California State Auditor

BUREAU OF STATE AUDITS

Department of Mental Health:

State and Federal Regulations Have Hampered Its Implementation of Legislation Meant to Strengthen the Status of Psychologists at Its Hospitals

July 2004
2003-114

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CALIFORNIA STATE AUDITOR

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July 6, 2004

2003-114

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the Department of Mental Health's (department) implementation of Chapter 717, Statutes of 1998 (Chapter 717), commonly known as Assembly Bill 947.

This report concludes that even though the department has acted to implement Chapter 717 at its four hospitals, a key issue—whether psychologists have the authority to serve as attending clinicians in patient care and treatment—remains unresolved. In addition, state regulations specifically allow only physicians to order the restraint and seclusion of patients, an action that psychologists at the four hospitals contend is within their scope of license. Further, no significant changes occurred either to psychologists' membership on certain key committees or in the clinical privileges available to them at the department's hospitals after the enactment of Chapter 717. Finally, although California is considered one of the more progressive states with regard to the status of psychologists in state hospitals, some other states' statutes allow more privileges for their psychologists. However, psychologists in these other states are not always performing these activities in practice.

Respectfully submitted,

Elaine M. Howle

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State Auditor

CONTENTS

Summary 1

Introduction 5

Chapter 1

The Department of Mental Health Has Acted Within the Framework Governing Patient Care to Implement Specific Legislation in Its Hospitals, Yet a Central Issue Remains Unresolved 17

Recommendation 30

Chapter 2

Representation on Key Committees and the Privileges Available to Psychologists Have Changed Little Since 1998, and Some Other Entities Allow Psychologists More Privileges 31

Recommendation 47

Appendix A

The History of Health and Safety Code, Section 1316.5 49

Appendix B

Membership Data for Committees at Department of Mental Health Hospitals 51

Responses to the Audit

Health and Human Services Agency, California Department of Mental Health 55

California State Auditor's Comment on the Response From the California Department of Mental Health 57

SUMMARY

Audit Highlights . . .

Our review of the Department of Mental Health's (department) implementation of Chapter 717, Statutes of 1998 (Chapter 717), commonly known as Assembly Bill 947, revealed that:

- ☑ ***Even though the department has acted to implement Chapter 717 at its four hospitals, a key issue—whether psychologists have the authority to serve as attending clinicians in patient care and treatment—remains unresolved.***
- ☑ ***State regulations specifically allow only physicians to order the restraint and seclusion of patients, an action that psychologists at the hospitals contend is within their scope of license.***
- ☑ ***No significant change occurred either to psychologists' membership on certain key committees or in the privileges available to them after Chapter 717 was enacted.***
- ☑ ***Although California is considered one of the more progressive states with regard to the status of psychologists in state hospitals, some other states' statutes allow more privileges for their psychologists but the psychologists are not always performing these activities in practice.***

RESULTS IN BRIEF

Legislation was passed in 1998 to strengthen the status of psychologists at state-operated health facilities by requiring these facilities to establish medical staff bylaws permitting psychologists to become members of their medical staff and allowing them clinical privileges, such as providing psychological assessments to patients. This legislation, Chapter 717, Statutes of 1998 (Chapter 717), commonly referred to as Assembly Bill 947, amended Health and Safety Code, Section 1316.5.

Even though the Department of Mental Health (department) has acted to implement Chapter 717 at its four hospitals, a key issue—whether psychologists have the authority to serve as attending clinicians in patient care and treatment—remains unresolved. In addition, state regulations specifically allow only physicians to order the restraint and seclusion of patients, an action that staff psychologists contend is within their scope of license. Further, we did not identify significant changes either to psychologists' membership on key committees or in the clinical privileges available to them after the enactment of Chapter 717. Finally, although California is considered one of the more progressive states with regard to the status that psychologists hold in state hospitals, other states' statutes allow them more privileges.

State and federal regulations governing the care and treatment of patients in its hospitals have constrained the department's ability to fully implement the requirements of Chapter 717. The department's hospitals provide inpatient mental health services primarily to patients who are involuntarily committed for care. State regulations set forth by the Department of Health Services (Health Services) restrict to physicians the overall medical care and treatment of patients in two of the three types of health facilities within these hospitals. As of April 2004, these two types of facilities accounted for 76 percent of the patients in the department's hospitals. In addition, Health Services' regulations governing all three types of facilities allow only physicians to order the restraint and seclusion of patients. Further, federal regulations generally restrict to physicians the overall care and

treatment of Medicare and Medicaid patients at these facilities. Medicare patients accounted for 20 percent and Medicaid patients for 2 percent of the department's hospital population as of April 2004.

