BeHOLD:
The Department of Mental Health's Management of the Public Guardian Office and Patients' Rights Advocate

SUMMARY

Public Guardians in California handle some of society's most vulnerable people. These public servants are hired by the county and appointed by the court to manage the personal, financial, and medical needs of those suffering grave mental or physical illnesses or disabilities. Deputy public guardians across the state typically manage dozens of clients simultaneously, assisting them in tasks ranging from involved financial and medical decisions to the provision of basic necessities of day-to-day life.

Like the Public Guardian Office, Patients' Rights Advocates assist a segment of a given county's vulnerable population, i.e., those receiving mental health-related treatment and especially those held involuntarily at psychiatric facilities. In Humboldt County, both the Public Guardian Office (PGO) and the Office of the Patients' Rights Advocate (PRA) are managed by the Department of Mental Health, which is within the Department of Health and Human Services (DHHS). This report is not an evaluation of the overall performance of DHHS and Mental Health, but an investigation of two areas where Mental Health should reconsider its practices.

The Humboldt County Civil Grand Jury (Civil Grand Jury) learned that members of Humboldt County's Public Guardian Office were not participating adequately in "care conferences" for clients at skilled nursing facilities (SNF). The excessive caseloads carried by deputy public guardians hinder the office's fulfilment of its obligations to the conserved. The subsequent investigation showed that Humboldt County has been experiencing steady annual increases in both its total number of clients and the average caseloads borne by each guardian. The average caseload of each deputy public guardian dwarfs that of counties with populations two and three times the size of Humboldt. During this investigation, the Civil Grand Jury learned that Mental Health had recently imposed specific restrictions that limited the PRA's ability to access patient information on a daily census, in Mental Health meetings, and in regular reports about denials of rights. It was alleged that these new implementations of the existing confidentiality policy were adversely affecting, and even potentially obstructing, the PRA's state-mandated duties. Facility employees, who see the PRA's work as critical, have described the administration's withdrawal of the census data as "reactive," "defensive," and "punitive."

The Civil Grand Jury has concluded that the Public Guardian Office and Office of the Patients' Rights Advocate are struggling to meet their objectives because of the management of the Department of Mental Health, which has acted slowly to mitigate the problem posed by the growing number of conserved. Although the PGO itself was perhaps not as responsive as it should have been, most of the responsibility for the PGO's inability to fulfill its obligations to clients rightfully lies with DHHS and Mental Health, who control the PGO's resources and lack an adequate plan for adapting to unforeseen staffing shortages. Much-needed efforts might have been taken sooner if not for poor communication between the departments involved. DHHS should request funds for a new deputy public guardian and the Board of Supervisors should ensure that such funds are approved. Furthermore, DHHS should develop and implement a policy to mitigate the effects of unforeseen events on the remaining staff's workload.

The Civil Grand Jury found that while the legal basis of Mental Health's confidentiality policy is sound, its rigid implementation—redacting the patient census, the list of detained patients across the county, and regular reports detailing the frequency of denial-of-rights orders—takes the protection of "confidentiality" to unnecessary and unproductive lengths. This is especially true in light of the explicit allowances made for county employees who have completed the department's annual Health Insurance Portability and Accountability Act (HIPAA) training. At best, withholding information about patients makes the already challenging job of the county's single PRA needlessly difficult. At worst, it could actually rise to the level of denying certain clients their legal right to advocacy. Mental Health should ensure that the Patients' Rights Advocate has full access to patient information relative to their duties, specifically as they pertain to use of the census, the list of Lanterman-Petris-Short clients, the collection of denial-of-rights statistics, and the entire Continuous Quality Improvement (CQI) meetings.

DHHS' recent funding-request for a new deputy public guardian and Mental Health's ongoing reconsideration of the PRA's duties are reasons for optimism. But until these recommendations are implemented, Humboldt County is vulnerable to potential legal action for failing to meet obligations to both its conserved clients and mental health patients. The looming challenge of caring for the growing numbers of aging senior citizens and those suffering from acute mental illness, especially during the COVID-19 pandemic of the present and foreseeable future, will only exacerbate these present difficulties.

BACKGROUND

Guardians of the Public

> *No single group of individuals, no segment of our population, more poignantly challenges our moral convictions and social values about the worth of human life and dignity and rights of the individual than do those (older) people whose mental and physical impairments place them at the mercy of society ....*
>
> (Diamond 1963: 13)

The name itself—"public guardian"—speaks to the trust, diligence, responsibility, virtue, and compassion this position demands of those who are given this job. The legal and conceptual basis for the institution of the public guardian in the United States is derived from English law. The 1324 statute known as *De Prerogative Regis* states that "The King shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them their necessaries."[1] In early nineteenth-century England (and a bit later in the U.S.), those suffering from dementia, alcoholism, drug addiction, developmental disabilities, the many forms of "insanity," "feeble-mindedness," and incompetency were housed in institutions.

At present, in the United States, state governments manage the role of dependent caregiver, although laws vary between states. Before the very first California state public guardian's office was established in Los Angeles in 1945 to serve any person unable to administer their own affairs, such persons were institutionalized.[2] But California State Hospitals became so overcrowded by the 1950s

[1] Aviv 2017.

