

The LPS Conservatorship Laws in California

Summarized by Thomas T. Thomas

The Lanterman-Petris-Short (LPS) Act of 1967, California Welfare and Institutions (W&I) Code, Section 5000 *et seq.*, concerns the mandatory civil commitment of a mentally ill person in the State of California, and there are similar laws in most other states. The law implies the need for conservatorships of persons with a mental illness. Our guest speaker on March 23 was **Harry Gin, ACSW**, Supervisor of the LPS Conservatorship Unit of the Alameda County Social Services Agency, Department of Adult and Aging Services. He unraveled the complexities of what a public conservatorship can and cannot do in most situations. Also present at the meeting was NAMI-East Bay Board member **Rebecca Bianchi**, who is a local resource and writer on issues with the Medicare Part D Drug Plan. She offered information and answered questions about the regulations.



HARRY GIN, ACSW

In 1957, Harry Gin said, the population in state mental health hospitals was just over 37,000. In 1968, just after LPS passed, it was 18,000; and in 2005, the population was 535. “LPS has deinstitutionalized mental health treatment,” he said. “Today, state hospitals are the point of care for people who are the most difficult to care for, such as people with assault issues that most local facilities can’t deal with.” Alameda County has only 18 patients at Napa State Hospital.

For example, persons found mentally incompetent under California Penal Code Section 1370—that is, unable to assist in their own defense—are sent to the state hospital for up to three years in order to be restored to competency. If after that time they still could not stand trial, they would be a candidate for long-term LPS public conservatorship.

LPS conservatorship was initiated to arrange for the involuntary hospitalization and mental health treatment of persons who are gravely disabled as a result of a mental disorder or severe and chronic substance abuse or alcoholism. The law ended inappropriate, indefinite, and involuntary commitment of people who are mentally disordered, developmentally disabled, or impaired but not disabled by chronic alcoholism. The conservatorship provides for prompt evaluation and treatment, and safeguards individual rights through due-process judicial review with the participation of the conservator’s office, the public defender’s office, and patient rights advocates, while guaranteeing and protecting public safety.

“LPS removes people from the state hospitals into the community,” Gin said. “It allows society to protect itself and the people who are ill.” Public guardian-conservators manage cases under orders from the Superior Court. The public conservator conducts an initial investigation of people referred from locked psychiatric facilities. For Gin’s unit, 61% of referrals come from John George

Psychiatric Pavilion, 25% from Alta Bates Herrick, 5% from Fremont Hospital, and others from the Veterans Administration in Menlo Park and Palo Alto and from Santa Clara Criminal Justice Mental Health. The public conservator's office cannot accept referrals from general hospitals, the community, or the patient him/herself.

Currently, the LPS Conservatorship Unit receives about 600 referrals a year. Of these, 79% are for psychotic disorders like schizophrenia, 11% are for mood disorders like bipolar and depression, and 1% are for cognitive disorders like dementia and delirium. About 60% of the cases are repeats, and about 20% involve estate management.

If the public conservator finds the person is eligible under county rules and is gravely disabled under Section 5150 of the W&I Code, the office makes a recommendation to the court for conservatorship. The LPS Conservatorship Unit can then marshal and protect the conservatee's income, assets, and estate when estate powers exist; pay the conservatee's bills and fees from estate funds; monitor the quality of health care the conservatee receives in residential care facilities, nursing homes, psychiatric settings, and hospitals; authorize changes in medication; facilitate requests for both routine and invasive medical treatment, obtaining court approval in situations that require informed consent such as surgery; and prepare regular status reports to the court as required.

"The public guardian provides treatment for people who are unable to give consent on their own," Gin said. This function also provides legal protection for the hospital offering treatment.

The court may grant temporary conservatorship for 30 days while the patient is under observation. Under W&I Code 5150, the person can be held involuntarily for 72 hours, after which there is a probable cause hearing to determine if the person is a "danger to self or others" or gravely disabled. The finding of grave disability—that is, unable to provide for one's own food, shelter, or clothing—is required for public conservatorship. There may also be a Riese hearing to establish capacity.¹ During the hearings, the person can ask for a writ of *habeas corpus* to challenge the involuntary restraint.

After the hearings, the person may be held for an additional 14 days for certification under W&I Code 5250. If necessary, and with appropriate writs and hearings, the person might then be placed under a 30-day temporary conservatorship under W&I Code 5270, a 150-day (six month) temporary conservatorship, or possibly permanent conservatorship (up to one year).