The department's hospitals have allowed psychologists to be included on their medical staff, but psychologists still are neither allowed to serve as attending clinicians nor to order the restraint and seclusion of patients. The department, using reports it requested from a psychology subcommittee and its hospital chiefs of staff, issued a special order in January 2003 enumerating 27 activities that psychologists could perform under their scope of license. However, these activities included neither the authority to act as an attending clinician nor the ability to order the restraint and seclusion of patients. As a result, staff psychologists still contend that the department has not fully implemented Chapter 717. Nonetheless, the department's view is that it has implemented the intent of Chapter 717 and has addressed the psychologists' contentions to the extent possible within the framework that governs patient care in its hospitals. In 2003 the department requested medical staff at its hospitals to develop pilot projects for psychologists to serve as attending clinicians. According to the department, it is currently promoting solutions to satisfy its psychologists, psychiatrists, legal requirements, and standards of care for its patients.

A court has concluded that psychologists are permitted to take primary responsibility for the care and treatment of patients in acute psychiatric hospitals; however, Health Services' attempt to amend the regulations to permit psychologists to order their restraint and seclusion in the department's health facilities was voided by the Office of Administrative Law. The department contends that the psychologists' authority to be primarily responsible for patient care and treatment is limited by their lack of authority to prescribe medication, and as of April 2004, 98 percent of the patients in the department's hospitals received medication.

With few exceptions, psychiatrists hold more positions than psychologists on three key committees—medical executive, credentials, and bylaws—at department hospitals, with the ratio of psychiatrists to psychologists as high as 9-to-1. We also found that the composition of the medical executive committees at the hospitals did not change appreciably after the passage of Chapter 717 in 1998. Moreover, psychologists are generally underrepresented on these key committees in terms of their proportion of the medical staffs. For example, psychologists

at one of the hospitals currently represent 36 percent of the medical staff, yet they make up only 10 percent of the medical executive committee.

Similarly, medical staff privileges for psychologists have remained relatively unchanged since the enactment of Chapter 717. The hospitals approved all 182 medical staff and privilege applications from the psychologists and psychiatrists we reviewed. However, psychologists could not apply to act as attending clinicians and to order seclusion and restraint because the approved application form for psychologists does not list these privileges. We focused on the application form because it lists all the privileges the hospital allows psychologists to apply for.

California is one of only 17 states to allow psychologists to practice in a hospital setting. Thus, the State is considered progressive in the status psychologists hold at state hospitals. Nevertheless, some private hospitals within California and some other states' statutes allow their psychologists more privileges. For instance, psychologists in two of the three private hospitals we contacted are allowed to serve as attending clinicians. In addition, state law in Louisiana expressly allows psychologists to order the seclusion and restraint of patients. However, the psychologists and administrators we contacted at individual hospitals in certain of those states indicated they were not performing such activities in practice.

RECOMMENDATIONS

The department should work to resolve the continuing issue regarding whether psychologists can serve as attending clinicians in its four hospitals. This effort should include providing leadership and guidance to the administrators, psychiatrists, and psychologists at each hospital to find reasonable solutions to satisfy the statutory and regulatory requirements governing patient care.

To ensure the appropriate level of representation for psychologists on committees, the department should direct the hospitals to annually review the composition of their medical staffs and the proportion of psychologists, psychiatrists, and other medical staff on their medical executive, credentials, and, if applicable, bylaws committees. Each hospital should modify, to the extent possible, the membership of these committees to more closely reflect the composition of its medical staff.

AGENCY COMMENTS

The department agreed with our findings and recommendations and stated that it plans to continue working with the medical staff at its hospitals to resolve any remaining issues of concern. In addition, where appropriate, the department stated it will direct its hospitals to make the membership of medical staff committees more proportionate with the overall medical staff membership. ■

INTRODUCTION

BACKGROUND

The Department of Mental Health (department) oversees an annual public mental health budget of more than $2 billion and provides various services for the prevention and control of mental illness. The department's Long Term Care Services Division directly operates four hospitals in the State. The hospitals—Atascadero State Hospital (Atascadero), Metropolitan State Hospital (Metropolitan), Napa State Hospital (Napa), and Patton State Hospital (Patton)—are accredited by the Joint Commission on the Accreditation of Healthcare Organizations and are fully licensed by the Department of Health Services (Health Services).

The department provides hospital services to patients who are either civilly or judicially committed. Civilly committed patients—those who are considered dangerous to either themselves or others or who are gravely disabled—are referred to the hospitals by county mental health departments. The courts, the Board of Prison Terms, and the Department of Corrections refer judicially committed patients to the hospitals. These patients include those who are incompetent to stand trial, those who are not guilty by reason of insanity, mentally disordered offenders, and sexually violent predators. Most patients are involuntarily committed to the hospitals.

