver

1. In order for a waiver for psychiatric treatment for minors in a facility with nonspecific separate housing arrangements with adults, the
facility needs to be designated under Welfare and Institutions Codes related to the civil commitment of minors, WIC §§ 5585.50 and 5585.55. The 5585.50 and 5585.55 Facility Designation process mirrors those described in this Process Manual.

2. The Facility must have specific treatment protocols and administrative procedures to identify and provide appropriate treatment to minors admitted with adults.

C. Facility Operations Guidelines

1. A designated facility provides evaluation and treatment services for persons who, as a result of mental health disorders, are judged to be dangerous to self or others and/or gravely disabled. It adheres to those regulations and statutes relevant to the clinical, health and safety needs of those persons.
   a. The facility must comply with applicable constitutional, statutory, regulatory, and decisional law, including but not limited:
      1) California Welfare and Institutions Code (WIC) § 5000-5121, the Lantern-Petris-Short Act.
      2) California Code of Regulations (CCR) Title 9 Chapter 3, § 663 Staffing Requirements for Inpatient Facilities.
      3) CCR Title 9 Chapters 4 and 4.5 Community Mental Health Services under the Lantern-Petris-Short Act.
      4) CCR Title 22 and/or 24 requirements governing behavioral health facilities and/or treatment facilities.
      5) California Civil Code.
      7) California Penal Code § 11164-11174.3.
      8) WIC §15610-15610.65 and §15630 governing mandated reporting.
      9) All applicable policies, procedures or guidelines governing LPS designation established by the Santa Clara County Behavioral Health Services (BHS).
   b. The facility maintains all applicable current licenses and/or certifications as appropriate for its type.
      1) Licensed acute care hospitals, psychiatric hospitals, psychiatric health facilities and certified crisis stabilization units will remain accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or by an
approved equivalent agency, and comply with CMS Medicare Conditions of Participation.

2) Skilled Nursing Facilities and Psychiatric Health Facilities shall comply with all provisions of Title 22 CCR and shall comply with all laws, regulations, CMS Conditions of Participation, and standards of care as apply to them.

3) Urgent Care Centers shall comply with all laws, regulations, and standards of care as apply to them.

4) Correctional Treatment Centers shall comply with all provisions of Title 22 CCR and shall comply with all laws, regulations, CMS Conditions of Participation, and standards of care as apply to them.

c. No designated facility may show any gross violation of clinical practice and/or safety provisions relevant to the class of persons for whom the designation applies, although the violations may not be explicitly covered by licensing standards. Any such gross violations, as determined by the Santa Clara County Behavioral Health Services Director, can result in discontinuance of the facility designation.

d. The facility assumes the full responsibility for assuring appropriate patient care and safety, and accepts all attendant legal obligations.

e. The facility has 24 hour a day, seven day a week behavioral health admission, evaluation, referral, and treatment capabilities, and provides whatever behavioral health treatment and care involuntarily detained persons require for the full period they are held (WIC 5152).

f. All areas of a general acute medical facility may be designated, providing:

1) The facility has one or more inpatient behavioral health units under the same licensure, unless a specific exception is made by the Santa Clara County Director of Behavioral Health.

2) Involuntarily detained patients are treated in areas other than the behavioral health unit only if their medical condition requires it.

3) Appropriate behavioral health staffing, assessments, programs and treatment are provided to all involuntarily detained patients regardless of their physical location within the facility.

4) All rights guaranteed to behavioral health patients by statutes and regulations are observed.
5) All rights to administrative and judicial review to which patients may be entitled, including but not limited to certification hearings, medication capacity hearings, and writs of habeas corpus, are properly initiated, implemented, and conducted.

6) Seclusion and restraints are not used to compensate for inadequate staffing, Santa Clara County of program or building security. Use of seclusion and/or restraints complies with all Title 9, Title 22, Health and Safety Code, CMS, and TJC standards.

7) The involuntary treatment provisions of the LPS Act are not used to authorize or deliver medical treatment. Consent to medical treatment must be obtained as otherwise provided in law.

g. Transfer of patients involuntarily detained under LPS to general medical units:

1) Transfer from a psychiatric unit to a medical unit within an entire LPS designated medical facility:

a. The patient remains subject to LPS involuntary detention. Care must be provided in a fashion consistent with prevailing standards of inpatient psychiatric care and the LPS Designation Guidelines of the Santa Clara County Behavioral Health Services. This includes regular assessment by a psychiatrist or psychologist and the adherence to all LPS patients' rights and due process requirements.

2) Transfer from a designated psychiatric facility to another accepting LPS designated general medical facility:

a. The actions at the receiving facility must comport with all LPS requirements. The receiving facility must notify the Mental Health Court of the change of the patient's location and should be prepared to attend any scheduled writ or probable cause hearings. Care must be provided in a fashion consistent with prevailing standards of inpatient psychiatric care and the Santa Clara County LPS Designation Process Manual.

b. The accepting LPS designated facility must assess the patient to determine if a 5150/5585.50 hold and admission is appropriate.
3) Transfer from an LPS designated facility to a general medical facility that is not LPS designated:
   a. The LPS designated facility must properly discharge the patient prior to transfer, as LPS detention cannot be provided at non-LPS-designated facilities.
   b. If the patient is later discharged from a non-LPS designated medical facility and readmission is sought to a designated LPS facility, the patient must again be assessed to determine whether a subsequent 5150/5585.50 hold and admission is appropriate.

h. Referring parties are made aware that attending physicians with 5250 authority for a designated facility cannot authority 5250s at any other facility.

i. The facility ensures that once patients are discharged from custody detention of assessor, they are provided with the means to return safely to the area where they were taken into custody, if that is their request.

j. The facility ensures that, of the time patients spend in a non-designated medical facility emergency room to which they have come for medical treatment and wherein identified staff believe there is a need for 5150/5585.50 evaluation, any detention time (up to 24 hours) awaiting placement to a designated facility is deducted from their subsequent 72 hour detention period, pursuant to Health and Safety Code § 1799.111.

k. In situations when assessment pursuant to 5151 at an out-of-county LPS designated facility results in determination that an individual detained under WIC 5150 cannot be properly served without being detained, that individual may be directly transferred from the out-of-county LPS designated facility to an accepting Santa Clara County LPS designated facility, provided that documentation of an acceptable 5151 assessment by a member of the attending staff of the sending designated facility accompanies the transported individual. An acceptable 5151 assessment is one which contains the conclusion that the individual requires detention or requires admission for evaluation and treatment.

l. Prior to admitting a person to a designated facility pursuant to § 5150, the professional person in charge of the facility or his or her designee
assesses the individual in person to determine the appropriateness of the involuntary detention, as per WIC § 5151.

m. When a county-operated LPS designated facility has determined under WIC 5585 that acute psychiatric inpatient admission is necessary for an LPS-detained adolescent, and determines that no acute psychiatric inpatient adolescent beds are available in non-publicly operated LPS designated facilities, BHS will work with the LPS designated facility to determine if the Crisis Transition Services Team can be linked and support the adolescent and family within the home.

1) County-operated LPS designated facilities must document regular efforts to identify and access available county-operated acute psychiatric inpatient beds in instances in which there are no acute psychiatric inpatient adolescent beds available in non-publicly operated LPS designated facilities for an LPS-detained adolescent.

n. County-operated LPS designated public facilities must coordinate daily census availability.

o. The clinical record associated with a 5151 assessment in an LPS designated facility that results in the release of an individual initially detained by Santa Clara County BHS authorized staff directly operated or contracted programs, must include documentation of the probable cause for detention recorded on the 5150 application, and the reason the 5151 evaluator felt that the cause (and other written clinical information provided with the 5150 application by program staff) did not suffice to require a clinical decision to continue involuntary detention.

p. Upon transport of an individual detained under WIC 5150 to an LPS designated acute care center from a non-LPS designated location, a reassessment for probable cause should be conducted and, if probable cause is found, a new detention application should be completed at that time by an LPS authorized individual.

q. Transport of an individual detained under WIC 5150 to an LPS designated acute care center from an LPS designated location may occur only under circumstances in which the receiving facility will be aware of 5150/5585.50 timelines and ensure a physician can assess the patient prior to the expiration of a hold.

r. LPS designated acute care center accepting patients detained on a 5150/5585.50 must complete a risk assessment for each patient.

1) LPS designated acute care centers receiving patients on 5150/5585.50s must refer to all documentation received with
the 5150/5585.50 in the risk assessment, reflect the consideration of the documentation received in the decision to admit the client, contact the 5150/5585.50 originator if a decision is made not to admit the client, and document the basis for determining the release of clients who were detained as a danger to self or others.

s. Once a facility accepts the patient for treatment by either conducting an assessment or by admitting a patient brought to the facility, it assumes the responsibility for seeing the case through to its appropriate disposition – i.e., the clinically indicated, available, and legally allowable treatment, referral or placement that best meets the patient's clinical needs and desires.

t. The facility makes arrangements for interpreters or for use of other mechanisms to ensure adequate communication between patients and personnel, if any language or communication barriers exist between facility staff and patients.

u. The facility allows the Santa Clara County Behavioral Health Services to review the facility for initial designation and for the continuation of such designation.

v. The facility allows Mental Health Advocacy Project (MHAP) staff access to all staff and patients at all times to conduct investigations to resolve specific complaints. Patients are allowed access to the Mental Health Advocacy Project (MHAP) staff at any time, except during times of emergency.

w. The facility allows the Santa Clara County BHS Director or designee and the Mental Health Advocacy Project (MHAP) staff access, upon request, to all treatment records, logs, policy and procedure manuals, contracts, credentials files and/or personnel records of staff empowered to initiate 72 hour holds, to conduct investigations and assess compliance with LPS and Patients' Rights statutes and regulations.

x. The facility abides by the procedures established by the Superior Court and the Santa Clara County Behavioral Health Services for all behavioral health-related court hearings that are facility-based [including but not limited to certification review ("probable cause") hearings, medication capacity ("Riese") hearings, Roger S. hearings and independent clinical reviews, and that are court-based [including writs of habeas corpus, medication capacity appeals, and all conservatorship proceedings].
1) The facility is responsible for transport and escort of patients to and from, and supervision of them at, all behavioral health-related court hearings.

y. The facility is obligated to reimburse BHS for costs associated with mandated patient rights advocacy and hearing services held at the facility. Rates of reimbursement are assigned annually by BHS Fiscal based on type of services and resource reliance. Invoices will be distributed on a quarterly basis.

z. The inpatient facility abides by all Patients' Rights Conditions of Participation as set forth by the Centers for Medicare and Medicaid Services (CMS) in 42 CFR part 482 inclusive of seclusion and restraint requirements, and ensures that a physician or clinical psychologist with appropriate privileges (or trained registered nurse or physician assistant) sees and evaluates (face-to-face) the need for restraint or seclusion within one hour after the initiation of the intervention. The time limits of orders for restraint or seclusion are within CMS and TJC specifications. Patients in restraint or seclusion are continually monitored and reassessed appropriately, as per CMS, Title 22, Health and Safety Code (Div. 1.5 commencing with §1180-1180.6), and TJC requirements. Skilled Nursing Facilities, Psychiatric Health Facilities, and Urgent Care Centers must abide by Title 22, Health and Safety Code (Div. 1.5 commencing with §1180-1180.6).

aa. The facility's process for using restraints or seclusion with behavioral health patients in an emergency situation has clinical integrity, and is the principle responsibility of trained clinicians who routinely promote de-escalation and prevention of unwanted psychological effects.

bb. The facility has a system and procedures in place to ensure the confidentiality, security, integrity, and accessibility of patient health information, inclusive of a contingency plan for the storage and protection of filed medical records against unauthorized intrusion and/or damage.

cc. The facility must notify the Santa Clara County Behavioral Health Services of any changes that may significantly affect the facility's conformance with the criteria for designation, including modification of physical structure, number of beds, demographic or diagnostic aspects of patient population, therapeutic services, or policy or procedure concerning staffing, program, or operations. Based on receipt and analysis of such information, Santa Clara County BHS may require a focused review as a condition of continued facility designation.
dd. The facility indemnifies, defends, and will hold harmless the Santa Clara County Behavioral Health Services, Santa Clara County Board of Supervisors, and the State Department of Health Care Services, and their officers, agents and employees, from and against any and all claims, losses, liabilities, or damages arising out of, or resulting from the facility’s or its designees’ exercise of County-granted LPS authority to detain and treat patients on an involuntary basis.

D. Staffing Guidelines

1. The facility has adequate 24-hour professional supervision to meet the clinical needs and ensure the safety of patients judged to be dangerous to themselves or others or gravely disabled.

2. At a minimum, the staffing must meet the requirements specified in Title 9, § 663 of the California Code of Regulations:

<table>
<thead>
<tr>
<th>Personnel Ratio per 100 Patients</th>
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<tbody>
<tr>
<td>Physicians</td>
</tr>
<tr>
<td>Psychologists</td>
</tr>
<tr>
<td>Social Workers</td>
</tr>
<tr>
<td>Registered Nurses</td>
</tr>
<tr>
<td>Other Mental Health Personnel</td>
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<tr>
<td>Total</td>
</tr>
</tbody>
</table>
3. In addition, the facility must have methods for determining staffing requirements based on assessment of patient needs, as per CCR §§ 71213 and 71215. The facility, upon request, makes available for review documentation of the methodology used in making staffing determinations, and provides verification that actual staffing meets the specified requirements.

4. Staff must hold current and valid California professional licenses where required.

5. All staff involved in the evaluation and treatment of involuntary patients must be fully conversant with the involuntary detention statutes (WIC § 5150/5585.50 et seq.) and with patients' rights statutes (WIC 5325 and 5325.1) and related regulations (CCR § 860 et seq.), inclusive attending physicians and psychologists, allied health professionals, and clinical employees.
   a. The facility makes available for review required documentation of attendance of staff at in-service training concerning LPS and patients' rights statutes and regulations (i.e., evidence of orientation at time of hire and of annual updates).

6. All staff involved in the evaluation and treatment of involuntary patients must be fully conversant with all mandated reporting statutes (including Penal Code §§ 11164-11174.3 and WIC §§ 15630, 15610-15610.65, and 15659), inclusive attending physicians and psychologists, allied health professionals, and clinical employees.

7. The facility meets requirements of TJC or of an approved equivalent agency for orientation and training of agency personnel, if utilized.