[2] "About the Public Guardian" 2020.

that incarceration therein constituted a form of institutional torture. Hospitals built for several hundred patients housed several thousands.[3] The Lanterman-Petris-Short Act (LPS), signed in 1967 and enacted in 1972, de-institutionalized mental health care and virtually emptied many of California's state hospitals. Several of these facilities closed and their patients, in some cases, ended up on the streets. In the aftermath of this legislation, the onus fell upon counties to deal with this population.

Humboldt County's Public Guardian Office

When it is determined that a person needs some level of intervention by referral from a physician, medical or mental health clinician, and the court, a public guardian is appointed to their case. Although Humboldt County's PGO has been overseen by its Mental Health Department for about four years, at one time the PGO stood as its own department with Veteran Services. It was later placed under the aegis of Social Services after the Department of Health and Human Services was established.

The current budgeted staff positions in the PGO include:

- Public Guardian, the head of the PGO
- Assistant Public Guardian, who is next in line administratively and supports the Public Guardian
- Three Deputy Public Guardians
- Several administrative positions including Auditor/Controller, Fiscal Assistant, Vocational Assistant, and Office Assistant

Clients and Services of the Public Guardian

The clients of the Public Guardian, the "conserved," are those deemed by the Superior Court to be unable to manage their own affairs according to the evaluation of a qualified physician or psychiatrist due to a grave mental or physical illness or disability.[4] They often lack the support of available and appropriate relatives or friends. Conservatorships belong to one of two primary categories. The Probate conservatorship focuses on financial and medical care decisions, usually for a lifetime. The LPS conservatorship, which must be renewed annually, requires the management and treatment of persons needing psychiatric care. The conservatorship of an individual client may fall within two further subcategories: a limited conservatorship for the developmentally disabled and a "representative payee" service whose sole task is managing clients' payments from the Social Security Administration, Veterans Affairs, or Disability.

The list of tasks performed by the PGO for the client is extensive:[5]

- Interview the proposed conservatee, family members, friends, physicians, psychiatrists, law enforcement personnel, social workers, and others.
- Prepare detailed reports of findings and recommendations to the court concerning family, finances, real and personal property, social history, medical and psychological conditions, and the need for a conservator or representative payee.

[3] Moore 2018.

[4] Larson 2016.

[5] The following list draws from several publicly available sources describing the duties of public guardians.

- Work with County Counsel in preparing petitions, interviewing witnesses, assisting with trial preparation, and arranging the appearance of clients at court hearings and trials.
- Arrange for the hospitalization, care treatment, vocational training (e.g., physical therapy, speech therapy), outpatient Mental Health care, education, and housing of clients.
- Negotiate rent payments, investigate extent and nature of conservatee estates.
- Locate inventory and protect all real and personal assets (trusts).
- Initiate application for, and assure receipt of, all benefits to which the client is entitled.
- Work with a multiplicity of agencies and individuals to arrange for the delivery of services to clients.
- Assist case-management personnel from other agencies in visiting and monitoring progress of conservatees in local and out-of-county placements, and prepare reports of visits.
- Provide medically-necessary, ancillary assessment, and case-management services to conservatees.
- Attend skilled nursing facility (SNF) Care Conferences.

These are but the formal duties of the PGO's job. In assuming the total care and handling of a client's personal, financial, medical, and legal affairs a host of other tasks inevitably arise, as simple as a client's request for a cell phone. Guardians have immense power over the conserved, whose financial, medical, and psychological well-being is in the hands of their public guardian. Guardians have the authority to remove a person from their home in order to place them in an assisted-living facility and the authority to make medical decisions for them. They can sell, confiscate, or liquidate the entirety of a client's property and belongings. Clients are vulnerable, often elderly, commonly disabled, and, by the nature of their predicament and circumstances, may lack the wherewithal to even understand their civil rights. Thus administration of guardianships and conservatorships must be held to the very highest ethical and legal standards. The Civil Grand Jury received a complaint that the participation of deputy public guardians in quarterly care conferences for patients/conservatees in skilled nursing facilities (SNF) has been unsatisfactory.

The Patients' Rights Advocate (and Why It Exists)

Over the course of its investigation of the Public Guardian, the Civil Grand Jury learned of a potential second and related concern in a different office overseen by the Department of Mental Health: the office of Humboldt County's Patients' Rights Advocate (PRA). The origins of this office in the history of California's mental health institutions is tragic, even terrifying. From their inception in the late 1800s, the state's "insane asylums" were left to operate without much oversight. As a result, conditions inside such hospitals did little for patients' mental health. Persons could be committed to an asylum on nothing more than the word of a relative. Patients, who could be held indefinitely, were essentially prisoners without sentences. Shackled, beaten, abused, and forgotten, patients were subjected to lobotomies, electro-shock therapy, psychotropic drugs, and sterilizations at the will of asylum administrators.[6] Guards carried blackjacks (i.e.,

[6] For psychotropic drugs, see Brecher et al 1972. For sterilization in California, see Kaelber 2012.

clubs). Those who died there—and many did—often were buried in anonymous mass graves behind the asylum. Once incarcerated in this virtually medieval system, a person had few if any rights.

This continued until two events led to an outcry for reform. The first was a 1950 undercover investigation by the California State Justice Department that exposed the terrible abuses and suffering inside Mendocino State Hospital.[7] The second was the 1962 publication of Ken Kesey's novel, *One Flew Over the Cuckoo's Nest*, which chronicled the oppressive and dehumanizing treatment of a group of patients in an Oregon psychiatric hospital. Two pieces of legislation appeared soon after. In 1963, President John F. Kennedy pushed through the Community Mental Health Act that sought to deinstitutionalize state hospitals, such as the one featured in Kesey's book. But the most sweeping reform came about from the 1967 Lanterman-Petris-Short Act (LPS), which sought to "end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders." In 1993, the California Office of Patients' Rights was created to ensure further that each person admitted to a mental health facility had access to an advocate who would, if needed, safeguard their basic rights. Now each county is required to have at least one Patients' Rights Advocate on staff.