Currently, the four hospitals jointly employ 161 psychologists[1] and 208 psychiatrists. The Business and Professions Code, Section 2903, defines a psychologist as one who renders psychological services by applying psychological principles and methods and by using procedures to understand, predict, and influence behavior. Psychological principles and methods include diagnosis, prevention, treatment, and improvement of psychological, emotional, and mental problems and disorders. However, Business and Professions Code, Section 2904, prohibits psychologists from prescribing drugs and performing surgery. The American Psychiatric Association defines a psychiatrist as a physician who specializes in the diagnosis, treatment, and prevention of mental illnesses and emotional

[1] Throughout this report, we refer to psychologists and clinical psychologists simply as psychologists.

problems. Business and Professions Code, Section 2051, states that a physician may use any and all methods, including administering drugs and performing surgery, to treat diseases, injuries, deformities, and other physical and mental conditions.

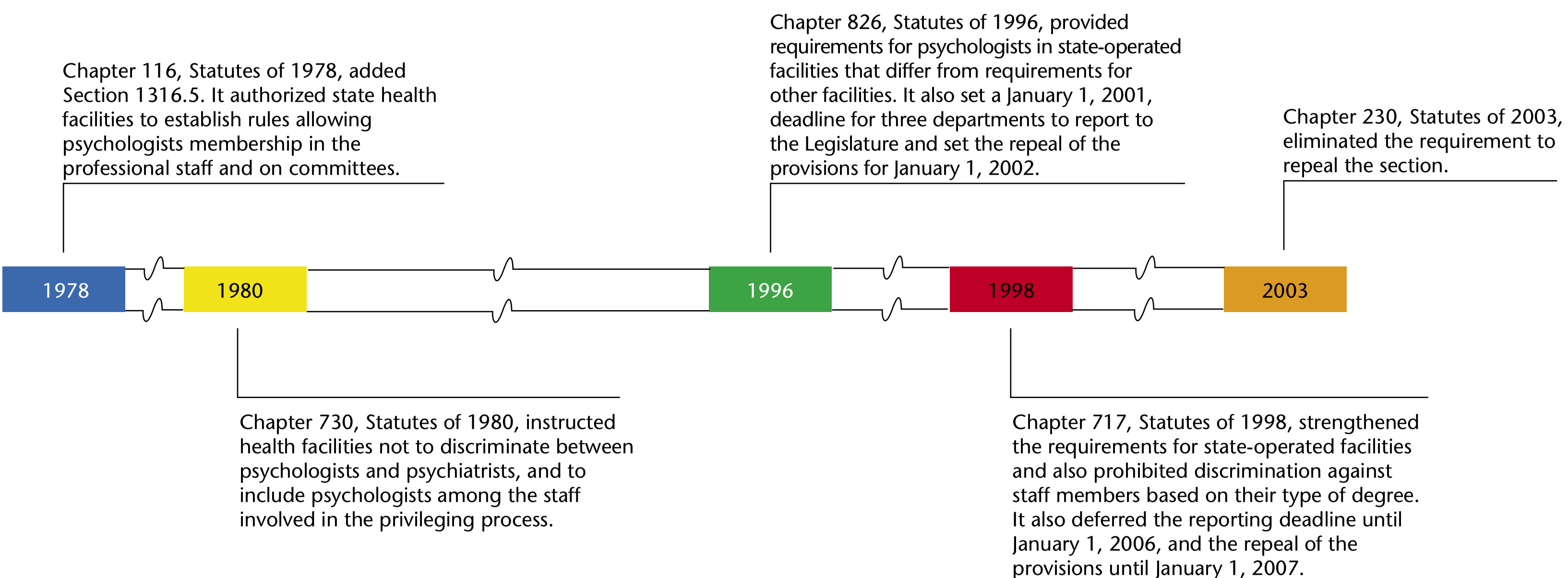
State Law Requires Medical Staff Membership and Privileges for Psychologists in State-Operated Health Facilities

Approved in 1978, Health and Safety Code, Section 1316.5 (Section 1316.5), expanded staff and professional services at health facilities to include services by licensed psychologists who have the appropriate training and clinical experience. The Legislature has amended Section 1316.5 four times since it was enacted. Figure 1 shows key dates and summarizes the requirements of Section 1316.5 and its amendments. Appendix A more fully describes the history of Section 1316.5.