E. Policies and Procedures

1. The facility has acceptable policies and procedures, plans, and contracts (without compensation or inducement for referring patients) which comport to the Welfare and Institutions Code, the California Code of Regulations, and the California Business and Professions Code related to the legal, ethical, fiscally sound, and clinically appropriate psychiatric treatment of both voluntary and involuntary patients.

2. These policies and procedures, plans, and contracts are made available for review and must include, but are not limited to, the following:
   a. Legal Issues
      • Initiation of 72 hour involuntary detentions, 14 day certifications (1st and 2nd), 180 day post certifications, and LPS conservatorships, and how the facility will assure proper implementation of these holds;
- Patients' due process rights, including procedures relating to certification ("probable cause") hearings, minors' due process proceedings (including Roger S. hearings and independent clinical reviews) writs of habeas corpus, medication capacity ("Riese") hearings, and five day notice requirements prior to establishment of temporary LPS conservatorships, and how the facility will assure that all requirements are met with regard to these rights;
- Patients' rights and denial of rights including required documentation and reporting;
- Use of seclusion and restraints;
- The dissemination of information on the risks and benefits of medication and procedures used for obtaining informed consent for medication;
- Confidentiality;
  - privacy and security of medical records,
  - Electronic communication,
  - Safeguards,
  - Training,
  - Retention of records,
  - Storage,
  - Authorization,
  - Penalties and sanctions,
  - Telehealth if applicable,
  - Research,
  - Breaches and reporting,
  - Risk analysis,
  - Confidentiality complaints,
  - Subpoenas, orders and warrants,
  - WIC Section 5328
- Facility parameters under which patients may have access to their treatment record (Health & Safety Code Section 123100).
- Authorizotion to Release Protected Health Information
- Required patients' rights notifications and advisements;
- Required notifications to patient of prohibition from owning, possessing, receiving, or purchasing firearms for a period of five years, including provisions for petition to Superior Court for relief of firearms prohibition, and provision of power of attorney declaration for firearms transfer and disposal;
- Required notifications of next of kin;
- Consents for treatment;
- Electroconvulsive treatment; psychosurgery or deep brain stimulation (if performed at the facility);
- AWOL, AMA, and approved discharges, including discharge planning that appropriately uses resources in the county (or counties) of initial LPS detention and residence;
- Admissions criteria and procedures, including those pertaining to minors in applicable facilities;
- Personal searches (types, justification for each type, and personnel and documentation required for each type of search);
- Room searches;
- Contraband;
- Time out;
- Tarasoff procedure and;
- Mandated reporting.

b. Ethical, Community Service, and Fiscally Sound Practices
- Facility Code of Ethics;
- Conflict of Interest;
- Gifts and donations;
- Fraud Waste and Abuse
- Whistleblower protections,
- Non-retaliation,
- Penalties and sanctions
- Education and training,
- Auditing,
- Reporting
- Process for resolving patient complaints, including (if applicable) Local Mental Health Plan (Medi-Cal) Beneficiary/Client Grievance and Appeal procedures;
- Criteria for identifying potential abuse; procedures for management of alleged physical and sexual abuse;
- Criteria for identifying issues of child endangerment or abandonment. This includes making efforts to determine upon admission whether the patient is a custodial parent or caregiver of a child or an elder or dependent adult and if so, whether a report should be made pursuant to Penal Code § 11164 et seq. or WIC §15630 et seq.;
- Advance Directives;
- Hospital plan for patient care;
- Strategic Plan [goals for psychiatric services] with community needs, services, and priorities identified;
- Program services and schedules, and handouts for patients;
- Staffing Plans for patient care areas;
- Intake/admissions policies and procedures, including procedures for accepting transfer to the hospital of individuals detained pursuant to WIC § 5150/5585.50 in a different county (e.g., verifying conditional LPS authorization by Santa Clara County of the professional who detained the individual out-of-county);
- Contracts or Agreements for providing or receiving Psychiatric Mobile Response Team(s) services to non-designated facilities, and/or with individuals providing emergency evaluations; and,
- Safeguarding of belongings throughout hospitalization and during transfer and discharge.

c. Clinical Appropriateness
- Utilization Review Plan with mechanism for over- and under-utilization oversight and implementation of admission, continued stay, and discharge criteria;
- Mechanism for identification and management of critical incidents; --Safety and Disaster Plans;
- Performance Improvement Plan with performance measures for professional staff [i.e., 72 hour hold (5150/5585.50) proctoring and monitoring criteria], and,
- Governing Body and Medical Staff Bylaws and Rules and Regulations.
- Credentialing
- Training
- 5150/5585.50 Authority

F. Physical Environment

1. The facility has a safe, clean, and comfortable physical plant which ensures the safety of, and which meets the clinical and physical needs of patients identified as being dangerous to self or others or gravely disabled, and which is in compliance with all applicable statutes and regulations.

2. At the conclusion of construction and/or conversion to a psychiatric program, the physical plant operated by the facility meets the structural standards as provided in CCR Title 24 and has had its plans and construction approved by all legally dictated authorities.
3. The psychiatric program is housed in a separate and distinct unit within the facility's physical structure.
4. The facility provides areas for physical exercise and recreational opportunities.
5. The facility has a secure outdoor area is safely accessible so that all patients have access to fresh air daily, weather permitting.
6. Each behavioral health unit has a separate observation room near the Nursing station that provides a safe environment for those patients placed in seclusion and/or restraints and that supports the dignity of the individual to the extent possible.
7. The facility's physical plant has fire clearance from the Office of the State Fire Marshall and meets 2012 Life Safety Code (CMS 482.41).
8. The facility's physical plant is structured and equipped to meet patients’ rights requirements pursuant to WIC § 5325 and 5325.1:
   a. The facility shall have sufficient indoor storage space accessible to each patient per WIC § 5325.
   b. A sufficient number of phones shall be available for patient use in locations which ensure confidential conversations, pursuant to WIC § 5325.
   c. The facility shall operate a canteen, shop or vending machine accessible to the patients or have other means of providing patients with the opportunity to purchase incidentals regularly.
   d. The patient bathrooms shall be constructed to ensure privacy, as afforded patients by WIC § 5325.1.27
   e. The facility shall be constructed to offer space for physical activity and recreational programs.
9. The facility provides designated smoking areas for adults that have adequate ventilation to ensure healthful air quality or alternate nicotine replacements for patient comfort.
10. The facility provides nicotine replacement treatment for adolescent patient comfort. Guardian consent will be obtained prior to provision of nicotine replacement treatment for patient’s that have guardians.
11. A facility treating minor inpatients ensures they are housed in a separate unit away from the adult population absent a waiver from the Santa Clara County BHS Director approved by the county Board of Supervisors and the State DHCS (WIC, § 5585.55 & §5751.7).
12. The facility provides adequate, safe, and appropriately secure space, and also any necessary personnel or staff, to meet the clinical and safety needs for all facility-based hearings, such as probable cause, Riese, Roger S., and clinical reviews.
G. Documentation and Treatment Guidelines

The designated facility participates in quality improvement activities, including documentation, data collection and quarterly reporting, as specified by Santa Clara County Behavioral Health Services in this document and in LPS evaluation form requirements, and in subsequent revisions thereto.

1. The state and county have quarterly and annual reporting requirements related to:
   a. Involuntary Detention
   b. Denial of Rights
   c. Restraint and Seclusion
   d. Convulsive Treatments
   e. Grievances, incidents and adverse events related to involuntary detention, denial of rights, use of restraint and seclusion and convulsive treatment.

2. Facility will work with MHAP to report Denial of Rights monthly and quarterly reports DHCS Form #1804.

3. Facility will complete and send DHCS Forms listed below by the 15th business day of the month following the end of a quarter to:
   Director Behavioral Health Services
   LPS Facility Reports
   828 S. Bascom Ave, Suite 280
   San Jose, CA 95128
   FAX (408) 885-5789
   a. DHCS form #1010 Quarterly Report on Involuntary Detentions
   b. DHCS Form #1011 Convulsive Treatments Administered (only for facilities that provide convulsive treatment)

http://www.dhcs.ca.gov/formsandpubs/forms/Pages/Mental_Health-Forms.aspx

4. The facility ensures that initial assessments of referred patients are completed regardless of ability to pay.

5. Comprehensive behavioral health assessments of voluntary and involuntary patients include documentation substantiating the need for current treatment and level of care, and are completed by the attending practitioner within 24 hours of admission.

6. Authorized members of the professional staff who initiate involuntary detentions participate in the care and treatment of the patients for
whom they initiate 72 hour holds (inclusive of participation in treatment planning), pursuant to WIC § 5150 and CCR § 823.

7. The facility ensures that patients are appropriately involved in planning their care and treatment, as evidenced by documentation of patient participation in treatment planning.

8. The facility ensures that patients' medical problems are identified, addressed, and documented in treatment plans.

9. The facility must ensure full compliance with WIC § 5328.1, which pertains to provision of information to family members, and must have internal policies and clinical documentation that reflect these practices.

10. The facility meets BHS requirements for application and referral of clients to Santa Clara County for petition for establishment of LPS conservatorships. (Appendix C through Appendix G)

11. The facility ensures that the attending practitioners are present and testify at all appropriate hearings (e.g., Writs, LPS conservatorship hearings, and medication capacity hearings), and that treating physicians meet all expectations related to communication with, and testimony in, the Probate Division of the Santa Clara County Superior Court refer to Certification Review Hearings Policy and Procedure Manual.

12. A designated facility may provide telepsychiatric testimony for conservatorship hearings at the discretion of the court. Use of tele-testimony by LPS designated facilities should be compliant with applicable standards for telepsychiatric testimony or telehealth services. Corresponding documentation will include a consent for telehealth services.

13. The facility ensures that, should an involuntarily detained person elope, measures are taken to protect the individual and the public, by contacting law enforcement to try and apprehend the person, to notify family and reporting the elopement to the public guardian.

14. The facility will respond in a timely manner to all inquiries from BHS outpatient providers of service responsible for the care of any individual hospitalized at the facility, and will works cooperatively with the providers to establish effective transition to outpatient care.

15. The facility ensures that, upon discharge, patients receive practical, realistic and appropriate referrals to community agencies, suitable placement, and necessary transportation and transfer of care, as evidenced by documentation in the Discharge and Aftercare Plans and other easily identifiable records, regarding these elements and associated interagency communication to facilitate appropriate transition of care.
16. Uninsured, non-Medi-Cal patients who need further psychiatric medication are discharged with prescriptions for psychiatric medications that are available through the BHS uninsured formulary and consistent with BHS parameters for prescription of psychiatric medication.

17. The facility has a mechanism to review medical records on an ongoing basis for completeness and timeliness of information, and takes action to improve the quality and timeliness of documentation that impacts the care of voluntary and involuntary patients.

18. The facility establishes and maintains a mechanism for appropriately resolving complaints, grievances, and appeals.

19. The facility's professional staff establishes and maintains a mechanism for proctoring and ongoing peer review of knowledge and competencies of 5150 involuntary detention authorized professional staff members with involuntary detention procedures and 5150's. Criteria and outcomes of monitoring are made available for review by the Santa Clara County Director of Behavioral Health Services and/or designee(s).

20. The facility notifies Santa Clara County Behavioral Health Services Inpatient Quality Improvement Division (QID) of all deaths and critical incidents, including suicides, homicides, and physical/emotional abuse, Taser use, or serious injury involving a psychiatric patient by appropriately transmitted document within 24 hours of occurrence or by the next business day if event occurs on a weekend or holiday.

21. The facility establishes and maintains a mechanism for determining patient perception of the quality of the clinical treatment process and the satisfaction of individuals served. Outcomes are made available for review by the Santa Clara County Director of Behavioral Health or designee(s).

II. AUTHORIZATION TO TAKE INDIVIDUALS INTO CUSTODY PURSUANT TO THE LANTERMAN-PETRIS-SHORT ACT

A. General Guidelines Related to Designated Inpatient Facilities

A. Facility administration will maintain a current roster and current credentials files of professional staff members who have been privileged and authorized to initiate 72-hour detentions (5150 involuntary detention authorization). The foregoing are made available on request to representatives of Santa Clara County Behavioral Health Services.
B. Continuation of the designation status of the facility requires that all professional staff of the facility comply with all applicable LPS requirements. These requirements include the limitation of involuntary detention to those individuals who meet LPS criteria and are taken into custody only by members of the professional staff with involuntary detention authority.

C. The facility ensures that all individuals with 5150 involuntary detention authority, whenever exercising or otherwise communicating either orally or in writing about their 5150 involuntary detention authorization-related activities, maintain their facility affiliation on file.

1. The facility ensures that the completed original 5150 detention form is present in the medical record for all involuntarily detained patients. A completed form contains, in legible fashion, the signatory's professional discipline, and the facility affiliation under whose authority the involuntary detention was initiated. Mental Health Professional staff must have the authorization to do an LPS hold in order to complete the "Application for Assessment, Evaluation, and Crisis Intervention or Placement for Evaluation and Treatment" in order for the client to be taken into custody.

2. The facility ensures that the involuntary detention authority granted to a member of the professional staff of the designated facility is exercised at the facility only in relation to the professional staff member's responsibilities in conjunction with that facility.
   a) Qualifying professional staff that have a valid card at multiple facilities will have involuntary detention privileges at these facilities.

D. When an evaluation for possible involuntary detention is conducted either on or off the facility premises, the authorized professional staff must:
   a. Conduct and document an assessment that considers the full range of available treatment modalities, sites, and providers, and results in the care that best meets the client's specific needs. Assessment of need is based upon condition, treatment needs, geography, and current fiscal and treatment relationships with providers. The care should be rendered without regard to profit or gain by the designee's parent facility.
b. Have available a facility-approved comprehensive and current referral source list and be well versed in all relevant treatment resources in the client’s area.

c. Honor the preference of the client and/or the parent of a minor, conservator, or legal guardian for the type and location of the desired treatment facility if administratively feasible and clinically appropriate.

d. Unless prohibited by specific circumstances, seek information from and involve, current providers of behavioral health care to the client in order to support continuity of care.

1. If you believe the client is receiving care from BHS or a BHS subcontracted provider and treatment information cannot be obtained from the client or significant other, the evaluating professional staff will contact ACCESS at (800) 704-0900 to facilitate coordination of care.