What the PRA Does

The PRA is an advisor, proponent, defender, and counselor for any patient receiving mental health treatment in the county. Patients are housed under various Welfare and Institutions Codes (WIC) that allow involuntary committals, beginning with WIC §5150. When a patient is deemed a danger to themselves and/or to others, gravely disabled, or unable to care for themselves due to a mental health condition, they can be held involuntarily for seventy-two hours on a "5150." A probable cause hearing can extend that hold for fourteen more days (WIC §5250), an additional fourteen days (WIC §5260), and an additional thirty days that may lead to a court order for the patient to be conserved (WIC §5270). Because these holds suspend civil rights, strict guidelines must be met prior to a patient's admission to the facility.

The PRA's duties include:

1. Assisting mental health staff in ensuring that such clients are informed of their rights.
2. Performing the critical role of providing advocacy and representation for clients during the "certification review hearing" which determines the legal status and continuance of their detention on a mental health hold.
3. Training and educating the staff at Mental Health facilities about patients' rights and advising the department on questions concerning the laws and regulations surrounding holding clients.
4. Monitoring local facilities in which county mental health clients are held.
5. Conducting investigations to explore and resolve any issues or problems regarding a patient's rights should any come to light involving involuntary holds and unreasonable or punitive denial of rights (e.g., seclusion or restraints).
6. Monitoring present and past denials of patients' rights with the help of reports issued quarterly which the PRA then forwards to the state Patients' Rights Office.

[7] Blanc 2019.

Technically any person receiving (or who has received) mental health-related treatment at any facility in the county (e.g., St. Joseph's Hospital, Humboldt County Correctional Facility) is a client of the PRA, but most of the PRA's clients are those admitted to Sempervirens Psychiatric Health Facility or the long-term care facility, Crestwood Behavioral Health Center. Each patient admitted voluntarily or involuntarily to a mental health facility should be made aware of the availability of the PRA and provided with a packet containing a brochure about the PRA's services, a Release of Information form (ROI), and the PRA's contact information. The contact information is also posted in every facility with a statement of patients' rights.

The Humboldt County Civil Grand Jury's investigation of the Patients' Rights Advocate

It came to the attention of the Civil Grand Jury that the county's Patients' Rights Advocate was unable to perform their duties in a timely and efficient manner because they were denied critical patient information to which they had previously enjoyed access.

METHODOLOGY

In preparation for this report, the Humboldt County Civil Grand Jury:

- Conducted interviews with Humboldt County Public Guardian Office employees.
- Conducted interviews with Humboldt County mental health and social services employees.
- Conducted interviews with state-level and other counties' patient advocates.
- Interviewed complainants.
- Reviewed documentation provided by interviewees, including financial accounting.
- Researched California guardianship and advocacy law.
- Gathered and collated statistics from other counties.

DISCUSSION

Public Guardian Office: The Complaint

The Civil Grand Jury received a complaint from one of the four Eureka-area skilled nursing facilities. The complaint stated that deputies of the Public Guardian Office were unable to participate adequately in "care conferences" scheduled quarterly for clients under the PGO's care. When the deputy guardian did attend the care conference, they were frequently interrupted by phone calls, which diminished the value of their participation in the conference. These conferences play an important role in treatment, providing the occasion for medical staff, ombudsmen, guardians, and sometimes the client to review the client's program, make necessary adjustments, confirm treatment goals, and even register client complaints when appropriate. Moreover, the complaint noted that guardians were having trouble performing basic services for their clients, such as shopping for clothes or acquiring a cell phone, in a timely fashion. Frequently the task of securing such day-to-day items was falling to the staff of the facility or care home in question and, in some cases, to no one at all. Chronic understaffing in the Public Guardian Office undermines its ability to address the interests of residents in such facilities. In addition to the increased attention of the deputy public guardians, the complaint seeks a closer collaboration between the staff of skilled nursing facilities and the Public Guardian Office.

After undertaking a series of interviews and visiting facilities holding clients of the Public Guardian Office, the Civil Grand Jury determined that the performance of the Humboldt County Public Guardian Office was severely impacted by excessive caseloads. Several individuals who expressed dissatisfaction with the PGO's overall service to clients in the SNFs generally agreed that the guardians were hindered in fulfilling their obligations because of their excessive caseloads, which are reportedly in excess of ninety clients each (see Figure 1 below). This number is beyond the seventy or so cases that workers identified as a manageable caseload and far beyond the thirty to forty client workload that is considered ideal. To guardians often scrambling to locate their most at-risk clients, the relatively secure SNF residents are deemed a lesser priority because they are safely housed and fed and often have a source of income in trust.

Several factors contributed to this state of affairs. First, Humboldt County has an inordinate amount of persons who are being served by the Public Guardian Office. The County's per-capita population of conserved patients is far in excess of other California counties. Second, requests to DHHS (and to Mental Health, to which the PGO answers) for funding to be allocated for a new deputy public guardian position have gone unheeded for years. Third, one of the three deputy public guardians has taken an extended medical leave and that staff member's entire caseload was simply shifted to the remaining two deputies, the assistant PG, and the lead PG. The standard of care for many of the PGO's clients has clearly suffered with the resultant increase in caseload.