As Figure 1 shows, Chapter 717, Statutes of 1998 (Chapter 717), commonly known as Assembly Bill 947, amended Section 1316.5 to strengthen the requirements for state-operated health facilities. In particular, Chapter 717 required these facilities to establish rules and medical staff bylaws (bylaws) that allow psychologists to hold medical staff membership and to obtain clinical privileges within the scope of their license. The medical staff provides patient care and also includes physicians, dentists, and podiatrists. Clinical privileges confer permission to provide specific services for patients within the facility, such as performing psychological assessments and psychotherapy. In addition, the amendment allowed psychologists at these health facilities the right to pursue privileges within the full scope of their license and stated that the psychologists' rights and privileges were limited only by their demonstrated competence. Further, the amended statute required that the bylaws and rules and regulations at the facilities not discriminate against staff members based on whether the member holds a medical degree or a doctoral degree in psychology when the services involved are within the member's scope of license. Also, the amendment required these health facilities, if possible, to include psychologists in the review, evaluation, and determination of qualifications for privileges, and in the admission, suspension, and termination of psychologists. Finally, the amendment deferred a deadline for the department and two other state departments to report on the impact the amended statute has on quality-of-care and cost-effectiveness issues to January 1, 2006, from January 1, 2001.

FIGURE 1

Key Legislation in the History of Health and Safety Code, Section 1316.5



Source: Health and Safety Code.

Three Types of Health Facilities in the Department's Hospitals

Acute psychiatric hospital—Provides 24-hour inpatient care, with basic services including medical, nursing, rehabilitative, pharmacy, and dietary services.

Intermediate care facility—Provides inpatient care to patients who need skilled nursing supervision and supportive care, but who do not require continuous nursing care.

Skilled nursing facility—Provides continuous skilled nursing and supportive care to patients on an extended basis, including medical, nursing, dietary, and pharmaceutical services, and an activity program.

Source: California Code of Regulations, Title 22.

State and Federal Regulations Govern Patient Care and Treatment in the Department's Hospitals

Health Services sets forth, in the California Code of Regulations, Title 22 (state regulations), licensing requirements that state health facilities must follow. The four department hospitals are licensed as acute psychiatric hospitals and also contain separate units that are licensed as either intermediate care or skilled nursing facilities (see text box). Different provisions within state regulations govern each type of facility. For example, for each type of facility, state regulations specify what clinical functions psychologists and other staff members are allowed to perform. These functions include the admission, discharge, diagnosis, treatment, and restraint of patients. Figure 2 shows the location, patient population, and numbers of psychologists and psychiatrists for each hospital.

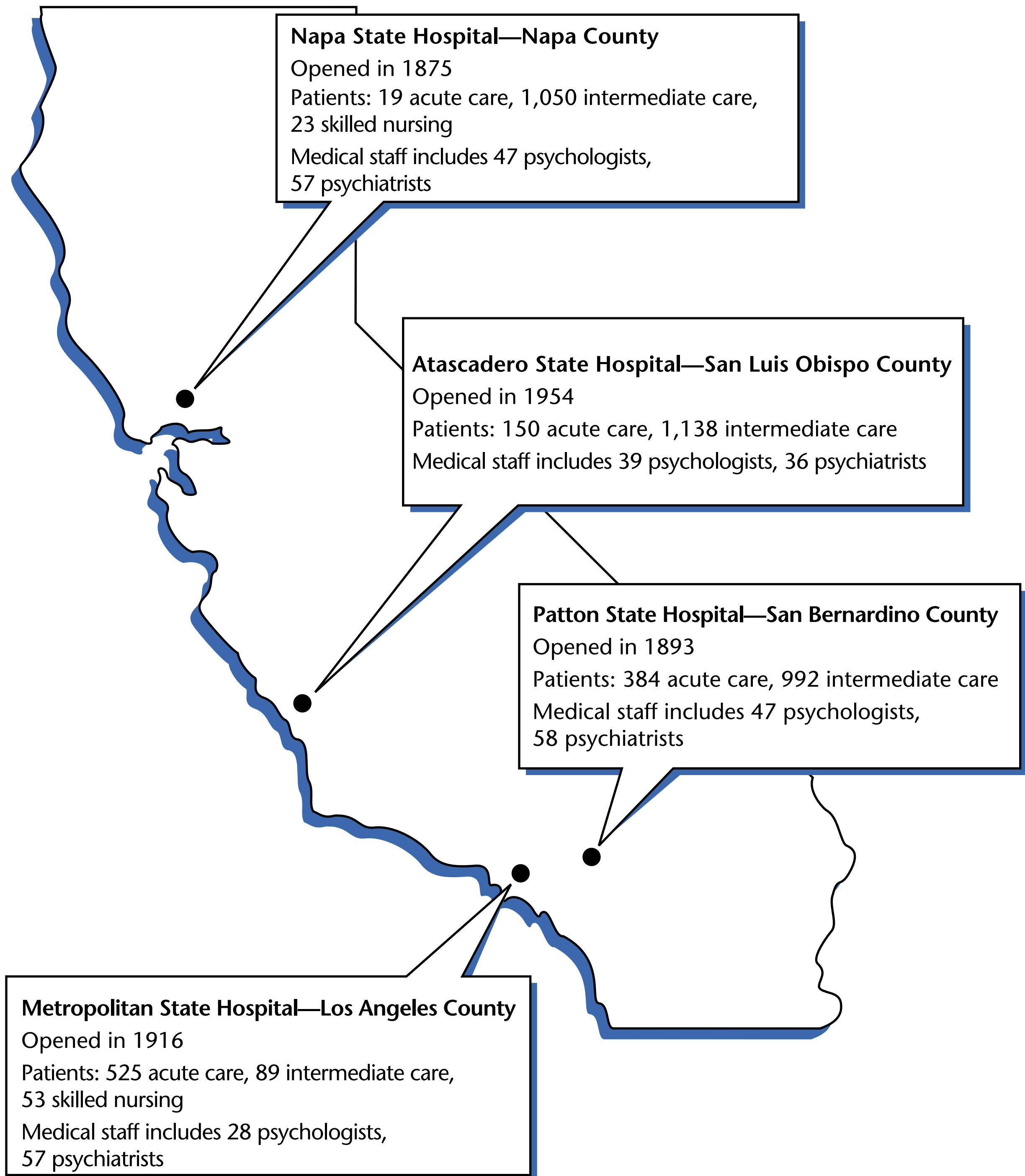
Some patients at the four hospitals qualify to receive either Medicare, which is health insurance for the aged and the disabled, or medical assistance through Medicaid for certain treatments they receive. To receive funding from Medicare and Medicaid for these services, the hospitals must comply with requirements set forth in the Code of Federal Regulations, Title 42 (federal regulations). Like state regulations, these federal regulations describe the types of services psychologists and other staff members may perform. As of April 2004, 961 patients (22 percent) in the department's four hospitals were receiving Medicare or Medicaid benefits.