2. If the client is currently receiving services from BHS or a BHS subcontracted provider, you must notify the identified case manager within one working day of the evaluation, whether or not the client was hospitalized as a result of the evaluation.

e. Strongly consider the proximity of the designated facility to the patient’s own community, family and support system. Alternatives to taking a patient to a more distant facility should be considered and documented on the off-site assessment form. Preferences are taken into account if feasible.

f. Ensure that proper interventions and/or treatment are provided to the client for whom they have initiated LPS evaluation until appropriate disposition is effected, e.g., one-to-one monitoring, removal of sharp objects, and the like.

g. Give detention advisement to clients in a language or modality that the client can understand, pursuant to WIC § 5150(f)-5150(h), inclusive of the name of the facility to which the client is being taken, and notification that the person is not under criminal arrest, but is being taken for examination by behavioral health professionals. (See Appendix A).
h. Follow all statutory requirements regarding client confidentiality that are consistent and in compliance with HIPAA and LPS privacy regulations.

i. Maintain an accurate log of all requests for their off-premises services, including:

j. Take reasonable precautions to preserve and safeguard the person's property, pursuant to WIC § 5150(e) and 5211.

k. Initiate 72 hour holds only within the boundaries of Santa Clara County only.

l. Represent themselves to the public as affiliated with the facility from which they derived their 5150/5585.50 involuntary detention authority.

m. Initiate involuntary detentions only for persons who, based on the authorized staff member's professional assessment, are believed to be dangerous to self, or others, or gravely disabled because of a mental health disorder.

n. Abide by all provisions in the Welfare and Institutions Code Division 5, and accompanying regulations, and Department policies regarding treatment, evaluations, patients' rights, and due process.

o. When the client does not meet criteria for involuntary detention, provide the client with information, referral to appropriate community services, and/or other intervention as appropriate to his/her circumstances.

p. Report conditions of abuse or neglect at residential facilities, such as suspected or possible unsafe and unsanitary living conditions, involving elder or dependent adults and children, to the appropriate agencies - for example, APS, DCFS, Patients' Rights, Community Care Licensing, etc. [per WIC 15630 (a)-(h)].

q. Report potential child endangerment or abandonment and make efforts to determine offsite and upon admission whether the client is a custodial parent or caregiver of a child or caregiver of an elder or dependent adult and if so, whether a report should be made pursuant to Penal Code § 11164 et seq. or WIC 15630 et seq.

E. Designated facilities that provide material support to members of the 5150/5585.50 detention authorized professional staff must provide full disclosure to Santa Clara County Behavioral Health Services regarding the nature, terms, and limitations of such support. Material support includes payments to the attending staff...
for such services, provision of vehicles, communication infrastructure, and patient transport. Full disclosure includes all applicable policies, procedures and contractual arrangements that relate to such support.

a. The designated facility that provides this support has an administrator who is knowledgeable and responsible for ensuring that the support is in accordance with all applicable designation regulations.

F. The facility must have at least one privileged professional staff member with 5150/5250 authority present within one hour for on-site assessment of individuals considered for involuntary detention and/or admission.

G. The designated facility must have the ability to safely detain an individual pending 5150/5250 assessment for up to one hour on-site pending the arrival of an authorized professional staff member.

B. Criteria for Approval of Inpatient Facility’s Authorization of Individuals to Initiate Involuntary Detention

1. Be authorized under Welfare and Institutions Code § 5150 to initiate a 72 hour period of involuntary treatment and evaluation, individuals must meet all of the following criteria:

a. Must have received licensure and training as a behavioral health professional that meets Santa Clara County Behavioral Health Services standards.

b. Be a licensed or waivered member in good standing of the facility professional staff in a behavioral health setting.

c. Have a current 5150 Identification Card.


C. Peace Officers

1. In accordance with Welfare and Institutions Code § 5150, peace officers as described in California Penal Code § 830 are empowered to initiate involuntary detention (custody) under the Lanterman-Petris-Short Act.
III. INITIAL FACILITY DESIGNATION

A. Designated Facility Requirements

1. To be eligible to become a Designated LPS Facility, a facility must be licensed or certified as a mental health treatment facility or a hospital, as defined in subdivision (a) or (b) of § 1250 of the California Health and Safety Code, by the California Department of Public Health (CDPH). A Designated Facility may include, but is not limited to:
   - A licensed general acute care hospital,
   - A licensed psychiatric hospital,
   - A licensed psychiatric health facility,
   - Or a certified crisis stabilization unit.

2. Other types of facilities may be designated at the discretion of the BHS Director.
   a. Facilities must comply with all applicable regulations established by DHCS and CDPH Licensing and Certification. All licenses and/or certifications must be maintained.
   b. Facilities must meet legal and regulatory requirements of Welfare and Institutions Code Division 5, Community Mental Health Services under the Lanterman-Petris-Short (LPS) Act, the Children’s Civil Commitment and Mental Health Treatment Act of 1988, and Title 9, California Code of Regulations (CCR), Subchapter 4, Community Mental Health Services under the LPS Act.
   c. No facility shall have any gross violations of clinical practice and/or safety precautions relevant to the particular level of care administered to individuals, even though the violations may not be explicitly covered by licensing and/or certification standards. This determination shall be made by the BHS Director.
   d. No facility shall be under investigation or convicted of Medicare/Medi-Cal fraud or be noncompliant with Medicare Conditions of Participation. This determination shall be made by the BHS Director.
   e. The facility must comply with all conditions set forth in the BHS LPS Designation and Process for Facilities within Santa Clara County.

B. Submitting a Request for Facility LPS Designation

1. The facility requesting designation notifies the Santa Clara County Behavioral Health Services Director in writing of their intentions.
2. The BHS Director or designee responds to the request with the “Santa Clara County Behavioral Health Services LPS Process Manual”, the
"Application for LPS Designation" (Appendix B), the "LPS Facility Designation Protocol" and a copy of the "Santa Clara County Behavioral Health Services LPS Facility Designation Policy".

3. On receipt of the "Application for LPS Designation, and corresponding materials requested, the Director will assign the Medical Director or Designee to pull together an LPS Designation Team that consists of:
   a. BHS Medical Director or designee
   b. Inpatient Quality Improvement Division
   c. 5150 Coordinator
   d. Public Guardian
   e. County Counsel
   f. Mental Health Advocacy Project
   g. Licensed Clinical Professional, can be CBO partner
   h. Age and/or Service Specific Contract Monitor or Division Lead
   i. NAMI
   j. Consumer

4. The LPS Designation Team will review the materials for initial compliance within fourteen (14) business days of receipt and notify the Designated Facility Director of initial findings within twenty-one (21) business days of receipt.
   i. Initial Compliance is determined when the
      a. Site visits will be conducted within thirty (30) days of receipt of application if all the necessary materials are included in the application packet.
      b. If the submitted materials are incomplete, the site review will be scheduled once the Designated Facility Director has submitted all the requested materials.

C. Site Visit
1. The site visit will consist of a review for compliance with the LPS designation guidelines and criteria including:
   a. The physical plant
   b. Staffing
   c. Policies and procedures
   d. Credentials files
   e. Health Facilities Licensing reports
2. The site visit will be conducted by a designated multidisciplinary team:
a. BHS Medical Director or designee
b. Inpatient Quality Improvement Division
c. 5150 Coordinator
d. Public Guardian
e. County Counsel
f. Mental Health Advocacy Project
g. Licensed Clinical Professional, can be CBO partner
h. Age and/or Service Specific Contract Monitor or Division Lead
i. NAMI
j. Consumer

3. The Lanterman-Petris-Short Facility Designation Protocol will be used for the LPS Designation and Re-designation Process. Prior to the visit, the facility will provide the multi-disciplinary team with copies of materials described in the LPS Designation Protocol. These materials include:
   a. Copy of latest CDPH/Joint Commission Report
   b. Log of any complaints received by CDPH within the past 2 years (for psychiatric units)
   c. Log of any complaints received by MHAP within the past 2 years.
   d. Log of adverse events
   e. Staffing plans by discipline and patient-to-staff ratios
   f. Current fire clearance
   g. Governing body and medical staff bylaws.
   h. Performance Improvement and Utilization Review Plans
   i. Verification of 24 hour admitting capacity

5. If the facility is already accepting patients, the site visit will also include:
   a. An examination of treatment charts selected by the LPS Designation Team.
   b. Voluntary interviews with selected patients and staff.
   d. Facility denial of rights, seclusion and restraint, and involuntary holds record
   e. Access to meeting minutes,
   f. Manuals (Administrative, Nursing, Program, Safety/Risk Management),
g. In-service records,

If the facility's physical plant has not yet opened at the time of the on-site review, LPS designation authority may still be granted on the basis of physical plant, staffing, licensure, policies and procedures (inclusive of Bylaws, Manuals and Plans), and credentials evaluations. However, in this instance, reassessment shall be conducted three months after commencement of the facility's operation and encompasses examination of treatment records, patient and staff interviews, in-service records, contracts with off-site mobile response individuals and/or teams, minutes, and logs and reports on file with the BHS Quality Improvement Division.

6. If the facility is found to be in compliance with the LPS Designation Criteria at the site review, the LPS Designation Team will submit a written summary of the findings along with a recommendation for formal designation to the Santa Clara County Behavioral Health Services Director.

7. If the Santa Clara County Behavioral Health Services Director finds, based on all available information, that the facility meets all guidelines and criteria specified for designation, the Director may, as a delegate of the Santa Clara County Board of Supervisors and after review by Santa Clara County Counsel, designate the facility for 5150 purposes.

8. The LPS Facility Designation recommendation is submitted to the State Department of Health Care Services liaison for final approval.

9. The Santa Clara County BHS Director notifies the facility Director in writing of the designation decision.

10. If the Santa Clara County LPS Designation Team finds that a facility is not in compliance with LPS guidelines and criteria, they will inform the facility and the BHS Director and make specific recommendations for compliance. A return on-site visit is scheduled once the facility notifies the Medical Director that the recommendations have been implemented.

   i. In the event that the facility disagrees with multi-disciplinary team findings, it may, if it chooses, present information and/or arguments directly to the Director.

11. Prior to the facility's exercising its designation authority, individuals involved in the involuntary detention process must have made application to the Santa Clara County Behavioral Health Services for approval to initiate involuntary evaluation and detention, with signed attestation by the designated director in charge of the facility, must
have received Santa Clara County-approved training on LPS statutes and patients' rights and achieved a passing score on a written examination, submitted a signed agreement to the terms of individual 5150 detention authority set forth by the Santa Clara County Behavioral Health Services, and be issued an identification card by the county to be carried whenever imposing involuntary detention authority.

D. Designation Types and Terms

1. Types of Designation and Terms

- **Conditional:** (to be determined) A site visit has been conducted. Facility status or findings indicate additional needs, such as Joint Commission Accreditation, licensure, fire clearance expires soon or reports pending. Or significant corrective actions are required in a brief timeframe. LPS Designation Team will review materials such as license, accreditation, clearances, etc. grievances, incidents, reports, policies and determine if a follow up site visit is required to verify compliance.

- **Initial/Renewal/Reinstatement:** (3 years) The facility is renewing or reinstating LPS Designation and there are few or limited findings that can be addressed without further site visit or contractual changes (if applicable).

- **Withdrawal:** Gross violation and/or ongoing violations of clinical practice, patients' rights, quality of care, and/or safety precautions relevant to the class of persons to whom designation applies. Failure to comply with the terms and ethical provisions of law related to involuntary detention. Failure to correct circumstances within specified timelines that previously led to conditional designation. Closure, loss of licensure, or loss of TJC or equivalent accreditation; failure to comply with Medicare Conditions of Participation. Failure to allow BHS or MHAP designees to review the facility for designation or complaint resolution purposes, including access to specified patients, staff, and records to establish compliance. Or when in the judgment of the BHS Director, closure is required by community needs.

2. All designation timelines are revocable at any time should the facility fail to comply with the designation guidelines.
IV. FACILITY REDESIGNATION

A. Procedures

1. BHS will notify the facility within 60 days of LPS Designation expiration to coordinate the site visit.

2. The Medical director or Designee sends:
   b. Application for LPS Designation.
   c. Policy 415.211 LPS Facility Designation.
   d. Lanterman-Petris-Short Facility Designation Protocol

3. The Facility Director submits the above application to the BHS Medical Director and arranges for an on-site visit.
   a. Under the auspices of the Santa Clara County BHS Director, the LPS Designation Team conducts a review of each designated facility seeking re-designation to assess compliance with LPS designation guidelines and criteria, as outlined in the Lanterman-Petris-Short Facility Designation Protocol.

4. Such review encompasses a tour of the patient units, survey of open and closed treatment charts selected by the reviewers, voluntary interviews with clients, examination of policies, procedures, Manuals, Plans, minutes and contracts as specified in the LPS Designation Protocol, and discussion with facility staff.

5. The reviewers apprise facility staff of their findings orally at the conclusion of the visit and in writing within 30 days thereafter, (via a preliminary draft and a final report) citing specific areas of compliance and noncompliance, and making recommendations for remedial action where indicated. Reviewers may also ask for a specific plan of correction to address areas of noncompliance, to be submitted within 30 days of report receipt or as otherwise directed.

6. The reviewers make a recommendation concerning the facility’s continued designation to the Santa Clara County BHS Director. If the reviewers are unable to recommend continued designation they may elect to conduct a repeat on-site visit upon their determination that sufficient time has elapsed for the facility to correct identified deficiencies. Gross violation(s) of clinical practice, patients’ rights, and/or safety practices relevant to the class of persons for whom designation applies can result in temporary suspension and/or discontinuance of the designation. [See Section V of this document for additional circumstances]
warranting conditional designation and/or withdrawal of designation.

7. If the facility fails to correct identified deficiencies, the Santa Clara County BHS Director takes appropriate remedial action up to and including termination of the facility's designation.

8. The facility is notified in writing of the above action. Temporary suspension of a designation or placement of the facility on conditional designation status is a departmental administrative action requiring no action by outside parties.

B. Length of Designation
   a. (Re) Designation as a facility to evaluate and treat persons involuntarily detained under the Lanterman-Petris-Short Act (Welfare and Institutions Code, Division 3) is valid for three (3) calendar years from the time of the Santa Clara County BHS LPS re-designation survey, unless such designation is subsequently suspended or withdrawn.
   b. Designation ceases if the facility has not detained patients on an involuntary basis pursuant to the WIC § 5150 and/or 5152 for a period of five years.