Growing Caseloads, Shrinking Workforce

Humboldt County Mental Health's proposed budget for this fiscal year is $46.6 million, just over $28 million of which represents salaries and benefits.[8] Yet despite the unusually high demand in Humboldt County and the desperate need for a well-staffed, highly efficient Public Guardian Office (PGO), Mental Health administrators have not advocated that this office become a program. Even as Mental Health maintains separate budgets for programs like Healthy Moms, Substance Abuse Disorder, and Humworks (this last with a budget of just $20,000), the PGO is expected to serve its nearly 490 clients—an extraordinarily high number compared to other counties — without its own budget and without sufficient autonomy. As a result, the PGO must compete with other offices for a slice of the General Fund. This has led to problems.

Documents provided to the Civil Grand Jury show that the number of clients under the care of the Humboldt County Public Guardian Office has increased steadily for several years and that this trend only seems destined to continue (see Figure 1).

[8] *Humboldt County FY 2019-2020 Proposed Budget: Section D, Health and Human Services* 2019.

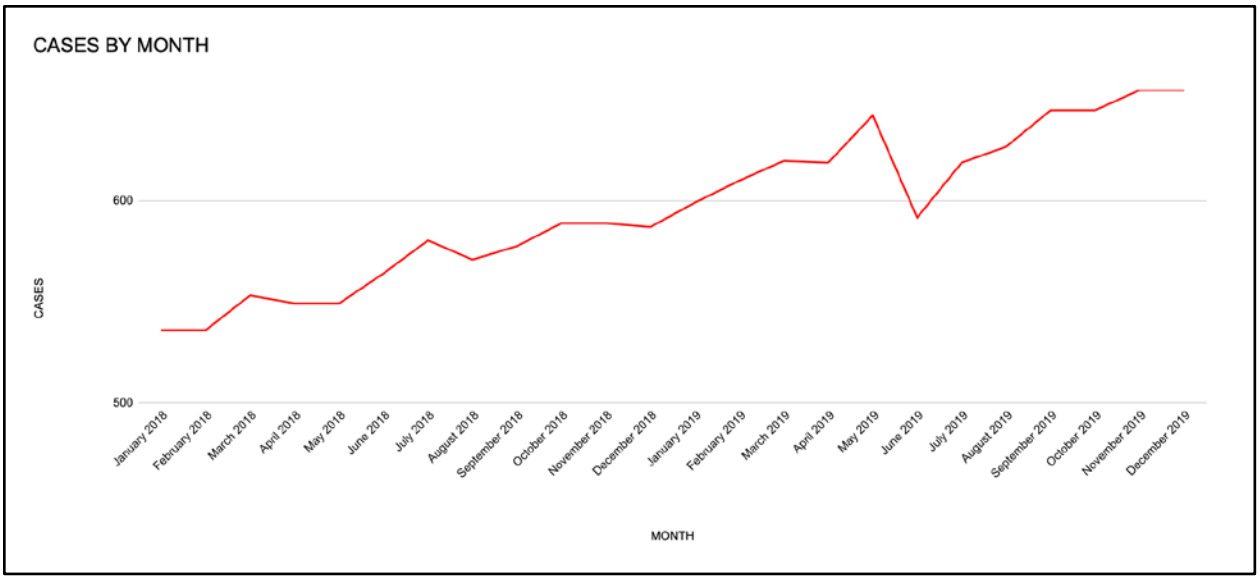

Figure 1: Public Guardian Caseloads 2018-2019

Currently four workers serve around 700 clients of various types and needs.[9] Of these, some 200 or so are clients for whom the office handles just one aspect of their lives, the financial part (e.g., social security, disability checks, etc). That leaves approximately 500 clients who require a staggering range of services and needs, from intervention in serious drug abuse to management of financial affairs to onerous tasks such as locating personal papers in a packed mobile home to the mundane such as getting the client new pajamas. The unique challenges faced by Humboldt County's Public Guardian are immediately apparent when its workload per caseworker is compared to that of other counties. Humboldt's average number of clients per guardian (or caseworker) exceeds not only that of counties of similar population, far oustripping peer counties such as Mendocino, Shasta, and Yolo, but also that of counties many times its size (see Figure 2).

COUNTY	TOTAL CLIENTS	CLIENTS per guardian	TOTAL POPULATION	CLIENTS per capita (per 100,000 residents)
Humboldt	**490**	**90-120**	**135,000**	**363**
San Mateo	670	51	765,000 (2016)	**88**
Santa Barbara	190	50-75	446,469	**43**
Solano	236	60-65	447,643	**53**
Santa Cruz	148	29-30	273,213	**54**

[9] The most recent number of total clients in Humboldt was reported to be 709 as of April 2020.

