

California Department of AGING

# Long-Term Care Patient Representative Program

California Association of Health Facilities: July 13, 2022

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## What is the LTC Patient Representative Program?

The Long-Term Care Patient Representative Program is a new program within the California Department of Aging.

The program will provide public patient representatives for residents of skilled nursing and intermediate care facilities who, pursuant to Health and Safety Code section 1418.8 have:

- been determined by an attending physician to need a medical intervention that requires informed consent.
- been determined by an attending physician to lack capacity to provide informed consent
- no identified family or legal surrogate who can make decisions on their behalf.
- no identified friend, relative, or other person who can represent their interests during an interdisciplinary team (IDT) review of the prescribed medical intervention.

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## How was the program established?

- It was authorized by Assembly Bill 135, which became law in 2021.
- The bill added California Welfare and Institutions Code sections 9260-9295.
- The LTC Patient Representative Program is an ongoing program supported by the General Fund.



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**What will the program do?** 

<b>Provide trained public patient representatives throughout the state</b>	<ul style="list-style-type: none"> <li>Contracting with government agencies, nonprofit organizations, and Area Agencies on Aging.</li> <li>Hiring limited-term state employees</li> </ul>
<b>Establish requirements for public patient representatives</b>	<ul style="list-style-type: none"> <li>Eligibility</li> <li>Training—initial and continuing</li> <li>Certification/decertification</li> </ul>
<b>Train and certify public patient representatives</b>	<ul style="list-style-type: none"> <li>This will include a criminal record check.</li> </ul>
<b>Develop policies and procedures, and provide templates for notices that facilities must send</b>	<ul style="list-style-type: none"> <li>Notice templates and program contact information will be available on CDA's website.</li> </ul>
<b>Collect, analyze, and report program data</b>	<ul style="list-style-type: none"> <li>Facilities will submit data to the LTC Patient Representative Program quarterly.</li> </ul>

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**What will public patient representatives do?** 

- Confirm that all criteria are met for an IDT to convene.
- Meet, and if possible, interview the resident prior to an IDT meeting, including initial IDT meetings, quarterly reviews, and IDT meetings held due to a change in the resident's condition.
- Review the resident's medical and clinical records.
- Review relevant policies and procedures of the facility.
- Participate in IDT reviews and articulate the resident's preferences or a best approximation of those preferences, if known, or the resident's best interests.
- Identify and report any concerns regarding abuse or neglect of the resident.
- Refer a resident who seeks judicial review to appropriate legal services.

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**What will public patient representatives NOT do?** 

- Serve as surrogate decision-makers for residents regarding financial, admission, or placement decisions—or anything else outside of the duties established by Welfare and Institutions Code section 9260 et seq.
- Serve as case managers.
- Investigate elder or dependent adult abuse or neglect.
- Help residents resolve issues related to care.
- Participate in IDT reviews that would "directly and inexorably lead to death."
- Provide services in settings that are not skilled nursing or intermediate care facilities licensed by the California Department of Public Health.

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### Who may serve as a patient representative?



"Patient representative" means a competent person whose interests are aligned with a resident who has agreed to serve on an interdisciplinary team. A patient representative may be a family member or friend of the resident who is unable to take full responsibility for the health care decisions of the resident, but who has agreed to serve on the interdisciplinary team, or another person authorized by state or federal law.

If a family member or friend is not available to serve as the patient representative, the Long-Term Care Patient Representative Program may designate a public patient representative. [Health and Safety Code section 1418.8(4)].

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### What are the qualifications to be a public patient representative?



- Have no conflicts of interest
- Pass a criminal background check
- Complete initial and ongoing training, which will include (but not be limited to):
  - The public patient representative's role in the IDT process
  - Bioethics and the IDT process
  - Representing the known wishes or best interests of a resident
  - Providing culturally responsive services in facility settings
  - Reviewing relevant facility policies and procedures
  - Reviewing medical and clinical records
  - Advance care planning
  - Relevant medical procedures
  - Advanced dementias, end-of-life care, the dying process, and hospice

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### When will patient representatives be available?



- Following two court-approved extensions, all skilled nursing and intermediate care facilities will be required to include patient representatives on IDTs convened pursuant to HSC section 1418.8 beginning January 27, 2023.
- The state program will have trained public patient representatives available as of that date in cases where a facility has been unable to locate a friend or relative to serve as a patient representative on the IDT.
- Prior to January 2023, the Office of the Long-Term Care Patient Representative (OLTCPR) will provide training for facility staff.
- A link to this training, as well as templates for the notices facilities will be required to send, will be available on the program's [webpage](#) prior to January 27, 2023.