V. WITHDRAWAL OF DESIGNATION, CONDITIONAL DESIGNATION, AND REINSTATEMENT OF DESIGNATION

A. Circumstances under which Santa Clara county Director of Behavioral Health Services may withdraw his or her designation of a facility

The Santa Clara County Director of Behavioral Health may withdraw his or her designation of a facility under these Guidelines in the following circumstances:

1. Gross violation and/or ongoing violations of clinical practice, patients' rights, quality of care, and/or safety precautions relevant to the class of persons to whom designation applies;
2. Failure to comply with the terms and ethical provisions of law and Santa Clara County BHS policies regarding constitutional, statutory, regulatory and decisional law, including but not limited to WIC, Division 5, Community Mental Health Services, CCR Titles 9 and 22, and the Business and Professions Code, § 650, concerning compensation for referrals;
3. Repeated failure to verify and submit for authorization only fully qualified individuals; failure to assure that 5150 detention authorized
staff are appropriately monitored and supervised, and/or that its representatives exercise the involuntary detention and treatment authority in accordance with established Santa Clara County BHS Guidelines and legal requirements;

4. Failure to allow the Santa Clara County Director of Behavioral Health or his/her designees to review the facility for designation or complaint resolution purposes, including access to specified patients, staff, and records to establish compliance with Santa Clara County BHS LPS Guidelines and regulations;

5. Failure to correct circumstances within specified timelines that previously led to conditional designation;

6. Failure to truthfully disclose the material support provided to members of the 5150 detention authorized professional staff concerning off-site evaluation and 5150 detention activities, or to ensure the support is in accord with all applicable designation regulations; and,

7. Closure, loss of licensure, or loss of TJC or equivalent accreditation; failure to comply with Medicare Conditions of Participation.

8. When in the judgment of the BHS Director, it is required by community needs.

B. Circumstances under which Santa Clara County Director of Behavioral Health Services may place designated facility on conditional designation status.

The Santa Clara County Director of Behavioral Health may place a designated facility on conditional designation status under the following circumstances:

1. Failure to submit a timely or acceptable corrective action plan as requested in writing for cited deficiencies;

2. Failure to ensure that all rights guaranteed to behavioral health patients by statutes and regulations are adhered to, including proper initiation and implementation of rights to administrative and judicial reviews, hearings, and writs;

3. Improper use of seclusion or restraint, including failure to routinely utilize preventive alternative interventions and/or to follow CMS, Title 22, and Health and Safety Code (Div. 1.5 commencing with § 1180-1180.6) requirements for seclusion and restraint orders, use, and monitoring;

4. Occurrence of significant quality of care or safety issue or critical incident requiring Santa Clara County BHS investigation and prompt corrective action by the facility;
5. Failure to meet documentation and treatment guidelines, as specified in Section I.F. of this document, by established deadlines;
6. Failure to notify Santa Clara County BHS of significant occurrence(s) or to submit reports as required by Santa Clara County BHS within 30 days after end of reporting period;
7. Failure to provide whatever behavioral health treatment, care, and referrals involuntarily detained persons require for the full period that they are held; and,
8. Failure to notify the Santa Clara County BHS of any changes that may affect its conformance with the criteria for designation.

C. Circumstances under which the Director of Santa Clara County Behavioral Health Services may reinstate approval of a facility’s authorization of a rehired or returning individual.

The Santa Clara County Director of Behavioral Health may reinstate approval of a facility’s authorization of a qualified hired, rehired or returning individual to exercise its delegation of authority under the following circumstances:

1. Individual left facility/professional staff for reasons not related to any disciplinary action for which involuntary detention authority was suspended or withdrawn during the prior authorization period; and;
2. Individual left facility/professional staff for no longer than six months and the Individual’s written and signed agreement with the facility and Santa Clara County BHS has not expired, or, Individual left facility/professional staff for no longer than three years and the last authorization period was of at least five years duration. [Also See Guidelines item II.C.2.]
3. If the written and signed agreement has expired, the individual left facility/professional staff for longer than six months, and the person’s last LPS authorization was of less than three years duration, the individual takes the Santa Clara County BHS-approved LPS Detention Authorization Training Course and written examination the next time it is offered. No reinstatement of 5150 detention authority will be granted until the individual has passed the written examination.
4. When in the judgment of the Santa Clara County BHS Director, it is required by community needs.
D. Should the Santa Clara County Director of Behavioral Health withdraw his or her designation of a facility, or should the Santa Clara County Director of Behavioral Health withdraw the approval of a designated facility’s 5150 detention authorization of an individual, the following procedures shall take place:

1. Except as described below in respect to emergencies, the Santa Clara County Director of Behavioral Health Services shall notify the facility of his or her intention not less than 30 days in advance of taking the action. The notification will specify the reasons for which the action is being taken.

2. The facility may submit a written demand for review within 14 days of receiving the notice of intention to the BHS Director. In support of its written demand, the facility may submit written documentation or other proof controverting the specification made in the notice of intention. If the facility wishes to make an oral presentation or present witness to controvert the specifications in the notice of intention, its written demand may also request a meeting at which such oral presentation can be made.

3. If a request for a meeting for an oral presentation is made, the meeting shall be held not less than five nor more than ten days from the date on which the facility demanded the review. In no event shall the meeting take place more than 25 days after the notice of intent to withdraw the designation was received by the facility.

4. The meeting at which the facility makes its oral presentation shall be attended by the Santa Clara County Director of Mental Health, or his or her designee, and such other representatives as designated by the Santa Clara County BHS Director in writing to the facility administrator. The meeting may be attended by the facility administrator and Chief Medical Officer and such others as they designate in writing to the Santa Clara County Director of Behavioral Health Services. The facility may make oral presentations that are pertinent to the specifications contained in the notice of intent. A reasonable period of time, as determined by the Director of Behavioral Health Services or his or her designee, shall be permitted for the facility’s oral presentation.

5. The Director of Behavioral Health Services shall consider all written, oral and other information submitted by the facility. The Santa Clara County Director of Behavioral Health Services shall notify the facility in writing of his or her final decision not later than 29 days from the facility’s receipt of the notice of intention.
E. Circumstances under which the Santa Clara County Behavioral Health Services Director may suspend the authority of the facility to involuntarily detain or treat under the LPS act or suspend the approval of a designated facility's authorization of an individual.

If in the judgment of the Santa Clara County Director of Behavioral Health Services, an emergency or threat of harm to consumers exists, he or she may suspend the authority of the facility to involuntarily detain or treat under the LPS Act or the approval of a designated facility's authorization of an individual. Such a suspension may be made during the pendency of a notice of intention, as described above, or for such periods of time during which the Santa Clara County Director of Behavioral Health Services judges the emergency or threat to exist.

1. The facility may request a review immediately or within 14 days of receiving the written notice of emergency suspension, such review to be held within 3 working days from the date on which the facility demanded the review, unless another mutually agreeable time, not to exceed 14 days from the date on which the facility demanded the review, is set.
VI. Appendices
Appendix A: WIC § 5150(f)-5150(h) 5150(f).

1. Each person, at the time he or she is first taken into custody under this section, shall be provided, by the person who takes him or her 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. The information shall be in substantially the following form:

   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 an examination by mental health professional at ___________________________ (name of facility). You will be told your rights by the mental health staff.

   (1) If taken into custody at his or her own residence, the person shall also be provided the following information: 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.

2. The designated facility shall keep, for each patient evaluated, a record of the advisement given pursuant to subdivision (f) which shall include all of the following:

   (1) The name of person detained for evaluation.
   (2) The name and position of the peace officer or mental health professional taking the person into custody.
   (3) The date the advisement was completed.
   (4) Whether advisement was completed.
   (5) The language or modality used to give the advisement.
   (6) If the advisement was not completed, a statement of good cause, as defined by regulations of the State Department of Health Care Services.

3. Each person admitted to a facility designated by the county for evaluation and treatment shall be given the following information by admission staff at the evaluation unit. The information shall be given orally and in writing and in a language or modality accessible to the person. The written information shall be available to the person in English and in the language that is the person’s primary means of communication. Accommodations for other disabilities that may affect communication shall also be provided. The information shall be in substantially the following form: [Also Refer to DHCS
1802 (01/2014) form “Involuntary Patient Advisement (To be read and given to the patient at time of admission)”.]

4. My name is __________________________. My position here is __________________________. You are being placed into the psychiatric unit because it is our professional opinion that as a result of behavioral health disorder, you are likely to (check applicable) :

- harm yourself
- harm someone else
- be unable to take care of your own food, clothing, and housing needs

We believe this is true because ______________________ (list of the facts upon which the allegation of dangerous or gravely disabled due to behavioral health disorder is based, including pertinent facts arising from the admission interview). You will be held for a period up to 72 hours. During the 72 hours you may also be transferred to another facility. You may request to be evaluated or treated at a facility of your choice. You may request to be treated or evaluated by a mental health professional of your choice. We cannot guarantee the facility or mental health professional you choose will be available, but we will honor your choice if we can.

During these 72 hours you will be evaluated by the facility staff, and you may be given treatment, including medications. It is possible for you to be released before the end of the 72 hours. But if the staff decides that you need continued treatment you can be held for a longer period of time. If you are held longer than 72 hours, you have the right to a lawyer and a qualified interpreter and a hearing before a judge. If you are unable to pay for the lawyer, then one will be provided to you free of charge. If you have questions about your legal rights, you may contact the county Mental Health Advocacy Project (MHAP) at (408) 293-4790 (phone number for the county Mental Health Advocacy Project (MHAP)

Your 72-hour period began __________________________ (date/time). This does include weekends or holidays.

(d) For each patient admitted for evaluation and treatment, the facility shall keep with the patient’s medical record a record of the advisement given pursuant to subdivision (h) which shall include all of the following:

1. The name of person performing the advisement.
2. The date of the advisement.
3. Whether the advisement was completed.
(4) The language or modality used to communicate the advisement.
(5) If the advisement was not completed, a statement of good cause. If the advisement was not completed at admission, the advisement process shall be continued on the ward until completed. A record of the matters prescribed by subdivisions (f), (g), and (h) shall be kept with the Patient’s medical record.
Appendix B: APPLICATION FOR LPS DESIGNATION

GENERAL INFORMATION:

1. Name of Applicant – Facility Name: __________________________
   ____________________________________________________________

   Address: _____________________________________________________

   City: _________________________________________________________

   Zip Code: ____________________________________________________

   Telephone: (____) ______________________

2. Sponsorship:

   □ Government Entity  □ Non-Profit Corp.
   □ Individual or Proprietary Corp. □ Partnership
   □ Other ________________________________

3. Is the property owned by the applicant? □ Yes □ No

   If no, state the name, address and affiliation of the property owner:
   ________________________________________________________________

4. Capacity to be licensed: __________________________

5. Current status of the facility:

   To be constructed □ yes □ no
   Existing Community Care Facility (to be remodeled: □ yes □ no)
   Existing Health Facility: (to be remodeled: □ yes □ no)
   Other: (to be remodeled: □ yes □ no) __________________________

6. Current License Classification (if any): __________________________

7. Location of Facility: __________________________________________

8. Setting: □ Rural □ Urban
9. Services, in addition to in-patient treatment, to be offered by the facility:

☐ Day treatment ☐ Outpatient ☐ None ☐ Other:

10. Age Groups to be admitted:

☐ Children ☐ Adolescent ☐ Adult ☐ Older Adult

11. Legal Classes to be admitted:

☐ Voluntary ☐ Involuntary ☐ LPS Conservatee ☐ Judicially Committed

12. Provisions for treatment of patients requiring medical services for physical health conditions:


13. Contractual Agreements Attached: ☐ Yes ☐ No

If No, under development with:


14. Provision for referral of patients who are found to have psychiatric disorders that the facility is not able to treat including transportation arrangements:


Statement of Provisions attached: ☐ Yes ☐ No

If No, under development with:


15. Provision for After-Care Services:


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16. Anticipated Source of Funding for Care and Treatment:
   □ Short-Doyle □ Insurance □ Private □ Other ________________

17. Clinical Director – Name: ________________________________
    Degree: _______________________________________________
    License type & #: _________________________________________
    Telephone: [___] ________________________________

18. Anticipated average per diem charge for inpatient services to a fully paid patient: $ __________. Attach a complete list of any and all charges and costs for inpatient services.

The following must be submitted with this application:

A. A plan for quality assurance, including utilization review and medication monitoring.
B. A list of diagnoses proposed to be treated by the applicant’s program.
C. A list of diagnostic and treatment services, including all personnel, equipment and modalities that will be used to treat the various diagnoses listed under ‘B’ above.
D. A schedule of weekly activities to be engaged in by each patient and a schedule of a patient’s typical day. This should include the anticipated flexibility of the program activities to provide for the individual needs of each patient.
E. A list of the staff identified or hired to date, with a brief resume and copy of current licensure for each.
F. A description of applicant’s previous experience in the provision of mental health services, including appropriate licenses and biographies of both the organization and individual administrators.
G. The number, description and qualifications of proposed staff; if actual staff members have been hired, submit a copy of their current resume and license.
H. If the treatment staff time is to be assigned to other than inpatient services, indicate the percent distribution.
I. A statement from administrators/staff stating whether their
licenses have ever been suspended or revoked and whether they are under current indictment, as well as a listing of: their arrest record, if any; any convictions of a felony; and malpractice actions, if any, against them; any charged felonious activities; and any currently pending actions by any private individual, government body, hospital staff office, or hospital affiliation, involving their professional duties. A floor plan of the proposed program space.

J. A narrative description which explains the program. The summary of the planned program should explain how the programmatic space will be used, what treatments and activities will be available to patients and how they will be assured an appropriate, safe and therapeutic environment.

K. A clearly written statement of an Admissions Policy by diagnosis which specifies the explicit exclusion of individuals whose primary presenting problems result from drug or alcohol abuse or who require detoxification.