Shasta	151	38	179,209 (2018)	**84**
Lake	78	19	64,386	**121**
Yolo	178	58-60	220,500	**81**
Del Norte	50	33	27,812	**180**
Mendocino	73	73	86,749	**84**

Figure 2: PGO Case Workload by County

These numbers are startling.[10] Humboldt County's inordinately large population of conserved clients is a deeply concerning statistical anomaly that makes present questions about the administration's oversight of and responsiveness to the PGO even more urgent. Humboldt County's total conserved is half of the total conserved in San Mateo county, which has a population five times greater than that of Humboldt. The latter's average caseload is about one-third greater than what a guardian of San Mateo serves. The total population of either Santa Barbara or Solano counties is three times that of Humboldt, yet their guardians are responsible for roughly half the number of cases of a Humboldt guardian, and their total number of clients is significantly lower than that of Humboldt. Moreover, the number of conserved per capita in Humboldt County is far higher than any of the counties listed above. Humboldt has 363 conserved persons for every 100,000 residents. Del Norte County, whose total population is just under two-thirds of Humboldt's, has eighty-four conserved patients for every 100,000 residents.

There is every reason to believe that these disparities in total clients and clients-per-guardian between Humboldt and other counties will continue to grow, particularly because of the inevitable care which will be required for the aging "boomer" generation. Early data suggests that Humboldt County is beginning to see the effects of the present global COVID-19 pandemic on the Public Guardian's workload. As the middle and lower classes begin to feel the economic impact of job losses, business closures, and shrinking earnings, the number of those requiring the help of the PGO will naturally rise. Moreover, the $54 billion state-level budget deficit expected as a result of COVID-19 has forced California to consider deep cuts to the state's funding of health and education.[11] This will almost certainly impact the county's finances.

While the total number of clients served by the PGO has climbed steadily over the years, its excessive average caseloads reached stratospheric levels after one of only three deputy public guardians began an extended medical leave of absence in late 2018 that continues to this day. Although many institutions commonly deal with such absences of key staff members by hiring a temporary or contract worker to assume part or all of the absent employee's workload, the terms of the present *Memorandum of Understanding* (MOU) between Humboldt and the American Federation of State, County & Municipal Employees (AFL-CIO) forbid the hiring of a substitute appointment for an employee who is on leave *with pay*.[12] Nevertheless, the PGO attempted at some point to hire additional temporary staff from its own small budget in order to alleviate the

[10] Because the numbers of conserved fluctuate slightly from month to month, the statistics presented here should be viewed as a moving target.

[11] Botts 2020.

[12] The *Memorandum* (MOU) is effective October 1, 2017 through December 31, 2020. See Section 21.4 for medical leaves of absence. According to Section 9.3.7, substitute appointments may only replace a regular employee who is expected to be on an "authorized leave of absence without pay."

heavy burdens on each deputy public guardian. Such funding would come from the PGO's "representative payee" program, which generates about $15,000-16,000 per month in revenue by collecting a monthly fee from probate clients who are drawing Social Security in exchange for the management and distribution of those payments.[13] While the PGO made some efforts in the past six months to hire temporary staff, it is unclear how successful they were.

The immediate result of this sudden loss of a deputy meant that existing staff of the PGO was forced to distribute that absent deputy's caseload of eighty-seven clients among the remaining public guardians (and among the administrative staff) indefinitely. The average number of clients per guardian thus increased from 70 to 110 overnight, at least a 64% increase above the average guardian's caseload in other California counties (Figure 2).

Mental Health's Response

The natural solutions to such high caseloads in the PGO would be the creation of new positions to handle the client overload and filling the existing deputy position that presently sits vacant. Every year the finance sector of DHHS' Employee Services solicits the directors of departments and offices within DHHS to make official requests for their specific needs for the following budget year. The burden of requesting approval to hire in one of DHHS' various departments apparently rests chiefly on supervisors, who must argue for a specific need and explain the consequences of failing to address it. In each of the last two years, the PGO officially requested that funding be allocated to create an additional position for a new deputy. While the current preliminary approval of funding to hire a new deputy is a welcome development, the Civil Grand Jury was troubled by DHHS' seemingly delayed response to the increasing challenges faced by the PGO. Documents indicate that a new deputy position in the PGO has not been approved in twenty years.

The difficulty of securing funding for a new position is surely affected by the structure of DHHS funding. Because the PGO receives very little external funding, its costs must be covered by the county's general fund, which supplies very little of Mental Health's considerable budget. Yet it is still unclear why DHHS and Mental Health were so slow to respond to the increasingly dire situation of the PGO's staffing. When seeking some explanation for this failure to hire a new deputy, the Civil Grand Jury was told that there were no obstacles to hiring additional deputies and that the problem may have been one of communication between supervisors. The Civil Grand Jury was troubled by the response that such requests for hiring were "the responsibility of the supervisor" and that "sometimes supervisors do not ask loud enough."

While DHHS' current plan to hire a new deputy is a reason for optimism, it is worth underscoring just how much longer it will be before the Public Guardian receives any relief. DHHS has merely *earmarked* the funding in its current budget, which still awaits approval by the Board of Supervisors. If approved, Employee Services only begins the hiring process starting July 1st. After the necessary solicitation of applicants, screening of candidates, completion of paperwork, and required training, many, many months will have passed before the newly hired deputy can even begin to relieve the enormous workload that has accrued over several years. Moreover, following the hiring process, it takes at least a year of training before a new guardian

[13] Clients living in an SNF pay $5 per month; clients living independently pay $44; clients with total assets above $2,000 owe the PGO $600 annually. A small number of clients with VA benefits pays the PGO in a similar way.

can work on their own. If ever the citizens of this county needed excellence in governance, it is in the administration of this most crucial of public services, the Public Guardian Office.