A Governing Body, Policies, Bylaws, and Rules and Regulations Direct Each Hospital's Operations

The department maintains administrative oversight of each hospital through a governing body. The governing body of each hospital consists of the department's director, the deputy director of Long Term Care Services, and the hospital's executive director. Depending on the hospital, the governing body also includes the chief deputy director and the medical director or assistant director of Clinical Services from the department. Specific duties of the governing body typically include approving bylaws and rules and regulations. The department also communicates its policies and directions to the hospitals through special orders that it requires the hospitals to follow.

FIGURE 2

Location and Description of the Department's Hospitals

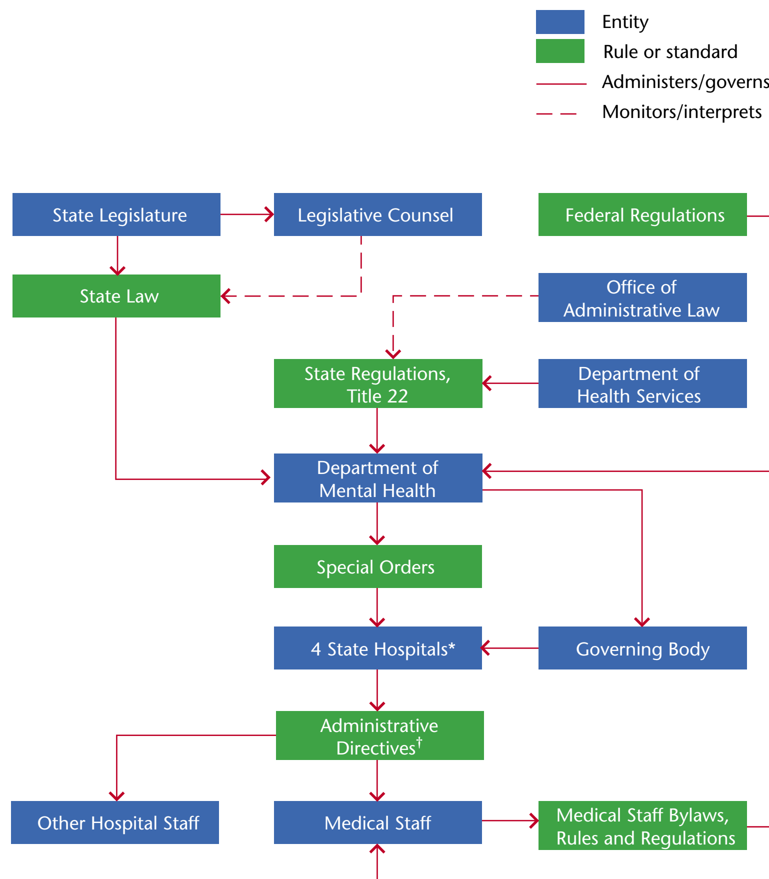


Source: Department of Mental Health patient populations as of April 28, 2004; hospital lists for departments of psychiatry and psychology.