Applicant's signature: ____________________________________________

Applicant's title: ________________________________________________

Organization name: _____________________________________________

Date: __________________________________________________________

Submit your Application to:

Director
Behavioral Health Services
828 S. Bascom Avenue Suite 200
San Jose, CA 95128
HISTORY OF THE CERTIFICATION REVIEW HEARING

In 1967, after a two-year study, the California Legislature enacted the Lanterman-Petris-Short (LPS) Act. This statute and subsequent amendments repealed the principal provisions of prior civil commitment laws and removed some of the legal disabilities previously imposed on the mentally ill. The LPS Act sought to replace the "warehousing" of the mentally ill with community-based services, emphasizing voluntary treatment while providing for periods of involuntary observation, crisis intervention and intensive treatment for persons whose condition renders them unable to care for themselves or dangerous to themselves or others. The act provides that a person who as a result of a mental disorder, is gravely disabled, dangerous to himself or herself or dangerous to others may be involuntarily detained for 72 hours of treatment and evaluation. Upon certification by certain qualified professional staff members, a patient may be detained for a period of intensive treatment not to exceed 14 days.

An involuntarily detained patient is guaranteed certain rights by statute, common law, and state and federal constitutional provisions. It is the protection of these fundamental rights which has resulted in the institution of "probable cause" or certification review hearings pursuant to Welfare & Institutions Code Section 5250. The rights of persons detained for 14-day treatment on the basis of grave disability were clarified in a federal court case, Doe v. Gallinot (1979) 486 F. Supp. 983, aff'd (1981) 657 F.2d 1017. Based on the finding that confinement in a mental institution is a severe deprivation of liberty and mental health decisions carry a substantial risk of error, the District Court decided that due process requires a review of a person's involuntary commitment to determine whether the facility has sufficient cause to detain a person beyond the 72-hour period. The court also ruled that the right to a probable cause hearing cannot be conditioned on the request of the patient. The court reasoned by analogy to the right of those individuals criminally detained and concluded that "[c]onditioning a probable cause hearing on the request of the individual reverses the usual due process analysis in cases where potential deprivation is severe and the risk of error is great. It is inconceivable that a person could be arrested on criminal charges and held for up to 17 days without a hearing unless he requested it." Doe v. Gallinot, supra, 486 F. Supp. At 993. As the U.S. Court of Appeals stated in its affirmation of the District Court's decision, "the bare existence of optional habeas corpus review does not, of itself, alleviate due process concerns." Doe v. Gallinot, supra, 657 F.2d at 1023.

The court further ruled that the hearing must be conducted by a neutral and independent decision maker, that the hearing must take place within seven days of a person's initial involuntary confinement, and that the hearing need not be a
formal judicial procedure. The court decided not to set forth detailed guidelines for the conduct of the hearing, leaving that task to the legislature.

California implemented the court's ruling by passing AB 3454 (Bates) in 1982; the law became effective on January 1, 1983. As enacted, AB 3454 provides for notice of the certification to the patient, advice and representation by a qualified Patient Advocate or attorney a probable cause hearing before a court-appointed independent Hearing Officer within seven days of the initial detention, and an immediate finding by the decision maker as to whether or not probable cause for detention exists. The bill also extended Gallinot to apply to certifications based on dangerousness to self or others. The bill is codified at WIC §§ 5250 et seq.

Because the liberty interests of citizens cannot be infringed upon without an independent preliminary finding of probable cause, because this liberty cannot be deprived without due process of law, and because the burden of persuasion rests on the state, it has been determined that a preliminary "probable cause" hearing is essential to protect the rights of a person detained under the LPS Act for 14 days of involuntary detention.

CERTIFICATION REVIEW HEARING PROCEDURES

I. General Statement

These procedures apply to certification review hearings conducted in Santa Clara County for the purpose of reviewing the detention of persons certified for 14 days of intensive psychiatric treatment, pursuant to WIC §5250. A certification review hearing or a voluntariness hearing must be held for any person certified for 14 days on intensive treatment unless the person has requested judicial review by writ of habeas corpus or has waived his or her right to a hearing.

II. Definition of Terms

A. Hearing Officer

A Hearing Officer shall conduct the certification review hearings. Hearing Officers, who will also conduct capacity hearings, shall be lawyers, court commissioners or retired court commissioners appointed by the Superior Court of Santa Clara County selected from a list of eligible persons unanimously approved by a panel composed of the Director of Mental Health, the Public Defender, and County Counsel (WIC §5256.1).

B. Probable Cause

Probable cause is established by the presence of facts that would lead a person of ordinary care and prudence to believe, or entertain a strong suspicion, that the person involuntarily detained under the LPS Act is mentally disordered, and is a danger to himself or herself, a danger to others, or gravely disabled. Probable
cause must be based on specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the belief or suspicion that the person is dangerous to self or others or gravely disabled. Probable cause requires some objective, verifiable evidence of dangerousness or grave disability (People v. Triplett (1983) 144 Cal.App 3d 283).

C. Patient Advocate
The Patient Advocate is the patient’s representative, who may include the patient’s private attorney, the Public Defender, or a patient’s rights advocate designated to represent patients in certification review hearings (WIC §§5255, 5256.4(a)(1)).

D. Patients Accorded Certification Review Hearings
A patient who is involuntarily detained under WIC §5250 is automatically accorded a certification review hearing, unless he or she has requested a writ of habeas corpus.

E. LPS/Probate Clerk
The LPS/Probate Clerk is an employee of the Superior Court who receives notification of all certifications, files certification documents when required, and maintains court records for all persons subject to certification proceedings in Santa Clara County.

F. Confidential Patient Information
Confidential patient information shall be defined in WIC §5328, et seq. and Title 9 of the California Administrative Code.

G. Facility Representative
The facility representative shall be a licensed professional, or supervised by a licensed professional who has direct personal knowledge of the patient’s treatment, is a member of the treatment team responsible for a certified patient’s treatment, and is designated by the facility to present evidence in the certification review hearing to support the facility’s decision to certify the patient.

H. 72-Hour Hold
A 72-hour hold is an emergency detention of a person by an attending staff member of a designated psychiatric facility, a peace officer, a member of a designated mobile crisis team, or other designated professional with the designated person who has probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled. During the 72-hour hold, the designated facility performs an initial psychiatric evaluation and provides intensive psychiatric treatment for the detained person for a period not to exceed 72 hours (WIC §§5150, 5151). A 72-hour hold is also the term commonly used to describe the written application
for the emergency detention. The 72 hour period begins at the time the person is confined involuntarily in a designated facility.

I. 14-Day Certification
A 14-day certification is the continued detention of a person, previously held for up to 72 hours pursuant to WIC §5150, for additional intensive treatment related to a mental disorder or impairment by chronic alcoholism, under the following conditions: if the professional staff of the facility providing evaluation has analyzed the person’s condition and found probable cause to believe that the person is, as a result of a mental disorder or chronic alcoholism, gravely disabled, a danger to himself or herself, or a danger to others and the person has been advised of the need for treatment, but is not able or willing to accept treatment on a voluntary basis (WIC §5250).

J. Grave Disability
Adult
For purposes of WIC §5250, an adult is considered gravely disabled if he or she is presently unable, as a result of a mental disorder or impairment by chronic alcoholism, to provide for his or her basic personal needs for food, clothing or shelter (WIC §5008(h)(1)(A)).

A person is not “gravely disabled” if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person’s basic personal needs for food, clothing and shelter (WIC §5350(e)(1-3)). However, unless they specifically indicate in writing, or through a declaration by a patients’ rights advocate, their willingness and ability to help, family, friends, or others shall not be considered willing or able to provide this help. The purpose of this subdivision is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the certification review officer to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person’s basic needs for food, clothing or shelter.

The term “gravely disabled” does not include mentally retarded persons by reason of being mentally retarded alone (WIC §5008(h) (3)).

It must be shown that the person is presently gravely disabled and not that he or she may relapse and become gravely disabled in the future, either due to failure to take medication or otherwise. Similarly, a person cannot be found gravely disabled merely because he or she will not voluntarily accept treatment.

Homelessness or adhering to other lifestyles that might be seen as dysfunctional is not synonymous with grave disability. Among the factors that the Hearing Officer should consider when deciding whether a homeless person is gravely disabled
is whether the person, because of his or her mental condition, is suffering from malnutrition, overexposure, or any other sign of poor health or neglect.

Minor
A minor is considered gravely disabled if he or she is presently unable, as a result of a mental disorder, to use the elements of life which are essential to health, safety and development, including food, clothing and shelter, even though provided to the minor by others (WIC §5585.25).

K. Danger to Self
The LPS Act does not define the term “danger to self” for the purposes of §5250. Generally, however, a person is considered a danger to self when he or she behaves in a manner or threatens to or otherwise indicates that he or she will behave in a manner that would result in his or her substantial injury or death. “Danger to self” means a present danger. The dangerousness to self must be as a result of a mental disorder or impairment by chronic alcoholism.

L. Danger to Others
The LPS Act does not define the term “danger to others” for the purposes of §5250. Generally, however, a person is considered a danger to others when he or she behaves in a manner or threatens to or otherwise indicates that he or she will behave in a manner that would substantially injure or kill another individual. “Danger to others” means a present danger. The dangerousness to others must be as a result of a mental disorder or impairment by chronic alcoholism.

M. Mental Disorder
Although “mental disorder” is not defined in the LPS Act, the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders is often relied upon for diagnostic criteria.

With regards to minors, mental retardation, epilepsy, or other developmental disabilities, alcoholism, other drug abuse, or repeated antisocial behavior do not, by themselves, constitute a mental disorder (WIC §5585.25).

N. Voluntariness
The voluntariness of a patient is established when a patient “knowingly and intelligently, without duress or coercion, clearly and explicitly manifests consent to the proposed therapy” (WIC §5326.5). A patient detained on a fourteen day certification may elect to have a voluntariness hearing. See Section VIII (K) regarding voluntariness hearings.

A physician may urge proposed treatment as the best one, but may not use, in an effort to gain consent, any reward or threat, express or implied, nor any other form of inducement or coercion such as placing the patient in a more restrictive
setting, transfer of the patient to another facility or loss of the patient’s hospital privileges (WIC §5326.2(b)).

O. “Willing and Able”
A person shall be considered “willing and able” to be a voluntary patient if he or she is capable of understanding his or her need for treatment for a mental disorder and makes a meaningful commitment to a plan of treatment for that disorder while in the hospital, notwithstanding the fact that he or she is gravely disabled, dangerous to others or herself or himself, as a result of a mental disorder.

III. Certification Process

A. Certification
If a person is detained for 72 hours under WIC §5150 and has received an evaluation, that person may be certified for not more than 14 days of intensive involuntary treatment under the following conditions: the patient is unwilling or unable to accept treatment on a voluntary basis (after being advised of the need for treatment), and the professional staff has analyzed the person’s condition and finds the person is, as a result of mental disorder or impairment by chronic alcoholism, a danger to self, others, or gravely disabled (WIC §5250).

B. Timing of Certification
The patient may be certified at or before the expiration of the 72 hour hold (WIC §§5150, 5170, 5200, 5225, 5250). (The 72-hour hold is computed in terms of hours rather than days.) The patient may also be certified during an intervening period of voluntariness that occurs after the 72-hour hold.

The total amount of time that a person may be held is 17 days, which includes the three days for the 72 hour hold. This 17 day maximum also includes any intervening period of voluntariness (WIC §5258). A person shall not be placed on more than one 5150 hold, nor more than one 5250 hold during a single hospital admission. The exceptions to this rule include 72 hour holds discharged for clients placed on medical units during a single hospital admission), amended certifications (See Sections III(C) and III(G)), and 5250’s that are reinstated after a period of voluntariness.

If the physician feels there is enough evidence at the conclusion of the 14 days, the facility may place the person on a temporary conservatorship pursuant to WIC §5352, may place the person on a 180 day hold for dangerousness to others pursuant to WIC §5300, or may place the person on a second 14 day hold for danger to self-pursuant to WIC §5260 (WIC §5257). This policy and procedure manual does not cover the procedure for putting an individual on these three holds.
After all the above holds have been exhausted, the facility must either discharge the patient or sign the patient in voluntarily (WIC §5257).

C. Certifications on Medical Units
If a patient is admitted to a medical facility in Santa Clara County on a 5150 while the patient’s condition qualifies as a medical emergency and a psychiatric evaluation cannot occur within 72 hours, the 5150 should be discontinued with a notation to the medical chart. After the emergency condition has been treated, the facility will evaluate whether a 5150 is warranted.

A medical emergency exists when: immediate services are required for the alleviation of severe pain, or immediate diagnosis and treatment of unforeseeable medical conditions are required, if such conditions would lead to serious disability or death if not immediately diagnosed and treated. (California Healthcare Association Consent Manual)

D. Certification Form
1. Authorized Persons

For a person to be certified, a notice of certification shall be signed by two people. The first person must be the professional person, or his or designee, in charge of the facility providing evaluation services. The designee must be a physician or licensed psychologist with a psychology doctorate and 5 years postgraduate experience in mental health.

The second person shall be a physician or psychologist who participated in the evaluation. The physician shall be, if possible, a board certified psychiatrist. The psychologist shall be licensed and have at least five years of postgraduate experience in mental health (WIC §5251).

If the first person who signed also performed the evaluation, then the second person may be another physician or psychologist, unless one is unavailable, in which case a licensed clinical social worker or a registered nurse who participated in the evaluation shall sign (WIC,§5251).

2. Content

The notice of certification must state the specific factual basis that led the facility to determine that the patient is gravely disabled or a danger to self or others, as a result of mental disorder (WIC §5252). The factual basis should list observed behaviors or other objective information. Conclusionary statements are not sufficient.
3. **Copies**

On the day of the certification, a copy of the certification form should be placed in the treatment record and copies should be given to the patient, Patient Advocate, and the LPS/Probate Clerk.

**E. Notice of Certification**

1. **Patient**

The patient must be personally served with a copy of the completed Notice of Certification on the day it is issued, or as soon thereafter as is reasonably possible (WIC §5253).

The person certified shall also be asked by the facility to designate any person who is to be sent a copy of the certification notice. If the person is incapable of making this designation at the time of the certification, he or she shall be asked to designate a person as soon as he or she is able (WIC §5253).

2. **Family**

Reasonable attempts shall be made by the mental health facility to notify family members or any other person designated by the patient, of the time and place of the certification hearing. The facility must advise the patient that he or she has the right to request that this information not be provided and must obtain the patient’s consent in order to notify family or other designees of the hearing or any other confidential information (WIC §5256.4(c); §5328).