Patients' Rights Advocate: The Complaint

Like the Public Guardian, the Office of the Patients' Rights Advocate is also overseen by the Department of Mental Health. Evidence gathered by the Civil Grand Jury suggests that the efficient workings of this office were also negatively affected by the department's practices. The primary issue concerned the department's interpretation and implementation of its policies protecting privacy and patient confidentiality, specifically the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Humboldt County's Department of Mental Health understandably privileges the privacy of its clients and observes federal law governing such protections. The Civil Grand Jury found that while the legal basis of Mental Health's policy is sound, its interpretation and implementation adversely affect the PRA's mission and patients in mental health facilities. The following practices would benefit from reconsideration:

1. The redaction of patient information from the daily census and periodic reports on "denial of rights" orders, both of which are supplied to the PRA.
2. The PRA's exclusion from meetings where sensitive information may be discussed.

While confidentiality policies may be guided by law, they also make the PRA's important work much harder and, worse, may prevent the PRA from meeting state-mandated obligations to advocate for clients, report significant statistical data, and monitor county facilities. In the event of a client lawsuit, current practices might even be construed as obstruction and, for this reason alone, should be carefully reconsidered. The Civil Grand Jury was interested in learning the justification for this new interpretation of patient confidentiality and, more importantly, whether Mental Health's specific practices for the preservation of patient confidentiality potentially hindered and even prevented the PRA from effectively doing their job.

The Redacted Census

Mental Health did not always implement its confidentiality policy as it does currently. Before October 2019, the Ward Clerk at Sempervirens routinely faxed to the county PRA (and to other staff) a daily "census" listing the name, date of birth, case number, date of admission, legal status, financial status, and type of hold for each patient currently housed in the facility. While the kind of data included in a census may vary by county, the census is a common tool for helping a PRA learn of new admissions, easily locate patients within a facility, and keep track of their legal status. In October 2019, Mental Health administration decided the census would be redacted to exclude the name, birthdate, and case number of all patients for whom the PRA did not have an existing signed release of personal information or "ROI." The explanation given for this sudden change in practice was that such patient data, even the disclosure of the name of a patient at the facility, constituted a violation of confidentiality according to WIC §5541, which requires a client's authorization before a PRA can access confidential records or information. WIC §5325.1 and the patient's "Bill of Rights" state, respectively, that all persons with mental illness have a "right to privacy" and the right "to be treated confidentially, with access to [their]

records limited to those involved in their care or designated by the patient."[14] In addition to parts of the census, the list of clients being held under LPS holds was also withheld from the PRA by Mental Health administrators.

The Civil Grand Jury heard from multiple sources that the new practice was, in effect, a hindrance to the performance of the PRA's advocacy duties. Information that was previously accessible to the PRA now requires additional, time-consuming work in a job that already requires rigorous adherence to procedure for its various duties and mandated deadlines.

A PRA serves as advocate during a patient's hearing regarding the legality, status, and necessity of a mental health "hold." To file the necessary paperwork the PRA must access a patient's file. The previously unredacted census allowed the PRA to complete the paperwork and prep for the impending hearing *from the PRA office*. The implementation of the new policy introduced a new, even Byzantine, level of bureaucratic process. The advocate must now, first, visit each facility and move room-to-room to determine whether clients have been admitted who might need their services and, second, engage clients in the middle of an often involuntary and even traumatic mental health hold to persuade them to make the rational, calm decision to sign the ROI. If the PRA successfully secures the release, the advocate must then enlist the help of the facility's ward clerk, who enters the information in the system. Only after the clerk enters the ROI into the county computer system can the PRA access the patient's records and return to their office to complete the necessary paperwork. Processing the ROI usually takes 24 hours. Moreover, the added cost of the daily clerical work to redact from the census information about patients who lack an ROI is unjustified.

This onerous process becomes potentially problematic when it occurs around the leadup to the semi-weekly hearings, legal proceedings that determine the status and possible extension of a hold for patients in the facility. A hearing must take place within three days of admission. If there is any delay in acquiring an ROI from a patient, the PRA could be forced to make repeated trips to the facility on the same day: to the facility for an ROI, back to the office to complete the paperwork, and then back to the facility for a hearing. The patient needs a prepared advocate as they enter a hearing to face recommendations by professionals and officials well-versed in the process and procedures of holds.

When gauging the added cost of the redacted census in the PRA's time and energy, one must remember that a single PRA serves all mental health clients in Humboldt County. Clients are found not only at Sempervirens and Crestwood, but technically at any facility where patients receive care, including (but not exclusive to) St. Joseph's Hospital, Humboldt County Correctional Facility, and various homeless shelters. Moreover, the PRA is responsible for Humboldt patients who are held in facilities outside the county. The advocate's job is further complicated because clients are people whose complex family lives and health histories can be exacerbated by any number of contingencies.

The nature of mental health emergencies sometimes precludes the possibility of acquiring a signed ROI. Distressed individuals may lack the wherewithal or ability to understand their rights or file a complaint. Psychosis, mania, heavy medication, or other such mental or physical debilitation can prevent patients from willingly releasing their information to the PRA in a timely fashion. Moreover, some patients will have a weaker grasp of their rights and what constitutes a violation of them. At worst, such reduced access could complicate the PRA's legal duty to "act

[14] The "Bill of Rights" is originally based on the Association of American Physicians and Surgeons' (AARP) list of "patient freedoms."

as an advocate for patients/residents who are unable to register a complaint because of their mental or physical condition" (Title 9 CCR §862.2 [5]). Mental Health administration should be facilitating the PRA's workload. Instead they are forcing the PRA to work "blindly," as one source described the change in practice represented by the redacted census.

