

WIC 5270 Facility Staff Training Questions and Answers

If you have further questions, you can ask the group of trainers by emailing Margaret.Obilor@hhs.sccgov.org

Temporary Conservatorship Filing

Q: If the patient continues to be gravely disabled while on the 5270, can the inpatient team then apply for temporary conservatorship?

A: Yes. If, during the 5270 time it appears the person will require appointment of a temporary conservator, the conservatorship referral can be made. The referral must be made with sufficient time to allow for investigation and legal procedures. Because the conservatee must receive 5 days' notice of the intent to file a temporary conservatorship before the petition is filed, the conservatorship hearing has to take place on day 30 of the 5270 hold, and the conservatee must receive 15 days' notice of the hearing date, in order to allow for investigation of the petition, the referral for conservatorship must be made by day 5 of the 5270 hold.

Q: If the doctor believes a T-Con will be necessary, can they file for that directly during the 5250, or do we need to do a 5270 first? Or in other words: is the 5270 a required step in the progression from 5150 to T-Con?

A: The 5270 is absolutely not required in Santa Clara County in order to progress to a T-Con. In fact, the law requires that if the doctor believes a T-Con is necessary during the 14 days of the 5250, it must be filed during the 5250. Further, the doctor is required to evaluate for the patient for necessity of a T-Con during the 5250 time. It should be rare to file a T-Con after a 5270. If the clinicians believe a T-Con is necessary, the 5270 is not appropriate.

Q: The intent of the legislature was to use 5270s to prevent the placement of a T-Con. It sounds like that is not going to happen. Is that accurate?

A: That is not accurate. In every County where WIC 5270 has been enacted, there are many more 5270s filed than temporary conservatorships. The statute requires doctors to make a determination as to whether a patient will need a temporary conservatorship BEFORE placing the 5270. The 5270 should be used in appropriate circumstances where the doctor believes that the patient will reconstitute within 30 days. The Board of Supervisors expressed their intent to monitor the implementation of the 5270 hold and assess whether it appears to be reducing T-Cons.

Medication

Q: Does the requirement for 3+ refusals apply at the beginning of the 5270 if the individual was ordered to take medications under the 5250

A: Refusal is required in order to file a Riese petition. However, if a patient has been continuing to refuse medication during the 5250 time period, even though there is an order for involuntary medication, and a 5270 has been placed, those facts can be used to show refusal.

Q: Since 5250 + Riese order would enable us to use only immediate acting IM medications, am I correct in assuming that on 5270 + Riese may still not allow Long Acting Injectable medications like Invega Sustenna (which lasts 28 days)?

A: Correct, a Riese order on a 5270 still does not allow for the use of LAI Medications.

Q: For a reise - is there a grace period for medication to continue while waiting for the hearing on 5270 after the expiration of 5250 or would there conceivably be a gap in meds if a patient refuses?

A: There is no grace period. At the end of the 5250, the patient must be told they have a right to refuse until another medication order is obtained.

Voluntary Treatment

Q: If a patient initially agrees to stay voluntarily at the end of the 5250, even though they are gravely disabled, are we able to place the patient on 5270 if the patient then states they want discharge (and they are still gravely disabled).

A: Yes, if the patient meets criteria and it is still within the 47 day time-frame, the patient can be placed on a 5270, accounting for all voluntary time. Voluntary time counts in the 47 days and the doctor must subtract voluntary time from the expiration date of the hold.

Q: If pt is placed on 5270, but later states they are willing to stay voluntary - if they are then made voluntary (b/c of their stated willingness to stay voluntary), but later then state they want to be discharged, can this patient be placed back on a 5270?

A: yes, if the patient is placed on voluntary status after the 5270 is placed and/or upheld, and then within the 47 days they ask to leave again, they can be placed back on the 5270 if they still meet criteria. Voluntary patients placed on a hold go back on the hearing calendar and have a right to a hearing to determine if they presently meet the criteria for the hold. You must notify MHAP of a hold placed on a voluntary patient.

Q: Is there a grace period for the 5270 similar to the 5250? For example, if a patient is voluntary sometime during or after the 5250 can we write a 5270 prior to the end of the total 47 days.

A: Yes, the 5270 can be written after the initial 17 days if there is an intervening period of voluntariness. Days spent voluntary between holds are subtracted from the end date of the hold.

Timing of the 5270 Hold

In general, does the 5270 begin at the end of the 5250?

A: The 5270 begins at the time the hold is served to the patient, just like the 5250. The last day of the 5250 should be the first day of the 5270 such that the total between the two holds is 44 days (47 including the 5150 time).

Signature Requirements

Q: Does 5 years of experience include residency training for physicians? If it does not....then we are in trouble at VA Palo Alto.

A: Physicians are not subject to the 5 years experiences requirement. The statute says the second signature must be "either a physician who shall, if possible, be a board-qualified psychiatrist, or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders."

Q: Does Form 1808 Require two signatures?

A: Yes. The first must be the professional person in charge of the facility and the second can be a physician who, if possible, is a board-qualified psychiatrist or a licensed psychologist with 5-years post graduate training in mental health disorders. If the professional person in charge of the facility participated in the evaluation of the patient, the second signature can be an LMFT, RN, or MSW.

Q: Can the first signature be someone as "acting" medical director?

A: The professional person in charge of the facility means a person as defined in Title 9, California Code of Regulations, Section 623, 624, 625, 626, or 627 who is designated by the governing board of the facility or a person having control of the facility for the purposes of LPS. The designation must be in writing. Please consult your counsel as to what staff might fit this definition.

Q: Can you designate a delegate over the weekend or after-hours?

A: Please consult your counsel for application of the above-referenced statute to your facility's circumstances.

Out-of-county patients

Q: For patients whose residence is NOT Santa Clara County, can we use this 5270? Or do we follow the LPS laws for this pt's primary county of residence?

A: The 5270 can be used for out-of-county patient meeting its criteria. The temporary conservatorship processes of the county of residence would apply.

Writ Hearings

Q: Can the treating psychologist (PhD, not MD) testify in a writ hearing for the 5270?

Yes.

Q: In the past psychologists have testified in Writ hearings. Is this still the case?

Anyone who is familiar with the patient can testify if they are also familiar with the criteria for grave disability.

Q: Does the patient allowed to have a writ during the 5270 independent of having a writ during a 5250?

A: Yes, the patient can access the writ once during the 5250 and again during the 5270

Third Party Assistance

Q: I can think of a couple cases in which catatonic patients who meet criteria for GD do improve in approximately 30 days, they do not have the capacity to consent for voluntary hospitalization, but they do have 3rd party assistance with family members who agree they need additional treatment until the catatonia is improved. What would be the optimal legal hold in this case? It sounds like having 3rd party support negates qualification for 5270.

A: "Third-party support" is when a third-party is willing and able to provide the patient with the basic necessities of life. If the family member is not willing or able to provide that support, the patient could still meet the criteria for grave disability. This is a factual analysis that is often brought up at certification review hearings.

Certification Review Hearings

Q: For the 5270 hearings, will they happen during the same times as 5250 hearings?

A: Yes, the 5270 hearings will occur during the same days and times as the 5250 hearings.