3. **LPS/Probate Clerk**

The facility shall be responsible for faxing the certification to the LPS/Probate Clerk on the same date the certification is initiated, or as soon thereafter as is reasonably possible. If the LPS/Probate Clerk is not faxed a copy of a person’s certification, notice shall be deemed insufficient (See Appendix A).

4. **Patient Advocate**

Every 14-day certification must be called in telephonically to the Patients’ Rights Certification Line. The message shall include the patients’ name, hospital, unit, date of certification, whether any translation services are required, and who is leaving the message. (See Appendix A).

**F. Advisement of Certification**
Whoever delivers the certification to the patient shall inform the patient of his or her rights related to the certification (WIC §§5253-5255). The person who delivers the certification shall make every reasonable effort to read the following statement to the patient in a language or modality that the patient understands.
STATEMENT TO BE READ TO PATIENT PATIENT’S RIGHTS UPON 14-DAY CERTIFICATION
This is a certification for up to 14 days of treatment. Because of your mental illness, you are considered to be presently: (Circle applicable ground(s) and specify behavior that resulted in certification)

A danger to yourself, because

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

A danger to others, because

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Gravely disabled, because

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

and you have not been able or willing to accept treatment on a voluntary basis as evidenced from the following facts:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

There will be a certification review hearing here at the hospital within four days of your certification to determine whether or not there is sufficient reason to detain you. You may also choose not to have the hearing.
You will have the following rights at the hearing:

- To the assistance of a patients' rights advocate.
- To present and call witnesses on your behalf.
- To question persons presenting evidence in support of the certification decision and/or have the advocate do so (WIC § 5256.4(a) (4)).
- To make reasonable requests for attendance of facility employees who have knowledge of, or who have participated in, the certification decision.
- To have the Hearing Officer know if you are taking medication and be informed of the probable effects of the medication.

A Patient Advocate will be visiting you to assist you in preparing for the hearing or to answer other questions and concerns regarding your involuntary commitment. The hearing will be conducted by a Hearing Officer, not a Judge. You do not have to be present at the hearing if you do not wish to be.

If you want, you may choose to ask for a judicial review of your certification in a court hearing on what is called a "petition for writ of habeas corpus." That hearing will be held before a Superior Court Judge. If you cannot afford a lawyer, a Public Defender will be appointed to represent you at no charge. At this court hearing, the judge will decide whether you may continue to be treated involuntarily or whether your certification must be discharged. In deciding whether to go directly to judicial review, keep in mind that you do not lose your right to judicial review if you first participate in the certification review hearing here at the hospital.

Is there someone you wish to be informed regarding this 14-day certification and the hearing? (If yes, fill in name of person, address and/or phone number :)  

___________________________________________________________

___________________________________________________________

Date of notification:_________________________________________

Time of notification:_________________________________________

Patient’s name:_____________________________________________

Date of certification:_________________________________________

Time of certification:_________________________________________

Signature:_________________________________________________
G. Amendment of Certification

If the professional staff of a designated facility has analyzed a certified person's condition and has found the person is, as a result of mental disorder or impairment by chronic alcoholism, certifiable on one or more additional legal grounds (dangerousness to others or to himself or herself, or grave disability) for which he or she was not originally certified, two professional staff (as designated in Section III. C.1.) may amend the certification.

The professional staff must also amend the certification if it determines that a person is no longer certifiable on one or more legal grounds or which he or she was originally certified.

To amend a certification, the facility must complete a new certification form, which includes the amended ground(s), the date of the amendment, dated signatures of the two certifying staff members, and the starting date of the original certification. The facility should write "AMENDED" on the top of the new form. In no case shall the 14-day certification endure longer than fourteen days from the start date of the original certification. The facility shall notify the patient, family, the LPS/Probate clerk, and the Patient Advocate in the same manner as required in Section III.E above.

If the amendment is made before the certification review hearing, the patient and the Patient Advocate must be notified of this amendment as soon as possible but no later than one hour prior to the certification review hearing. An amendment made less than one hour prior to the certification review hearing must be approved by the Hearing Officer. If the Hearing Officer grants the request for amendment, the patients' rights advocate must be given adequate time to prepare for the hearing or a postponement must be granted if requested by the patients' rights advocate. If the amendment is made after the certification review hearing, another certification review hearing must be held as soon as possible, but not more than four days after the amendment.

H. Patient Transfer

A person on a 14-day certification should not be transferred from one designated psychiatric facility to another prior to the conduct of a certification review, unless the transfer is medically necessary.
I. Patient Requests a Writ

If the patient requests to proceed directly to a writ hearing, the facility shall immediately contact the public defender currently assigned to the LPS calendar. (See Appendix A) The facility should also call the certification into the patients’ rights advocate’s certification line and indicate that the patient is requesting a writ.

If the patient later withdraws their request for a writ, the facility shall immediately call the patients' rights certification line to inform the advocates that the patient has withdrawn their request for a writ hearing. The certification hearing shall be held within four days after the request for a writ was withdrawn (WIC §5276.2).

IV. Scheduling of Certification Review Hearings

Every hearing participant shall, in advance and as soon as possible, notify the other participants of requests for changes in the hearing schedule and any delay in the participant's arrival at the facility for hearings.

A. Time Limit

The certification review hearing must be conducted within four days of the person’s certification. The patient or Patient Advocate may request a postponement of the hearing for a period not to exceed 48 hours. The Hearing Officer shall have the discretion to grant or deny the postponement request (WIC § 5256).

B. Facility Duties

The facility shall immediately notify the Patients' Rights Advocate if at any time prior to the hearing there is a change in the certified person’s status which affects the hearing scheduling, such as:

1. The person is discharged or transferred from the facility;
2. The person becomes a voluntary patient;
3. The person proceeds directly to a hearing on a writ of habeas corpus, bypassing the certification review hearing;
4. The person withdraws his or her request for writ of habeas corpus; (See Section III(I) above)
5. The facility amends the certification. (See Section III(E) above)
C. LPS/Probate Clerk

The LPS/Probate Clerk will receive and maintain all certification hearing information received from facilities and accept all documents for filing as required by law.

D. Patient Advocate Duties

The Patient Advocate shall receive the voice mail messages off the certification line the day before hearings.

The Patient Advocate shall inform the Hearing Officer on the day before the hearing of the number of clients at the hospital and confirm the time and location for the commencement of hearings.

E. Hearing Officer Duties

The Hearing Officer shall endeavor to accommodate reasonable requests for scheduling changes.

If the Hearing Officer is unable to accommodate occasional rescheduling needs, an alternate Hearing Officer may be contacted, subject to guidelines established by the Superior Court.

F. Postponement

Postponement is a delay of a certification review hearing before that hearing has begun. Certification review hearings may be postponed within the four-day time period and for up to 48 hours after that time by request of the patient or the Patient Advocate or attorney. There may be more than one postponement within the six days following the certification (WIC §5256).

To ensure that postponements are heard at the next regularly scheduled hearing date, the advocate shall notify the Hearing Officer and the facility of the postponement. The advocate shall also call the postponement into the “Certification Notification Line.”

G. Continuance

Continuance is a delay of a certification review hearing once that hearing has begun:
1. Continuance of certification review hearings should be permitted by the Hearing Officer in, but not limited to, the following instances:
   
a. When clarification of a fact or law, which would be dispositive to the Hearing Officer’s determination is needed; or

b. When a witness would not be available unless a continuance were granted.

2. Continuances shall be as short as possible, and in no case shall they go beyond the next regularly scheduled hearing date for that facility.

3. Continuances may not be sought for the purpose of allowing a facility to modify the grounds for the 14-day certification or correcting or adding information in the treatment record and/or certification form.

V. Participants in Certification Review Hearings

A. Certified Person

The person certified shall be present at the certification review hearing except in the following circumstances:

The patient chooses to waive his or her right to have a certification review hearing.

If the patient decides that he or she does not want a certification review hearing, the Hearing Officer must verify that the waiver has been made voluntarily, knowingly and intelligently (Gallinot, supra, Order, January 20, 1981). When the patient waives his or her right to a hearing, the Hearing Officer does not hear evidence, or make a finding on the grounds for the certification.

The patient chooses to waive his or her presence at the certification review hearing or the patient is unable to attend. The patient’s absence itself should not be considered evidence for finding of probable cause.

The Hearing Officer determines that a patient’s behavior prevents a hearing from being conducted. The Hearing Officer should not dismiss a patient from his or hearing for merely interrupting. The Hearing Officer should try alternative means prior to dismissing the patient from the hearing. The patient shall be permitted to return to the hearing at the appropriate time to present his or her evidence.
B. Patient Advocate

At the certification review hearing, the person certified shall have the right to the assistance of a Patient Advocate or attorney (WIC §5256.4(1)).

C. Hospital Representative

Evidence supporting the certification shall be presented by a person designated by the facility. The district attorney or county counsel may elect to present evidence (WIC §5256.2).

D. Staff Necessary for Safety

The Hearing Officer may allow attendance at the certification review hearing by facility staff reasonably necessary for the safety of hearing participants. The facility representative shall notify the Patients' Rights Advocate and Hearing Officer in advance of the need for safety staff in the hearing. The Hearing Officer shall instruct the safety staff that the information in the hearing is confidential and shall not be discussed outside the hearing.

E. Witnesses

Witnesses with relevant evidence may testify at certification review hearings, but witnesses may not hear confidential patient information without the patient’s consent.

F. Others

For training purposes, staff from the Public Defender's office and the facility may attend the hearing with the consent of the person certified.

Other persons may not attend or observe the certification review hearings except with the patient’s permission. The Hearing Officer may excuse individuals from the hearing if their presence becomes disruptive.

VI. Duties of Facility Representative

A. Confidentiality

The facility representative shall not present confidential patient information to the Hearing Officer in the absence of the Patient Advocate prior to the certification review hearing, nor shall confidential information be discussed between the Facility Representative and the Hearing Officer.
after the hearing. The Hearing Officer is not to review the patient’s chart prior to the hearing except with the express consent of the parties.

B. Before the Hearing

1. The facility representative shall ensure that the Patient Advocate has access to the patient and the patient’s medical chart.

2. Ensure an appropriate location for the hearing pursuant to Section VIII (B).

3. Ensure that the medical chart is present at the hearing.

4. Ensure the patient’s presence, except under circumstances described in Section V (A).

C. During the Hearing

The facility representative shall:

1. Ensure that the 72-hour hold, 14-day certification and documentation of advisement are present in the medical chart.

2. Be able to locate in the medical chart and explain in terms understandable to a lay person:

   a. Documentation of the 72-hour hold, including the date, legal ground(s), and specific facts given;

   b. Documentation of the 14-day certification, including the date, legal ground(s), and specific facts given;

   c. Reasons stated in the medical chart as to why the patient was unable or unwilling to accept voluntary status;

   d. Doctor’s note in the medical chart which explains the reasons for the 14-day certification;

   e. The mental status evaluation at the time of certification and currently;

   f. The patient’s current medications and their side effects;
g. Relevant notes in the medical chart to substantiate ground(s) for 14-day certification;

h. Treatment plan; and

i. Discharge plan.

3. Be prepared to answer questions asked by the Hearing Officer, patient and/or Patient Advocate.

D. After the Certification Review Hearing

The facility representative shall:

1. Place a copy of the certification review hearing opinion in the patient’s chart.

2. Write a note in the chart indicating whether the hearing was held, the date of the hearing or waiver, the Hearing Officer’s decision, and whether a writ was requested by the patient.

3. Facilitate the patient’s discharge, if the Hearing Officer found no probable cause to detain the patient.

VII. Duties of Patient Advocate

A. Advisement of Patient

As soon after the certification as is practicable, but prior to the certification review hearing, a Patient Advocate shall contact the person certified to discuss the commitment process, to assist the person in preparing for the hearing, and to answer questions or otherwise assist the person. The Patient Advocate shall:

1. Explain that the person has been placed on a 14-day certification for the grounds alleged on the certification and may, as a result, be involuntarily held at the facility for up to 14 days from the initiation of the certification.

2. Advise the patient that if he or she wishes to contest the 14-day certification, he or she may do so in a certification review hearing held at the facility. Explain that if the patient successfully contests the 14-day certification, he or she will be free to leave the facility or to apply to become a voluntary patient.
3. Explain that the patient is provided legal representation in such a hearing by the Patient Advocate, whose role is solely to represent the patient's stated interest. Explain that the patient may retain a private attorney to represent him or her.

4. Explain that the patient may elect to waive his or her presence at the certification review hearing and still be represented by the Patient Advocate.

5. Advise the patient of his or her right to waive the certification review hearing.

6. Explain that if the patient elects to waive the certification review hearing, the patient retains the right to a writ of habeas corpus hearing and may request a writ if he or she decides, later in the certification period, to contest the certification.

B. Interview of the Patient

The Patient Advocate shall interview the patient to gather information which may be used in representing him or her at the hearing. The Patient Advocate should also review the patient's chart and interview any relevant witnesses. If the patient wishes, the Patient Advocate should contact any family members or friends.

C. Confidentiality

The Patient Advocate shall not present confidential patient information to the Hearing Officer before or after the hearing without the presence of the Facility Representative.

D. Duties of the Patient Advocate Prior to the Hearing

As soon as practicable, the Patient Advocate shall notify the Facility Representative of which patients will have hearings that day and provide the facility with a copy of the Declaration of Assistance for Patient, if applicable. (See Sections VIII (G) (3))

E. Duties of Patient Advocate in Hearing
If the patient or advocate has obtained permission to represent the person certified, he or she shall advocate zealously on behalf of that person. This includes cases in which the person certified wishes to contest the certification, but chooses to waive his or her presence at the hearing.

F. Duties of Patient Advocate After Hearing

The Patient Advocate shall deliver a copy of the Hearing Officer’s decision to the patient. If necessary, the Patient Advocate shall read and/or explain the Hearing Officer’s opinion to the patient. If the Hearing Officer has found probable cause, the Patient Advocate shall remind the patient of his or her right to judicial review by writ of habeas corpus.

G. Duties of Patient Advocate if Patient Requests Writ

If the patient wishes to proceed with a writ of habeas corpus, the Patient Advocate will notify the Public Defender’s Office of the client’s desire for a writ (WIC §5275). The advocate shall also inform the Hearing Officer of the patient’s desire for a writ, so it may be written on the hearing decision.