Denial of Rights Statistics

The implementation of the confidentiality policy also potentially impedes the PRA's mandated obligation to report to the state the occurrence and statistics of denial-of-rights orders in county facilities. A denial-of-rights order is an official process whereby a civil right is removed from a patient for "good cause" by the person in charge of the facility (WIC §5326).[15] Every denial of a right or rights must be recorded by the facility (Title 9 CCR §865.3) and these statistics are forwarded quarterly to the state's Office of Patients' Rights, the state legislature, and the county's Board of Supervisors. Information reported includes the number of persons whose rights were denied and a description of the right or rights (WIC §5326.1).

According to Humboldt County's job description (2017) of the PRA, the advocate must collect, compile, and submit this report. However, the monthly and quarterly reports detailing the use of seclusion and restraints currently provided to the PRA are redacted of all identifying patient information, apparently even of *identifying information about patients who have signed an ROI*. The absence of such information potentially reduces the accuracy of statistical data about the county's denials of rights and hampers any effort to determine what percentage of rights denials involve specific individuals, the extent to which such denials were supported by good cause, and any unusual or problematic patterns in facilities' denials of rights. This is especially true of incidents involving patients who are no longer at the facility so they can no longer be questioned directly.

Only Mental Health officials i.e., nurses, physicians, and administrators, have access to complete records and they alone reserve the responsibility to identify and report any potentially significant denials of rights connected to specific clients. In other words, Mental Health reserves for itself sole responsibility for adjudicating statistics about patients who are denied rights in the care of the Mental Health Department. The primary check on the incidence of seclusion and restraint on mental health patients in Humboldt County is Mental Health itself. This policy has led to the PRA currently not investigating any denials of rights although such investigations are mandated by WIC §5270.

Continuous Quality Improvement Meetings

The Civil Grand Jury identified Continuous Quality Improvement (CQI) meetings as another area of concern. Mental Health administration is required to conduct meetings at least ten times annually to review and analyze the department's programs for possible improvements. These meetings cover a great deal of information and data regarding the effectiveness of in- and outpatient care and are attended by the department's leadership and certain community stakeholders. Together they evaluate the extent to which their department is implementing the best practices and highest levels of professionalism and efficiency in its policies, regulations, and procedures. The confidential nature of the information reviewed and discussed at these CQI meetings requires that patient confidentiality be protected.

[15] Examples of "rights" are found at WIC §5325 and reasons defined as "good cause" at Title 9 CCR §865.2.

Ostensibly in order to protect such confidential information, the Mental Health administration excludes the PRA from any part of the CQI meetings in which any personal information about patients who have not signed an ROI is discussed. While it may align with laws protecting confidentiality, such practice is nevertheless one interpretation of the law and may conflict with a PRA's duty to interpret and report statistics of the denial of rights and investigate and resolve complaints regarding violations or abuse of rights. In the event of a suspected violation, the PRA is required to launch an investigation to ascertain the cause of denial of rights and bring this to the attention of department administrators. Thus the PRA's multifaceted job requires them to act as a consultant, representative, trainer, investigator, and a liaison between the county and state. The PRA's performance of this critical role is dependent on access to all pertinent information, not just which denials of rights occurred and how often, but also who was denied rights, for what reasons the actions were taken, and how often this occurs. Given the PRA's obligations to produce a fully informed report to the state, it is fair to ask whether the county's interpretation of patient confidentiality, insofar as it places limits on the information available to the PRA, is reasonable.

Another result of these restrictions placed on patient information has been the PRA's present suspension of two of the job's central tasks: to monitor facilities continually and train staff for compliance with patients' rights, laws, regulations, and policies. Out of fear for going astray of the administration's strict enforcement of confidentiality, the PRA has been reluctant to perform these duties.

Implementing Patient Confidentiality

The PRA asked Mental Health for an explanation of this new policy restricting access to patient information. Formal and informal responses by DHHS and Mental Health administration have defended the practices as an effort to "err on the side of confidentiality" and argue that such patient information is mostly irrelevant to the PRA's basic duties. Moreover it maintains that the PRA's reasoning for requesting a faxed, unredacted census, i.e., to avoid unnecessary travel to Sempervirens, is moot because the County's description of the position requires the PRA to visit facilities daily. According to the Department of Mental Health, there are but three occasions when the PRA is permitted access to records: when responding to a complaint from a patient who has provided authorization through an ROI; when conducting monitoring activities according to WIC §5520-5522, but only with records that have been "de-identified" (i.e., no protected health information, no names); when rights are denied and patients are reported under WIC §5326.1 (and with all identifying information redacted).

A review of all statements and documents concerning Mental Health's policy of patient confidentiality confirms that it is informed by current law. In implementing this policy, however, Mental Health interprets such laws as *strictly* and *narrowly* as possible when it comes to the duties of the PRA. For example, while WIC §5325.1 and the patient Bill of Rights restrict access to patient records, it does not *explicitly* forbid nor allow disclosure of the patient's name or location on the census or the list of LPS patients requested by the PRA. Since the statutory language is broad, it is up to the medical providers, patients, and advocates to interpret whether a specific situation would be covered by WIC §5325.1 and whether the disclosure would be in compliance with HIPAA. The Privacy Rule explicitly *permits* certain incidental disclosures to the extent that the entity (in this case DHHS) has applied reasonable and appropriate safeguards and implemented the minimum necessary standard, where appropriate (i.e., continuous HIPAA Training, and a signed Confidentiality Agreement).

