

CHAPTER 11
ADMISSION OF MINORS WHO ARE NOT DEPENDENTS OR WARDS OF THE JUVENILE COURT
FOR ACUTE CARE PUBLIC PSYCHIATRIC HOSPITALS AND PRIVATE FACILITIES UNDER
CONTRACT WITH THE COUNTY
("ROGERS" HEARING)

Rule 8.11.1

Applicability

This procedure applies to only those admissions in which the responsible person (other than a public official) seeks to admit a minor 14 through 17 years of age for evaluation or treatment of a mental disorder to a public facility and private inpatient facilities under contract with the County (e.g.: County Psychiatric Hospital or Rady Children's Hospital – San Diego, Child and Adolescent Psychiatry Services ("CAPS")). Admissions or detentions not referenced in these procedures will not be affected by these procedures, including, but not limited to the following: Welfare and Institutions Code section 5150 et seq. (Detention of Mentally Disordered Persons for Evaluations and Treatment), 5326.75 et seq. (Court Ordered Evaluation for Mentally Disordered Persons), 5225 et seq. (Court Ordered Evaluation for Persons Impaired by Chronic Alcoholism), 5250 et seq. (Certification for Intensive Treatment), 5260 et seq. (Additional Intensive Treatment of Suicidal Persons), 5300 et seq. (Post Certification Procedures for Dangerous Persons), or 5350 et seq. (Placement by Conservator for Gravely Disabled Persons). This procedure does not affect laws pertaining to what agency or individual has the right to consent to mental health or psychiatric treatment on behalf of a minor.

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 8.11.2

Definitions

A. "Hearing Officer" means a designee of the Mental Health or Juvenile Division of the court, and includes attorneys appointed to conduct Capacity hearings (see local rule 8.5.6, above) or professional staff from the Office of the Counselor in Mental Health who are appointed as hearing officers as referenced in Welfare and Institutions Code section 5334, subdivision (c).

B. "Facility" means any public or private facility under contract to provide services paid by County Mental Health, or any hospital licensed to provide acute care inpatient psychiatric treatment.

C. "Minor" means: any person who is age 14 through 17 years of age who is not emancipated.

D. "Responsible person" means a parent, guardian, or other person having custody of the minor.

E. "Minor's Counsel" means a licensed attorney who will assure that minors are informed of their right to pre-admission hearings, assures that minors who waive the right to a hearing have done so freely, voluntarily and intelligently, and represents the minor at any hearings conducted under this chapter.

F. "Work day(s)" means judicial days (or a day when the court is open).

G. "Public facility" means any facility owned or operated by the State of California or the County of San Diego.

H. "Professional person" means a psychiatrist, psychologist, social worker with a master's degree, licensed marriage, family and child counselor, or registered nurse.

(Adopted 7/1/2006; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 8.11.3

Initiating Hospitalization

A. When it is determined by an appropriate mental health professional that a minor is in need of psychiatric inpatient services, the responsible person, or staff representing the proposed treatment facility, must, prior to any admission to a facility initiate these procedures: (1) obtain a physician's affidavit; and (2) contact Minor's Counsel who will either in person or by telephone, inform the minor of the right to a hearing and determine whether the minor will freely, voluntarily and intelligently waive the right to a hearing, and may inform the minor of other patient rights;

B. The "Physician's Affidavit" must include the following information:

1. Whether the minor suffers from a mental disorder, and if so, its nature;

2. Whether the proposed treatment program requires 24-hour hospital care and is reasonably expected to ameliorate the mental disorder;

3. Whether the proposed facility in which the minor is to be placed is the least restrictive and most appropriate and available facility which can fulfill objectives of treatment; and

4. Whether the treatment facility is in the minor's home community or that the benefit of placement outside the home community outweighs the detriment of separating the minor from the home community.

C. When a minor has been involuntary detained at a facility under other provisions of law, and the responsible person desires to voluntarily admit the minor, the facility staff may assist in initiating voluntary admission. For the purposes of this procedure the voluntary admission will be treated as new admission to the facility regardless of prior involvement of the minor with the facility.

D. The physician's affidavit must be available at the facility when the Minor's Counsel determines whether the minor is protesting the admission, and must be available to the hearing officer at the hearing.

E. The professional person testifying at the hearing may be a person other than the person signing the "Physician's Affidavit" who is familiar with the treatment needs of the minor and available and/or potential resources.

F. When the minor protests the admission at the time of the evaluation for admission, or prior to the time of Minor's Counsel seeing the minor to ascertain whether the minor is protesting the admission, the procedures described in rule 8.11.5 apply.

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 8.11.4

Procedure for a Non-Protesting Minor who Wishes to Waive the Right to a Hearing

A. Before the minor waives the right to a hearing, Minor's Counsel must contact the minor by telephone or in person to ascertain whether the minor is protesting the admission and to provide notification of the right to a hearing. Minor's Counsel must certify that the minor freely, voluntarily, and intelligently waived the right to a hearing. Minor's Counsel and the minor must sign the approved "Waiver of Hearing" form (hereinafter referred to as "waiver"), except where the waiver is obtained telephonically, in which case the waiver on page 2 of the waiver will suffice. The signed waiver allows admission to the facility, providing other necessary authorization(s) (e.g., permission of the responsible person or legally authorized designee), which is/are also available. The waiver must remain in the minor's record at the treating facility. A copy of the signed waiver and the physician's affidavit must be given to the facility to which the minor is to be admitted.