During the hold process, the person can bring a family member or third party to court with an offer to take care of the person. In a hearing that includes the public defender's office, the judge can turn the public LPS conservatorship into a private conservatorship. The private conservator will have personal power—that is, can deal with the person's needs and psychiatric referrals—but not estate power, which can only be granted by probate court.

"The LPS conservatorship for mental illness is never long term," Gin said. "It is only for the time the person is held in a locked facility. When the person goes

¹ Riese hearings arose from a case in Southern California which determined that a person's being mentally ill doesn't mean he or she lacks capacity.

back to independent living, the LPS Conservatorship Unit terminates the relationship. The only time the relationship becomes long term is when the person is in long-term care such as in a skilled nursing facility. That requires confirmation of two psychiatrists or a psychiatrist and a physician. Otherwise, the conservatorship disappears after one year.”

The Alameda County conservator’s office will sometimes maintain the conservatorship at the request of a case manager in a licensed board and care as a cost avoidance measure, because keeping the person in a locked facility like John George can cost \$1,000 per day. Examples of such residences in Alameda County, all managed by Telecare Corporation, include STRIDES, for middle aged patients; STAGES for the elderly, and CHANGES for dual diagnosis.

However, Gin cautioned, public conservatorship is not the answer for family members concerned about their relative, because it doesn’t last. To maintain a public conservatorship beyond the involuntary hold is a possible violation of the patient’s rights. A private conservatorship is different.

After his remarks, Gin took some questions from the members.

Q. How much face-to-face contact does the conservator have with the patient?

A public conservatorship is not case management, but more administrative and paperwork. There might be one or two interviews during the 30-day observation period. However, in some counties where the mental health services unit does less, the conservator might do more.

Q. Do you protect the person from talking to the family?

Yes, but you can call the conservator’s office or the holding facility and give them any necessary information.

Q. LPS conservatorship is provided in all of California. Are there differences in other counties?

There may be different applications of the rules. For example, Alameda County provides for a 150-day temporary conservatorship because the public defender’s office wants a court review at that time. Other counties and private conservatorships continue for one year.

Q. Is there a fee for estate conservatorship?

Yes, but it is waived for indigent patients. For the rest, there is a one-time fee of \$1,200 for the LPS Conservatorship Unit, \$1,000 for the public defender’s office, and \$1,000 for the attorney handling the case, plus the normal fees for reporting and such.

Q. Can a public conservatorship be set up separately, outside of a locked facility?

No. The public conservatorship is the first resort during the 30-day involuntary commitment. Then the family can apply for private conservatorship. A judge would favor a private conservator over continuing with the public conservatorship, but the third-party proposal has to be satisfactory.

Medicare Part D “Donut Hole”

Rebecca Bianchi discussed the coverage gap, or “donut hole,” in the Medicare Part D Drug Plan. Once you spend \$2,510² towards your initial coverage limit on prescription drugs, you enter a coverage gap where you must spend an additional \$4,050 out of pocket on medications until you qualify for catastrophic coverage. These amounts are figured annually and start over again each year on January 1. Catastrophic coverage is \$2 for generic and \$5 for brand-name medications, or 5% of costs—whichever is higher.



REBECCA BIANCHI

Some of the strategies Bianchi recommend for navigating the donut hole are:

1. Use a drug card (Google “prescription drug assistance” to identify the providers). You can apply online or over the phone. Some cards you print out while others are mailed to you, or the provider interviews you over the phone to see if you qualify. Just take the card to your pharmacy. You can check out your drug and ascertain dosage and pill number online and compare costs between the various plans. You can also see a list of participating pharmacies online. Several of the available drug cards are Rx Savings Card, Free Drug Card, Your Rx Card, and USA Drug Discount Card.
2. Contact the drug manufacturer directly. Most pharmaceutical companies give out free medications to those whose income is too high to receive the Part D Drug Assistance Program from Social Security but still low enough to need help. Call to see if you qualify. Find out which manufacturer makes your brand-name drug and go to its website and look under the patient assistance program.
3. If things get really desperate, tell your psychiatrist that you can’t afford certain medications anymore and you want to try going off or decreasing dosage for some of them. Under supervision, you can ease off some of the more expensive medications and substitute generics or a less expensive brand. If that doesn’t work out, you can always go back to your previous dosage.
4. Alert your relatives to your situation. Some of the elderly ones especially, who may be on Medicare themselves and know all about the donut hole, may want to help out financially.

Bianchi offered two online resources. The website www.mypartdusa.com has information to help you through the donut hole and a newsletter about this and other Medicare topics. There is a phone number for the Medicare drug assistance program: 1-866-752-1795. www.PatientAssistance.com is a website to help you apply for assistance from the drug companies.

² These are all 2007 figures.