Each hospital maintains administrative directives to establish its basic policies for all hospital staff. Within each hospital, the medical staff is responsible for patient care and treatment, and this staff maintains and abides by bylaws and rules and regulations. The bylaws provide for the organization of the medical staff as a self-governing entity in matters involving the quality of medical care. They also provide the professional and legal structure for medical staff operations. The rules and regulations of the medical staff specify the proper conduct of the staff's work, including the responsibilities of staff members, and proper procedures for the admission, discharge, care, and treatment of patients. Figure 3 shows the framework governing patient care and treatment in state hospitals.

FIGURE 3

The Framework That Governs Patient Care and Treatment in State Hospitals



Source: Department of Mental Health, California Code of Regulations, Code of Federal Regulations, and various Web sites.

* Each state hospital has its own governing body, administrative directives, and medical staff bylaws and rules and regulations.

† Hospital administrative directives and medical staff bylaws must be consistent with each other.

Key Committees Participate in Medical Staff Administration

Active medical staff members at the hospitals serve on various medical staff committees. In particular, the medical executive committee facilitates the administration and functioning of the medical staff. For instance, this committee participates in developing hospital and medical staff policies, makes recommendations to the governing body on clinical and administrative matters, and handles matters relevant to medical staff operations. Two other committees key to medical staff administration are the bylaws committee and the credentials committee. Two of the hospitals, Atascadero and Patton, have bylaws committees to review the bylaws annually and make recommendations to the medical executive committee for changes. The remaining two hospitals, Metropolitan and Napa, review their bylaws at least once every two years, through either the medical executive committee or an ad hoc committee appointed by the medical staff president with approval of the medical executive committee.

The credentials committee reviews applications for privileges. When psychologists and psychiatrists apply for appointment to the medical staff, they also apply for clinical privileges. Typically, upon receiving the applications, the psychology and psychiatry departments review and forward their applications to the credentials committee for further review. The credentials committee submits applications along with its recommendations to the medical executive committee, which reviews the recommendations and other relevant information and makes its recommendations to the hospital's executive director or governing body. Either the governing body or the executive director, as the local representative for the governing body, accepts or denies the applications for medical staff membership and privileges based on the medical executive committee's recommendations. When the hospital initially approves psychologists and psychiatrists for privileges, they must go through a period in which a proctor observes their performance.

Two of the hospital committees evaluate the requests for privileges using a variety of factors. These factors include a psychologist's or psychiatrist's education, training, experience, and current demonstrated professional competence. Hospitals may also use pertinent information concerning a psychiatrist's or a psychologist's clinical performance in other institutions or health care settings. Generally, psychologists and psychiatrists must reapply for medical staff membership and clinical privileges one year after

their initial application and every two years thereafter. In addition, psychologists and psychiatrists can request a modification of their privileges at any time.

When either a psychology or psychiatry department proposes to establish a privilege not yet available to its staff at the hospitals, it develops a description of the privilege and the criteria necessary for its staff to obtain the privilege. After the respective department approves the proposed privilege, it forwards the privilege description and criteria to the medical executive committee for its approval. If the medical executive committee approves the proposed privilege, it forwards the privilege to the governing body for its approval. If the governing body approves the privilege, the privilege application and the criteria for privileges are amended to include the privilege.

The Hospitals Use Treatment Teams for Patient Care and Treatment

Each hospital places each of its patients under the care of an interdisciplinary treatment team (treatment team) that is responsible for multiple patients with similar needs. A physician, usually a psychiatrist, serves as the attending clinician or the primary provider of care, for the treatment team. Attending clinicians' duties include making the official diagnosis of record for patients and approving patient treatment plans. Treatment team members, including psychologists, help develop and implement treatment plans. Specifically, they provide services such as psychological evaluations, psychotherapy, and various psychological assessments when these are part of patients' approved treatment plans.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) requested the Bureau of State Audits (bureau) to evaluate the department's status in implementing Assembly Bill 947, which was enacted as Chapter 717. Specifically, the audit committee directed the bureau to review the actions the department has taken to implement Chapter 717, such as the establishment of certain rules, bylaws, policies, or procedures related to the services provided by psychologists. In addition, the audit committee directed the bureau to review the laws, rules, and regulations relevant to the issues addressed by Chapter 717. Further, the audit committee instructed the bureau to examine

the functions, roles, or levels of service psychologists perform in the department's hospitals resulting from the implementation of Chapter 717. In particular, the audit committee asked the bureau to identify the privileges, duties, and responsibilities available to psychologists as a result of the implementation of Chapter 717, to determine whether a sample of psychologists in the department's hospitals are allowed to and actually provide services in accordance with Chapter 717, and to compare the level and frequency of services performed by the department's psychologists to those services performed by psychiatrists in comparable organizations or to other reasonable benchmarks. Lastly, the audit committee requested the bureau to determine, to the extent possible, whether the implementation of Chapter 717 has resulted in any cost savings or has had any other fiscal impact on the State.