B. When the waiver has been signed by a person other than Minor's Counsel due to telephone authorization, on the next work day following admission of the minor, Minor's Counsel must personally interview the minor and review the waiver. If in the opinion of Minor's Counsel, the minor is not freely, voluntarily and intelligently waiving the right to the hearing, or if the minor is now protesting the admission and requesting a hearing, Minor's Counsel must again advise the minor of the right to a hearing. A hearing must be held within five work days from the date the minor requests a hearing unless an agreement has been reached pursuant to rule 8.11.5H.

C. If, in the opinion of Minor's Counsel, the minor is not freely, voluntarily, and intelligently waiving the right to the hearing, or if the minor is protesting the admission and is requesting a hearing, Minor's Counsel must notify facility staff of the need for a hearing, and the facility staff or responsible person must arrange for a hearing through the Office of Counselor in Mental Health. A hearing will be held within five work days from the date Minor's Counsel informs the facility of the need for a hearing (unless an agreement has been reached pursuant to rule 8.11.5H).

D. In situations where a minor was admitted as an inpatient to a facility in accordance with the provisions of this procedure and waived the right to a hearing and subsequently indicates to Minor's Counsel, any member of the treatment staff, or the responsible person a desire to have a hearing and/or be released from the facility, then a hearing will be conducted by a hearing officer within five work days from the time of the request for hearing being filed with the Office of Counselor in Mental Health, unless agreement has been reached pursuant to rule 8.11.5H.

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 8.11.5

Protesting Minor

A. When the minor protests the admission and requests a hearing, the facility staff or Minor's Counsel must promptly telephone the Office of Counselor in Mental Health and request a hearing;

B. No admission will be made for a protesting minor under these procedures until a hearing is held or the minor waives the right to a hearing. It is the intent of these procedures that hearings be held on a pre-admission basis, unless the minor has been previously admitted under other provisions of law;

C. Minor's Counsel will be appointed to represent the minor at all hearings for admission to a hospital for acute psychiatric treatment;

D. Upon receipt of the request for a hearing, the Office of Counselor in Mental Health will:

1. Set a date for a hearing which must be scheduled no later than five work days after the request for hearing has been received unless agreement has been reached pursuant to rule 8.11.5H; and

2. Give notice of the hearing to the following by telephone:

a. Minor's Counsel;

b. The proposed facility;

E. The proposed facility or responsible person must notify the minor of the hearing;

F. The proposed facility must make reasonable effort to notify the responsible person and/or parent(s) of the hearing;

G. Minor's Counsel and the hearing officer may review all clinical and medical records in accord with the Welfare and Institutions Code sections 5328, subdivision (j), 5328, subdivision (m), and 5540-5546;

H. Nothing herein precludes the hearing from being held more than five work days from the date of the request, for good cause, and upon agreement of the hearing officer and attorney or the Minor's Counsel;

I. At the hearing, Minor's Counsel represents the minor. The minor and Minor's Counsel have the right to:

1. Review the Physician's affidavit;

2. Be present at the hearing;

3. Present evidence and call witnesses;

4. Confront and cross-examine witnesses; and

5. Waive the minor's right to be present at the hearing;

J. The hearing will be held in a place convenient to the parties and in an informal setting. The public will be excluded from the hearing, subject to exceptions made at the discretion of the hearing officer, inclusive of family members. Hearings will be electronically recorded, and all records will be held as confidential as provided in Welfare and Institutions Code section 5328;

K. Hearings will be conducted in an informal manner and the hearing officer may consider all evidence of probative value irrespective of whether it complies with formal rules of evidence. The decision of the hearing officer will be based on the preponderance of evidence. All of the following will be established at the hearing:

1. The minor suffers from a mental disorder;
2. The proposed treatment program requires 24-hour hospital care and is reasonably expected to ameliorate the mental disorder;
3. The proposed facility in which the minor is to be placed is the least restrictive and most appropriate facility which can fulfill the objectives of treatment; and
4. If the treatment program is not in the minor's home community, the benefit of placement outside the home community outweighs the detriment of separating the minor from the home community;

L. The hearing officer will make findings in writing to support the decision. Following the hearing, the hearing officer will issue an order authorizing admission to the recommended or alternate facility or an order denying admission. Copies of the findings and order will be provided to all the following:

1. The minor;
2. Minor's Counsel;
3. The responsible person upon request; and
4. The proposed facility.

Whenever possible a mental health professional who will participate in treatment in the proposed facility or a professional person who has participated in the minor's treatment should be available to present testimony at the hearing;

M. Nothing in these procedures requires a facility to accept a minor;

N. The minor may be admitted to the authorized facility within 15 calendar days following the hearing.

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2014; Rev. 1/1/2016)

Rule 8.11.6

Facility Review

Facilities accepting minors under this procedure must provide periodic review of the minor's treatment program to assure that continued treatment is required. Documentation of such reviews must appear in the minor's records at least monthly.

(Adopted 7/1/2006)

Rule 8.11.7

Confidentiality

Confidentiality must be in accord with Welfare and Institutions Code section 5328 et seq. The hearing officer will be considered a "court" as referenced in Welfare and Institutions Code section 5328, subdivision (f).

(Adopted 7/1/2006)

Rule 8.11.8

Records

Records must be maintained as provided for by law.

(Adopted 7/1/2006)

Rule 8.11.9

Writ of Habeas Corpus

If admission is authorized, Minor's Counsel must advise the minor of the right to a writ of habeas corpus hearing. If a request for release is filed, the writ of habeas corpus hearing will be in the Mental Health Division.

(Adopted 7/1/2006; Rev. 1/1/2014)

Rule 8.11.10

Filing a Writ of Habeas Corpus

Nothing herein deprives the minor of the right to seek a writ of habeas corpus.

(Adopted 7/1/2006)