Furthermore, Mental Health does not adhere to such strict enforcement of confidentiality across the board. One example is the nurses' station whiteboard: the PRA receives a paper census without the patient's name and location in Sempervirens, yet information about patients currently being held in the facility (specifically the first name and location of each client on a hold) is in fact featured on a whiteboard posted in the nurses' station. While "patient confidentiality" is defined as strictly as possible in Mental Health documentation, where it justifies restricting the PRA's access to client information, it is defined much more broadly in practice (i.e., at the facilities).

Moreover, it is unclear whether disclosure of this basic information in a census truly constitutes a violation of patient confidentiality when other counties in the state can and do routinely furnish such data to PRAs without the condition of a patient release. While Mendocino and Shasta Counties redact the census, the Butte County PRA receives complete nightly updates via email. PRAs from larger counties such as San Francisco and Monterey receive complete census forms. It is difficult to believe that a county like San Francisco, which faces a large and acute public mental health problem, is breaking the law on a much larger scale by affording its PRAs a full census. Moreover, when the Humboldt County PRA needs to check on clients housed in Shasta County, that county furnishes a *complete* census to them.

The above examples make clear that there is a certain amount of flexibility in the interpretation of "patient confidentiality" in counties throughout the state. While codes like WIC §5541 and the patient Bill of Rights surely afford Humboldt County's Department of Mental Health sufficient legal basis for limiting access to a patient's records, it is difficult to see how this applies to the Humboldt County PRA when they are a staff member of a HIPAA entity and have thus signed the confidentiality agreement required of all DHHS employees. As an organization covered by HIPAA, DHHS ensures compliance with HIPAA's protections of the privacy and security of health information by requiring annual training for all employees, including the PRA. The DHHS manual on *Privacy and Security Training* states explicitly that employees who complete the training can "look at" and "use" a person's confidential information "if [they] need it to do [their] jobs."[16]

Mental Health is not legally bound to restrict the PRA's access, especially when it comes to investigating denials of rights. The PRA can be given access to client information and records if the Mental Health director chooses to delegate responsibility for such an investigation (WIC §5326.1, WIC §5326.9). Both Monterey and San Francisco counties outline processes by which a county Mental Health director can designate responsibility to investigate denials of rights to a PRA who is granted access to full client information. Moreover, a recent report prepared by the California Office of Patients' Rights concluded that such a decision by Humboldt County, i.e., to include in its policy similar delegation procedures for denials of rights, would be supported by law and best practices for PRA programs.

FINDINGS

F1. The Public Guardian Office is understaffed. (R1, R2, R3)

[16] *Privacy and Security Training: Department of Health and Human Services*: 8.

F2. Mental Health, which administers the Public Guardian Office, did not take sufficient proactive measures to help the Public Guardian Office manage the increased caseload when a key staff member took extended leave. (R1, R2, R3)

F3. The present Public Guardians are unable to meet their obligations to clients adequately because they are burdened with inordinately high caseloads. (R1, R2, R3)

F4. The Humboldt County Memorandum Of Understanding with employees has language that restricts the replacement of employees when a full-time employee is out on prolonged medical leave. (R3)

F5. The Mental Health administration's interpretations of confidentiality create obstacles that prevent the Patients' Rights Advocate from serving clients' needs despite the Advocate's having signed a confidentiality agreement and having undergone the County's annual HIPAA training. (R4, R5, R6, R7)

RECOMMENDATIONS

R1. The Humboldt County Civil Grand Jury recommends that the Board of Supervisors ensure that adequate funding is budgeted for the hiring of an additional deputy public guardian. (F1, F2, F3)

R2. The Humboldt County Civil Grand Jury recommends that the Department of Health and Human Services hire an additional (fourth) deputy public guardian in order to ensure the office can manage its caseloads. (F1, F2, F3)

R3. The Humboldt County Civil Grand Jury recommends that the Department of Health and Human Services develop and implement a process to mitigate the effects of the increased workload on remaining staff when a staff member takes an extended leave. (F1, F2, F3, F4)

R4. The Humboldt County Civil Grand Jury recommends that Mental Health ensure that the Patients' Rights Advocate have full access to patient information relative to their duties. (F5)

R5. The Humboldt County Civil Grand Jury recommends that Mental Health ensure that the Patients' Rights Advocate be provided with an unredacted census daily. (F5)

R6. The Humboldt County Civil Grand Jury recommends that Mental Health ensure that the Patients' Rights Advocate be provided unredacted denial-of-rights reports with patient information. (F5)

R7. The Humboldt County Civil Grand Jury recommends that Mental Health welcome the Patients' Rights Advocate to the entirety of Continuous Quality Improvement meetings without restrictions. (F5)

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Humboldt County Civil Grand Jury requests responses as follows:

From the following individuals within 60 days::

- Humboldt County Department of Health and Human Services Director Connie Beck (CBeck@co.humboldt.ca.us): F1, F2, F3, F4, F5, R1, R2, R3, R4, R5, R6, R7.

From the following governing bodies within 90 days:

- Humboldt County Board of Supervisors (vbass@co.humboldt.ca.us, mike.wilson@co.humboldt.ca.us, smadrone@co.humboldt.ca.us, RBohn@co.humboldt.ca.us, EFennell@co.humboldt.ca.us): F1, F2, F3, F4, R1, R2, R3.

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

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