We reviewed the relevant statutes and state and federal regulations to gain an understanding of the framework that governs patient care and the functions psychologists at the hospitals may statutorily perform. We also reviewed legal opinions relevant to the requirements of Section 1316.5 and state regulations. To determine the department's status in implementing Chapter 717, we reviewed the bylaws, rules and regulations, and policies of each state hospital. Specifically, we reviewed the bylaws to determine whether they were amended to grant medical staff membership to psychologists. In addition, we reviewed the bylaws, rules and regulations, and policies to ascertain that they do not discriminate among psychologists and other medical staff members when they are performing within the scope of their respective licenses. Further, we reviewed the bylaws to identify the committees that process, review, evaluate, and determine qualifications for staff privileges for the medical staff, and those that assist in admitting, suspending, and terminating psychologists. We identified the three committees having key roles in these privilege and staff processes, and we examined the composition of these committees over several years. We then determined the impact, if any, of Chapter 717 on the composition of these committees. We also interviewed a sample of psychologists, psychiatrists, and administrative staff from the four hospitals regarding the status of the implementation of Chapter 717.

To identify the clinical privileges granted to psychologists as a result of the implementation of Chapter 717, we compared at each hospital the standard privilege application forms and descriptions used for psychologists prior to the enactment of

Chapter 717 to those currently used. From these comparisons, we determined the new privileges available to psychologists and whether these new privileges resulted from the implementation of Chapter 717. To identify the duties and responsibilities assigned to psychologists as a result of Chapter 717, we reviewed the department's special order that identified 27 activities psychologists are allowed to perform within the four hospitals. We determined whether any of these 27 activities resulted from the implementation of Chapter 717, and we evaluated each hospital's progress in implementing the special order.

To determine whether psychologists are actually able to provide services in accordance with Chapter 717, we reviewed a sample of privileging files for psychologists and psychiatrists, determined the rate of approval for the privileges requested by each group, and compared the approval rates of the two groups to each other. We selected our sample of 20 psychologists and 20 psychiatrists by judgmentally selecting five psychologists and five psychiatrists from each hospital. Because medical staff members must reapply for their privileges every two years, we reviewed all 182 privilege requests within the 40 files. To make our selections, we used a list of currently employed psychologists and psychiatrists provided by each hospital.

To compare the level of services performed by the department's psychologists to those performed by psychiatrists in comparable organizations, we compared the standard privilege application forms and descriptions used by psychologists to those used by psychiatrists at the four hospitals to determine whether the differences appear justified. In addition, we compared the types of services psychologists can perform at the state hospitals to those they can perform at private hospitals in California and at state-run hospitals in other states. We judgmentally selected three private hospitals for comparison because they are either psychiatric hospitals or have psychiatric units within the hospital. We selected four states for review because they are among the 17 states to offer staff or clinical privileges to psychologists in state hospitals and are considered progressive in the types of privileges statutorily allowed to psychologists. We ascertained whether psychologists in other states and in private hospitals may obtain medical staff membership and clinical privileges, have admitting or attending privileges, and order the restraint and seclusion of patients. We also determined whether other states define the scope of license for psychologists.

The audit committee asked us to compare the frequency of services performed by the department's psychologists to the frequency of those services performed by psychiatrists, but the hospitals do not track the amount of time psychologists and psychiatrists spend on all the services they provide. Therefore, we were unable to provide that information. In addition, although the audit committee requested that, to the extent possible, we assess whether the implementation of Chapter 717 has resulted in any cost savings or other fiscal impact on the State, we could not isolate any cost savings that directly resulted from the department's implementation of Chapter 717. ■

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CHAPTER 1

The Department of Mental Health Has Acted Within the Framework Governing Patient Care to Implement Specific Legislation in Its Hospitals, Yet a Central Issue Remains Unresolved

CHAPTER SUMMARY

Despite the actions taken and the conclusions reached by various entities that appear to clarify the authority of psychologists to perform certain activities at the four Department of Mental Health (department) hospitals, the key issue of whether a psychologist has the authority to serve as an attending clinician has not yet been resolved. In addition, although psychologists at the hospitals contend that a state law provides them the authority to order seclusion and restraint of patients, which they believe is within the scope of a psychologist's license, state regulations specifically restrict this action to physicians.