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### How will the program work?



- The attending physician will inform the facility that he or she has:
  - Prescribed a medical intervention that requires informed consent; AND
  - Following the steps outlined in HSC section 1418.8, determined that the resident lacks capacity to provide informed consent.
- The facility will try to identify a surrogate decision maker.
- If no surrogate is available, the facility will try to identify a friend or relative who can serve as the resident's patient representative during an IDT review.
- The facility will document these efforts in the resident's record.
- If the facility cannot identify a surrogate decision maker or private patient representative within 72 hours, it will contact the LTC Patient Representative Program and ask that a public patient representative be assigned.

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### The facility will also:



- Provide** all required notices—both written and verbal.
- Ensure** verbal notices are provided in the resident's preferred language. Written notices should be provided in the resident's preferred language if possible.
- Facilitate** the public patient representative's in-person or remote meeting with the resident.
- Facilitate** the resident's participation in the IDT if the resident wishes to participate.
- Make** the resident's medical and clinical records, as well as relevant facility policies and procedures, available to the public patient representative. In most cases, the facility will need to provide this information to the public patient representative electronically.
- Convene** the IDT meeting. This may be an in-person or remote meeting.
- Submit** aggregate quarterly data to the LTC Patient Representative Program.

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### What notices will be required?



<i>Notice of Interdisciplinary Team Review of Proposed Medical Treatment</i>	This notice must be provided to the resident and the resident's patient representative at least five days prior to the IDT meeting.
<i>Notice of Outcome of Interdisciplinary Team Review of Proposed Medical Treatment</i>	This notice must be provided to the resident and the resident's representative following the IDT, whether or not the IDT reached consensus.
<i>Notice of Interdisciplinary Team Review of Administered Emergency Medical Treatment</i>	This notice must be provided to the resident and the resident's representative within 24 hours of an emergency medical intervention being administered.
<i>Intervention to Treat Severe and Sustained Emotional Distress or the Application of Physical or Chemical Restraints</i>	This notice must be provided to the LTC Patient Representative Program within 24 hours of the emergency intervention.
<i>Notice of Failure to Conduct Timely IDT Review Following an Emergency Medical Intervention</i>	This notice must be provided to the LTC Patient Representative Program if the facility fails to conduct an IDT within one week.

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### What must be included in the IDT review?



**The IDT meeting, which can be held in-person or remotely, must include:**

- The resident's attending physician
- A registered professional nurse with responsibility for the resident
- Other appropriate staff (determined by the resident's needs)
- A patient representative

**The IDT must review:**

- The physician's assessment of the resident's condition
- The reason for the proposed medical intervention
- The probable impact on the resident's condition, with and without the intervention
- The risks and benefits of the prescribed intervention
- Any alternatives
- Whether the proposed treatment is consistent with:
  - The resident's preferences or a best approximation of those preferences, or
  - The resident's best interests

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### How will a decision be made?



- Per HSC 1418.8, the IDT must reach "consensus" in order to authorize or continue a medical intervention.
- If the IDT reaches consensus, the resident and the patient representative (whether public or private) must:
  - Receive notice regarding the outcome of the IDT review.
  - Have a reasonable opportunity to seek judicial review before the medical intervention is administered.
- If the IDT does not reach consensus and the facility wants to proceed with the intervention, the facility must petition to obtain a court order pursuant to section 3201 of the Probate Code to authorize the medical intervention.

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### What quarterly data will facilities submit?



- The total number of interdisciplinary reviews conducted.
- The number of unique residents who have had an interdisciplinary team review conducted.
- The total number of emergency medical interventions authorized pursuant to HSC section 1418.8(h).
- The number of unique residents who have had an emergency medical intervention authorized.
- A tabulation of the following:
  - medical interventions authorized by type.
  - the outcomes of the interdisciplinary team reviews.
  - instances when judicial review was sought.
  - emergency medical interventions where the interdisciplinary team failed to meet within the time required by HSC section 1418.8(h), including the causes of the delay and the number of days after the intervention that the interdisciplinary team finally met.
- Any other demographic or statistical data as may be required by the program.

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### Office of the Long-Term Care Patient Representative



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*Questions*



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[OPR@aging.ca.gov](mailto:OPR@aging.ca.gov)

Thank You!

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