When notifying the public defender, the Patient Advocate shall provide the spelling of the client’s name, the date of birth, facility and unit, and the advocate’s name and phone number.

VIII. Conduct of Certification Review Hearings

A. Format

The Hearing shall be conducted in an impartial, informal and respectful manner in order to encourage free and open discussion by participants. The person conducting the hearing shall not be bound by rules of procedure or evidence applicable in judicial proceedings (WIC §5256.4(b)).

B. Location

The facility representative shall arrange for the hearing to be conducted at the facility in a room which ensures privacy and is large enough to accommodate the hearing participants. The location shall be compatible with, and least disruptive of, the treatment being provided to the person certified (WIC §5256.1).

C. Interpretation Services
The facility shall provide an interpreter for non-English speaking and hearing impaired patients so that certified patients may communicate with a Patient Advocate and participate in their hearings. The interpreter shall be independent, unless the patient or Patient Advocate agrees otherwise, and shall be, to the extent possible, certified in the language spoken by the patient. Live interpreters are strongly preferred over phone interpreters. Upon certification of a person needing interpretation services, the facility representative shall notify the Patient Advocate of the need for an interpreter. Upon the advocate’s request, the facility shall provide an interpreter at the time of the advocate’s interview of the patient. The facility shall also arrange interpretation services for the certification review hearing.

D. Rights of Patient in Hearings

Certified patients have the following rights in a certification review hearing:

1. To assistance by a Patient Advocate or attorney.

2. To present evidence in the certification review hearing.

3. To question any witness who is presenting evidence in the hearing.

4. To make reasonable requests for the attendance of facility employees who have knowledge of, or participated in, the certification.

5. If the person has received medication within 24 hours or such longer period of time as the person conducting the hearing may designate prior to the beginning of the hearing, the facility representative shall inform the Hearing Officer of the probable effects of the medication (WIC.§5256.4).

6. Efforts will be made by all the participants to conduct the hearing in a manner that the patient will understand.

7. That the hearing is conducted in a language or modality for which the patient can understand.

E. Introduction

The Hearing Officer shall give an introduction to the hearing pursuant to Section VIII (J).
F. Hearing Procedures

1. Presentation of Evidence

After the presentation of any preliminary matters the Hearing Officer shall ask the facility representative to present evidence in support of the certification. The facility representative shall present evidence which supports the contention that the patient, because of a mental disorder, meets the ground(s) specified in the certification.

After the facility's presentation, the Patient Advocate and/or patient may present evidence on the patient’s behalf, and question the facility representative.

2. Impartial and Informal Hearing

The hearing shall be conducted in an impartial and informal manner to encourage free and open discussion by participants. The Hearing Officer conducting the hearing shall not be bound by rules of procedure or evidence applicable in judicial proceedings.

3. Closed Hearing

The hearing will be closed. Except for the participants, only those individuals expressly invited by the patient will be allowed to attend at the discretion of the Hearing Officer.

4. Questioning Witnesses

The Hearing Officer may question directly any of the parties' witnesses in the hearing and may, during the hearing, review any portion of the patient’s records.

G. Limitations on Evidence

1. Relevancy

All evidence which is relevant to establishing that the person certified is, or is not, as a result of a mental disorder, a danger to others, a danger to self, or gravely disabled shall be admitted at the hearing and considered by the Hearing Officer (WIC §§ 5256.4 and 5008.2).

The historical course of the person’s mental disorder shall be considered only when it has a direct bearing on the determination of whether the
person is a danger to others, or himself or herself, or gravely disabled, as a result of a mental disorder. The Hearing Officer shall exclude evidence he or she deems irrelevant due to remoteness of time or dissimilarity of circumstances (WIC §5008.2).

2. Evidence of Resistance to Commitment

Resistance to involuntary commitment shall not, in and of itself, imply the presence of a mental disorder or constitute evidence that a person meets the criteria of being dangerous to self or others, or gravely disabled (WIC 5256.4(e))

3. Evidence of Third Party Assistance

Family, friends or others shall be considered willing and able to help provide for a person’s basic personal needs for food, clothing or shelter only if their willingness and ability to provide this assistance is specifically indicated in writing on the following form (WIC §§5250(d)(1-2)): 
DECLARATION OF ASSISTANCE FOR PATIENT

My name is {advocate's name} and I am a patients' rights advocate calling on behalf of your {son, daughter, friend, etc.}, {patient's name}. I am calling from {name of facility}, where your {son, friend, daughter, etc.} is being held for fourteen days of psychiatric treatment. I do not work for the facility; I work for the Mental Health Advocacy Project.

There will be a legal hearing today to see if there is enough evidence to hold {him/her} for the rest of the 14-day period. The psychiatrist feels that {patient's name} needs further treatment at this facility. I am representing {patient's name} at this hearing today and {he/she} wants to {come home, stay with you} today. I am calling to ask if you are willing and able to assist {patient's name} in providing for his basic need(s) for {food, clothing and/or shelter} today. Before you answer, I want you to understand that if you agree to provide this assistance, the Hearing Officer will be more likely to discharge from the hospital. If you do not agree, the Hearing Officer will be more likely to decide that {patient's name} should remain at {name of facility}. Are you willing to provide assistance?

PATIENT'S NAME: __________________________________________

ADVOCATE: ______________________________________________

PERSON CONTACTED: _____________________________________

RELATION: ________________________________________________

RESPONSE: ________________________________________________

(repeat response to person to insure accuracy)

I hereby swear or affirm under penalty of perjury that the content of statement above in Part 1 was presented to the person contacted and that s/he gave the response above in Part 2.

Executed on ______________________, Santa Clara County

At ______________________,(City)

State of California by: __________________________

(Signature of Advocate)
When the advocate intends to present evidence of the willingness of a third party to assist the certified person in providing the basic necessities of life, that information is to be shared with the facility representative within a reasonable time before the hearing.

**H. Questioning by Facility Representative**

The facility representative may request that the Hearing Officer question the certified patient, as appropriate on issues of fact. The Hearing Officer shall have discretion whether to ask any such questions. The facility representative may not question the patient directly.

**I. Hearing Officer’s Role**

1. *Introductions and Explanation of Procedure*

The Hearing Officer shall introduce the parties and give a concise, plain explanation of the hearing procedure in a manner that maximizes the patient’s understanding of the procedure.

2. *Considering Evidence*

The Hearing Officer shall listen to and consider the evidence presented both in support of and against the ground(s) for certification in order to determine whether probable cause exists.

3. *Findings on Specific Grounds Alleged*

The facility has the burden of proving that probable cause exists for each ground alleged in the certification. The Hearing Officer must find that probable cause exists independently for each ground in order to uphold that ground.

4. *Rulings on Law*

The Patient Advocate and the facility representative may use statues and case law in support of their positions. When the Patient Advocate or the facility presents statutory or case law in support of an argument, the Hearing Officer must rule on the applicability of the law and state the reasons for the ruling.
5. Viewing Treatment Records

The Hearing Officer may inspect the certified patient’s treatment records only during the course of the hearing.

6. Oral Presentation of Decision

At the conclusion of the certification review hearing, the Hearing Officer shall announce his or her decision orally to the patients (WIC §5256.7). The Hearing Officer shall state whether the certification is upheld and on what ground. If no probable cause exists for certain alleged grounds, the Hearing Officer must state such findings.

J. Determination of Voluntariness and Voluntary Hearings

Before being placed on a certification, patients must be given the opportunity to remain at the facility on a voluntary basis (WIC §5250(c), 5252, 5276). No patient who is willing and able to be voluntary may be certified, regardless of whether the patient is a danger to himself, danger to others, or gravely disabled.

If the patient wants to be a voluntary patient, the patient or his/her advocate shall advise the facility at a reasonable time prior to the hearing in an attempt to reach an agreement on whether the patient can be voluntary.

If the physician and the patient cannot agree, the patient has the option of having a "voluntariness hearing." The Patient Advocate shall advise the facility representative of the patient’s desire for a voluntariness hearing.

The Patients' Rights Advocate shall inform the Hearing Officer of the need for a voluntariness hearing at the onset of the hearing.

At the voluntariness hearing, the Hearing Officer shall consider only evidence and arguments relevant to whether the patient is willing and able to be a voluntary patient. The Hearing Officer shall then decide if the patient is willing and able to be a voluntary patient and shall issue a written decision giving the reasons for the determination. If the patient is found to be willing and able to be a voluntary patient, the certification shall be discharged and the patient permitted to sign in as a voluntary patient.

Where a certification is discharged, and the patient signs in voluntarily, the certification may be reinstated by the physician if the patient later becomes unwilling or unable to remain voluntarily, and meets the criteria
for danger to self, gravely disabled, and/or danger to others. A new
“Notice of Certification” form must be completed, giving the reasons for
the change of status and the procedure outlined in Section III must be
followed. A new Certification Review Hearing will be required. The overall
detention period, including any intervening voluntary stay, shall in no event
extend beyond seventeen days. (See Section III (B) “Timing of the
Certification”)

If the patient is found not to be willing and able to be a voluntary
patient, the patient may then elect to proceed with a Certification
Review Hearing or waive his/her right to a hearing pursuant to Section V
(A).

IX.  Post-Hearing Procedures

A. Written Opinion of Hearing Officer

As soon as practicable after the hearing, a copy of the Hearing Officer’s
written opinion shall be given to the patient, the Patient Advocate, the
facility, and the court (WIC §5256.7).

The opinion shall clearly state whether probable cause was found and on
which ground(s), the evidence relied on and the reasons for the decision
(WIC §5256.7).

If the Hearing Officer determines that probable cause does not exist for an
alleged ground, the opinion shall reflect that patient is no longer legally
held on that ground.

B. Result of Discharge

If the Hearing Officer determines that probable cause does not exist, then
the patient may not be held involuntarily. Nothing herein shall prohibit
the person from remaining at the facility on a voluntary basis or the
facility from providing the person with appropriate referral information
concerning mental health services (WIC §5256.5).

C. Result of Finding of Probable Cause

If the Hearing Officer determines that there is probable cause that the
person certified is, as a result of a mental disorder or impairment by
chronic alcoholism, a danger to others or himself or herself, or gravely
disabled, then the person may be detained for involuntary, care,
protection, and treatment related to the mental disorder or impairment by chronic alcoholism (WIC §5256.6).

If during the 14-day period, the facility determines that the patient is no longer a danger to self or others or gravely disabled, the patient may no longer be involuntarily detained. The treating physician has an affirmative duty to either discharge the patient or sign his/her in voluntary.

Nothing in the LPS Act or these procedures prohibits the facility from allowing patients to leave the premises on passes, while on a 14-day hold.

D. Writ of Habeas Corpus

If the patient requests a writ, the Patient Advocate shall inform the facility of the patient’s decision. The facility must notify the public defender’s office as soon as reasonably possible. The Patient Advocate may also inform the public defender’s office of the patient’s writ request. The facility cannot transfer the patient to another facility outside the county while the writ is pending (WIC §5276).

X. Other Provisions

A. Training by Hearing Officer

Except as provided in Section C below, the Hearing Officer shall not engage in any training of facility representatives.

B. Performance Evaluation of Hearing Officer

The Court will conduct a formal performance evaluation of all mental health Hearing Officers annually. The panel conducting said evaluation will include representatives of the Public Defender’s office, a representative of mental health services providers, and three judges.

C. Meetings of Participants

Regular meetings of persons involved in certification review hearings will be scheduled by the Court and will include Hearing Officers, Patient Advocates, and facility representatives. These meetings may include informational presentations and discussion of issues of mutual concern.
**Telephone/Fax Numbers**

LPS/Probate Clerk's Fax Number ..................... 408-882-2693

LPS/Probate Clerk's Phone Number ..................... 408-882-2651

Patients' Rights Certification Line ..................... 408-280-2414

Public Defender's Office ..................... 408-299-7917
Appendix D: Capacity Hearings Policies and Procedures Manual

SUPERIOR COURT COUNTY OF SANTA CLARA

CAPACITY HEARINGS: POLICIES AND PROCEDURES MANUAL

MAY 2009
I. **General Statement**

The following policies and procedures are designed to implement the provisions of the Lanterman-Petris-Short Act, Welfare and Institutions Code (referred to hereafter as W & I Code) Sections 5332 and thereafter, which provide that:

1. Patients involuntarily detained under W & I Code §§ 5150, 5250, 5260, or 5270.15 may be administered antipsychotic medication if they do not refuse it, following: a) a disclosure of their right to do so, and b) an explanation of the effects of antipsychotic medication required by W & I Code §§5152 (c) and §5213(b). (W & I Code §5332).

2. Patients involuntarily detained under the above code sections who orally refuse, or who show signs of refusal following such explanation, may NOT be administered antipsychotic medication absent an emergency (WIC §5332(e)), until a) the treatment staff have determined that alternatives to involuntary medication are unlikely to meet the patient’s treatment needs, and b) the patient is found incapable of refusing or consenting to antipsychotic medication in a hearing held for that purpose. (WIC §5333 et seq.)

II. **Definition of Terms**

**A. Hearing Officer**

The Capacity Hearings shall be conducted by Hearing Officers, court commissioners, or retired court commissioners appointed by the Superior Court of Santa Clara County. Hearing Officers shall be lawyers selected from a list of eligible persons unanimously approved by a panel made up of the local mental health director, the Public Defender, and the County Counsel. (WIC § 5334(c)).

**B. Clear and Convincing Evidence**

The standard of proof in Capacity Hearings is clear and convincing evidence. Clear and convincing evidence means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered as proof. This standard of proof is considerably higher than “probable cause” and higher than “preponderance of the evidence” (more likely than not). The evidence must be very persuasive to overcome the presumption that the patient has capacity.
C. Antipsychotic Medication

Antipsychotic medication means any medication customarily prescribed for the treatment of symptoms of psychoses and other severe mental and emotional disorders. (WIC §5008(l)).

D. Incapacity to Give Informed Consent to Medication

Inability to understand and knowingly and intelligently act upon information required to be given about the medication. Major factors to be considered are whether the patient:

1. is/is not aware of his/her situation (e.g., if the court is satisfied of the existence of psychosis, whether the patient acknowledges the mental condition);  
2. is/is not able to understand the benefits and the risks of, and alternatives to, the proposed medication; and  
3. is/is not able to understand and evaluate the medication information knowingly and intelligently, and otherwise participate in the treatment process using rational thought processes.

In the absence of a clear link between the patient’s mental disorder and his/her ultimate decision, it should be assumed that he/she is utilizing rational modes of thought.

E. Patient’s Representative

The Patient’s Representative may include the patient’s private attorney, the public defender, or a patient’s rights advocate designated to represent the patients in Capacity Hearings.

F. Patients Subject to Capacity Hearings

Patients involuntarily detained under WIC §§ 5150, 5250, 5260, or 5270.15 for whom antipsychotic medication has been recommended, who orally refuse or give other indication of refusal of such medication are subject to Capacity Hearings.

G. Primary Witnesses
A primary witness is a witness who is qualified to testify on the issue of capacity or incapacity. Primary witnesses who are qualified to provide such testimony include:

1. **Treating Psychiatrist.** A licensed psychiatrist who is a member of the facility staff, has recommended the medication and has met personally with the patient to provide the medication information required by statute.

2. **Testifying Psychiatrist.** Another psychiatrist may be permitted by the Court to testify as an expert witness, as long as the psychiatrist is testifying from personal knowledge and has evaluated the patient, including (but not limited to) review of the medical record and discussion of medication with the patient.

3. **Psychologist.** A PhD psychologist with five years in of experience in mental health may also be permitted by the Court to give expert testimony. The psychologist should be a member of the treatment team and have either participated in the informed consent discussion with the patient and psychiatrist or have met personally with the patient to provide the medication information required by statute.

**III. Application**

These policies and procedures apply to all involuntary patients detained under WIC §§ 5150, 5250, 5260 and 5270.15, except for minors who are under the jurisdiction of the Superior Court pursuant to WIC §§ 300 or 600 (Dependents and Wards of the Court).

**IV. Initiating the Hearing**

**A. Decision to File a Petition**

If, after being presented the information about a) his/her condition, b) the medication recommended for his/her condition, and c) the right to refuse or consent to medication as provided above, a patient orally refuses or otherwise indicates refusal of a proffered medication, the treating psychiatrist will decide whether to Petition for a finding of incapacity in a Capacity Hearing.

If the patient is offered medication and accepts it after having been given the above information, no Capacity Hearing is required, even though the patient is unwilling to sign the informed consent form(s) or does not give oral consent. If the patient later verbally refuses the medication or gives other indication of refusal, the treating psychiatrist should re-evaluate and decide whether to file a Petition.
B. Completion of the Petition

The Petition requires that the treating psychiatrist review the medication information procedure and declare that:

1. The patient has a mental disorder with observed symptoms;
2. The treating psychiatrist has recommended medication, and the patient has received all required information about the medication;
3. Reasonable efforts were made to explain to the patient the risks and benefits of, and alternatives to, the medication, and to secure informed consent;
4. The patient orally refused the medication or gave other indication of refusal; and
5. Treatment alternatives to involuntary medication are unlikely to meet the patient’s needs.

In completing the “Declaration and Petition” (see Appendix A), the treating psychiatrist shall use specific facts to support the allegations set forth. Conclusions should be explained and supported by facts. Dates, times, specific incidents of conversations with the patient and quotes should be included. Specific recommended medications and doses should be stated; however, the treating psychiatrist later may change specific medications depending on therapeutic response and side effects. The treating psychiatrist must discuss with the patient regarding any change in medications even though another capacity hearing is not required.

When the Petition is completed and served on the patient, it should be delivered to the facility legal clerk or responsible staff person for notification to and filing with the Superior Court.

C. Notification and Filing of the Petition

1. Notification to Court. The facility legal clerk or the responsible staff member will notify the Superior Court that a Petition has been served on the patient and is ready for filing.

2. Notification to Patient’s Representative. At the same time that the notification is made to the Court, the legal clerk or responsible staff person will:

   a. Immediately notify the Patient’s Representative (if other than Mental Health Advocacy Project, referred to hereafter as “MHAP”) and
MHAP by phone that a Petition is being filed, and,

b. Immediately FAX a copy of the Petition to the Patient's Representative (if other than MHAP) and MHAP

3. **Filing of Petition.** The facility legal clerk or the responsible staff member shall either file the Petition with the Superior Court by delivering a copy of the same to the Clerk of the Court or file directly with the Hearing Officer prior to the hearing by placing the Petition in the customary filing place reserved for the Hearing Officer at the facility.

4. **Distribution.** Facility staff will make copies of the completed Declaration and Petition for:
   a. The patient, to be delivered personally by a member of the treatment team as soon after completion as is reasonably possible. The patient shall be given at the same time (i) a copy of the medication consent form related to the recommended but refused medication, and (ii) a copy of "Patient Advisement of Capacity Hearing" (see Appendix B), to be signed by the staff person delivering the papers.

   b. The Patient's Representative, to be delivered prior to the Representative's consultation with the patient.

   c. The Hearing Officer, to be delivered prior to the hearing.

   d. The medical record.

**D. Scheduling of Capacity Hearings – Within 72 Hours of Filing Petition**

1. **Generally.** Scheduling of hearings will be in accordance with policy as developed by the Superior Court and applicable law. This policy acknowledges the limitation on the availability of the hearing participants and the treatment needs of the patients, and allows for the scheduling of hearings as soon as possible and within 72 hours of the filing of the Petition (WIC §5334(a)).
2. **Scheduling Hearings.** Hearings will normally be scheduled for each facility on the same day as Certification Review Hearings, if notice of the Petition was given to the Patient’s Representative and MHAP by 8:00 AM the day of the hearing. The Capacity Hearings will be conducted separately from the Certification Review Hearings. Where a Certification Review Hearing and a Capacity Hearing are necessary on the same patient, the Certification Review Hearing will be conducted first. The Capacity Hearing may be scheduled immediately thereafter.

If the notice of Petition was given after 8:00 AM on the day of the scheduled hearing day, the Hearing may still be heard on that day, provided that the patient and the Patient’s Representative are given adequate time to prepare for the hearing.

3. **Who Schedules.** If, after talking to the patient and the psychiatrist, a hearing is needed, the Patient’s Representative will consult with the Hearing Officer, confirm the time and date for hearing, and advise the patient and psychiatrist accordingly.

4. **Postponements.** A non-treating psychiatrist or a psychologist is considered competent (qualified) to testify as to a patient’s incapacity. Nevertheless, if a patient or his/her Representative represents, in good faith, that the attendance of a treating psychiatrist or other member of the treatment team is necessary to the fact-finding process concerning informed consent, the advisement, or the patient’s response to the advisement, the Hearing Officer may postpone the hearing to permit production of the necessary witness. Any postponement hereunder shall be for the shortest period reasonably necessary to permit production of such witness and shall not exceed 72 hours from the time of filing of the Petition.

**E. Preparation for the Capacity Hearing**

1. **Assistance from the Patient’s Representative:**

   a. The Patient’s Representative will meet with the patient in order to:

      i) Provide information about the Capacity Hearing, including the time and date, the purpose, the standards and procedures used in the hearing and the legal rights of the patient.

      ii) Advise the patient in preparation for the hearing.
b. The Patient's Representative will also:
   i) Review the chart.
   ii) Contact and interview staff and others regarding the patient's condition and treatment in preparation for the hearing. The Patient's Representative may request the attendance at the hearing of staff who have information about issues related to the patient's medication.

2. Location. The Capacity Hearing shall be held in the hospital where the patient is receiving treatment, in a room where the privacy and integrity of the hearing will be maintained. The location should be compatible with, and not disruptive of, the treatment being provided the patient. The room should be large enough to accommodate the Hearing Officer, the treating psychiatrist, the patient, the Patient's Representative and at least one other person. The room should have chairs and a table or desk.

3. Interpreter. The facility shall make interpreters available to assist the Patient’s Representative to interview the patient and to attend the hearing as required, for any patient who is non-English speaking or hearing impaired.

4. Preparation by the Treating Psychiatrist, Testifying Psychiatrist or Psychologist. In preparation for the hearing, the treating psychiatrist should review the Petition and the medical record, and should prepare to make an oral statement giving the facts in support of the allegations in the Petition (see section V, subsection F., below).

   In the absence of the treating psychiatrist, the psychiatrist or psychologist who will testify in the hearing should review the medical record, interview and evaluate the patient, and prepare to give an oral statement of the facts in support of the allegations in the Petition (see section V, subsection F, below).

V. Conduct of the Hearing

A. Beginning. The Hearing Officer will open the hearing with an explanation of the nature and purpose of the hearing and the procedures to be followed; and will explain that the psychiatrist or psychologist must prove by clear and convincing evidence that the patient is incapable of refusing consent to medication.
B. Preliminary Issues. There are certain preliminary requirements that must be satisfied before the Capacity Hearing is allowed to proceed. Failure to meet these requirements should generally result in a withdrawal of the Petition by the doctor or dismissal without prejudice by the Hearing Officer. The Hearing Officer should explain that the hospital can submit a new Petition once the requirements have been met. These preliminary issues include:

1) Whether the presenting doctor is qualified to testify (see Section II, subsection G above);
2) Whether the patient is refusing the medication;
3) Whether reasonable efforts have been made to explain the risks and benefits of the medication to the patient; and
4) Whether the patient and Patient's Representative have received notice of the Petition.

C. Generally. Throughout the hearing, efforts will be made by all of the participants to conduct the hearing in a manner which the patient will understand and which minimizes the patient's discomfort and anxiety.

D. Evidence and Objections. The Hearing Officer will consider all credible and relevant evidence brought forward by the parties. The Hearing Officer will make determinations about whether evidence is credible and relevant on his/her own motion or at the request or objection of either party.

E. Questioning. The parties should direct their presentations and requests or objections to the Hearing Officer, except during the period provided for questions to be directed to one another. The Hearing Officer may question the hearing participants directly at any time. Parties should be respectful in the conduct of the hearing.

F. Presentation of the Case

1. The psychiatrist or psychologist will be asked to present the facts and argument in support of a finding of incapacity. The witness should present only those facts which he/she has personally observed, or which are clearly documented in the medical record and opinions within his/her competence. Facts documented in the record should be identified as such.
2. In order to fully assess the patient's capacity or incapacity for giving informed consent, the following information shall be presented, based on the Petition and informed consent form(s):

a. Diagnosis and basis for diagnosis.

b. Date(s) and circumstances of discussions with the patient about the medication, including what patient was told based on the informed consent form(s), including:

   i) Name of the recommended medication, dosage range, frequency and method of administration.

   ii) The probable and possible side effects and other risks associated with taking the medication.

   iii) The treatment alternatives to medication, and an assessment of their probable effectiveness in relieving the patient's symptoms.

   iv) The patient's history with the recommended medication, if any, the results of such treatment if known, and any implications for taking the medication at this time.

c. Patient's specific responses to discussion(s) of medication.

d. Dates and reasons for medicating the patient during this hospitalization; effects of such medication.

e. Analysis of:

   i) Whether the patient is/is not aware of his/her condition, e.g. the diagnosis and its implications, and what observable facts about patient's responses or behavior support this conclusion?

   ii) Whether the patient is or is not able to understand the risks and benefits of, and alternatives to, taking the medication. What observable facts about patient's responses or behavior support this conclusion?

   iii) Whether the patient is/is not intelligently and rationally able to understand and evaluate the medication information and
otherwise participate in treatment decisions. What observable facts about patient's responses or behavior support this conclusion?

3. Following the presentation of the psychiatrist or psychologist, the Patient’s Representative will present evidence and argument on the patient’s behalf. The Patient’s Representative may also question the treating psychiatrist or other persons (including facility staff members) having information about the patient’s condition, treatment or capacity to give or refuse informed consent to medication as set forth in the testimony of psychiatrist or psychologist.

4. The psychiatrist or psychologist may question the patient, as appropriate, on issues of fact.

5. The psychiatrist or psychologist and the Patient’s Representative and/or the patient may have the opportunity to make a brief argument in support of their positions at the conclusion of the presentation of evidence.

G. Decision

1. At the conclusion of the hearing, the Hearing Officer will make a determination of capacity. The Hearing Officer will orally advise the participants, explaining the reasons for the decision, and the consequences (e.g., whether the patient may be medicated against his/her will, or not).

2. If the Hearing Officer concludes that the psychiatrist has not provided clear and convincing evidence to show that the patient lacks capacity to give or refuse consent to medication, then the Hearing Officer will decide that the patient has capacity and the patient may not be medicated without consent, absent an emergency.

3. If the Hearing Officer concludes that the psychiatrist has provided clear and convincing evidence to show that the patient lacks capacity to give or refuse informed consent, the Hearing Officer will decide that the patient lacks such capacity. The patient may be medicated without consent.
4. A determination of incapacity will remain in effect until the patient regains capacity, or capacity is restored by judicial determination, or for the duration of the detention period (WIC §§ 5150, 5250, or 5260) under which the patient is held at the time of the hearing.

5. If the Petition is withdrawn or dismissed without prejudice, no decision is made on the merits. A new Petition may be filed at any time with updated information. The patient may not be medicated without consent, absent an emergency.

H. After Hearing

1. Notice of Decision:

2. Immediately following the Capacity Hearing, the Hearing Officer will give written notification of the capacity determination on the “Capacity Findings and Decision” form (see Appendix C). The decision will include a statement of the evidence relied upon, and the reasons for the decision. The original will be filed in Superior Court. Copies of the decision will be placed in the patient's chart and provided to the patient, the Patient’s Representative and the facility director, if requested.

3. Rights of Appeal:

   a. Both the psychiatrist and the patient have the right to appeal an adverse determination to Superior Court. The appeal will be a new hearing, meaning that all the evidence will be put before the judge.

   b. The Patient’s Representative will inform the patient in detail of the rights of appeal.

4. Medication After Hearing:

   a. If the psychiatrist appeals a decision that the patient has capacity, no medication may be administered without consent until the appeal is decided.

   b. If the patient appeals a decision of incapacity, medication may be
administered without consent until the appeal is decided.

VI. **Appeal**

Any party who is dissatisfied with the Hearing Officer's decision may appeal by requesting a trial de novo in Superior Court. If the patient is appealing the decision, the Patient’s Representative will notify the Public Defender’s Office of the patient’s request. If the facility is appealing the decision, the facility may contact County Counsel for assistance. The facility must transport the patient to court for the trial.