The framework of state and federal laws and regulations that govern patient care and treatment at the department's hospitals has constrained its ability to fully implement Chapter 717, Statutes of 1998 (Chapter 717), commonly known as Assembly Bill 947. Among its provisions, Chapter 717 requires that psychologists at state-operated health facilities—including the department's four hospitals—receive medical staff status and clinical privileges within their scope of license and without discrimination. State law includes treatment in its definition of scope of license for psychologists. However, certain state regulations set forth by the Department of Health Services (Health Services), and federal regulations governing Medicare and Medicaid patients, permit only physicians to provide overall care and treatment of patients. In particular, the regulations governing two of the three types of health facilities that accounted for 76 percent of the patients in the four hospitals in April 2004 limit to physicians the overall responsibility for patient care and treatment. In addition, the state regulations for all three types of facilities permit only physicians to order the restraint and seclusion of patients.

In January 2003, the department issued a special order outlining 27 activities that psychologists are permitted to perform at its hospitals. These activities represent a consensus between two reports resulting from a work group convened by the department, but they do not include the ability to order restraint and seclusion. Moreover, the special order stated that the overall responsibility for each patient's care was to be assigned to a physician. Although psychologists we interviewed contend that Chapter 717 has not yet been fully implemented because they are still unable to serve as attending clinician and may not order the seclusion and restraint of patients, the department asserts that it has implemented the intent of Chapter 717 and has addressed the psychologists' concerns within the framework that governs patient care in the four hospitals.

A court has concluded that psychologists are permitted to take primary responsibility for the care and treatment of patients in acute psychiatric hospitals; however, the attempt by Health Services to amend the regulations to permit psychologists to order patient restraint and seclusion in the department's health facilities was voided by the Office of Administrative Law. The department contends that primary responsibility for patient care and treatment is not relevant for psychologists practicing in its hospitals, in part because the vast majority of patients take medication to treat psychoses and severe mental disorders. According to state law, psychologists' scope of license does not give them the authority to prescribe medication.

Nevertheless, in 2003 the department's deputy director of Long Term Care Services requested medical staff at the hospitals to develop pilot projects to allow psychologists to serve as attending clinicians. Although this request has not generated any fully developed projects because of differences in ideology and expectations between psychologists and psychiatrists at the hospitals, the department stated that it is working on solutions to satisfy its psychologists, psychiatrists, and legal requirements. Thus, the issue of a psychologist's authority to serve as an attending clinician in the department's four hospitals is not yet resolved, while their ability to order restraint and seclusion appears to be prohibited.

CHAPTER 717 STRENGTHENED THE STATUS OF PSYCHOLOGISTS IN THE DEPARTMENT'S HOSPITALS

The Scope of Practice for Psychologists

- Rendering or offering to render for a fee to individuals, groups, organizations, or the public any psychological service involving the application of psychological principles, methods, and procedures for understanding, predicting, and influencing behavior.
- The application of principles and methods for ameliorating psychological problems and emotional and mental disorders of individuals and groups includes, but is not restricted to:
    - Diagnosis
    - Prevention
    - Treatment
    - Improvement of psychological problems

Source: Business and Professions Code, Section 2903.

The enactment of Chapter 717 strengthened the provisions of Health and Safety Code, Section 1316.5 (Section 1316.5), regarding the status of psychologists in state-operated health facilities. As we discussed in the Introduction, it requires each state-operated health facility—including the department's four hospitals—offering care or services within the scope of practice for psychologists (see text box) to establish rules and medical staff bylaws (bylaws) extending medical staff membership and clinical privileges to psychologists within the scope of their license. Before this legislation was enacted, Section 1316.5 required these same health facilities only to establish rules, regulations, and procedures to consider applications submitted by psychologists for medical staff membership and clinical privileges.

We discuss in Chapter 2 the impact Chapter 717 has had on the inclusion of psychologists on certain committees involved in the process of defining and granting medical staff privileges in the department's four hospitals.

STATE REGULATIONS SET FORTH BY HEALTH SERVICES RESTRICT TO PHYSICIANS THE OVERALL CARE AND TREATMENT OF MOST PATIENTS IN THE DEPARTMENT'S HOSPITALS

Although Section 1316.5 allows psychologists on medical staff at the department's four hospitals to work within their scope of practice, state regulations governing the care of most patients residing in the hospitals limit patients' overall treatment to physicians. Health Services maintains responsibility for licensing health facilities in the State and sets forth the regulations for patient care and treatment in the various types of health facilities. Health Services has licensed the department's four hospitals as acute psychiatric hospitals. In addition, within each of the hospitals it has licensed certain units as intermediate care facilities. Further, two of the four hospitals have units licensed as skilled nursing facilities.

As set forth by Health Services, the regulations governing patient care differ for the various types of facilities. As Table 1 shows, the regulations for intermediate care and skilled nursing facilities allow only physicians to admit, diagnose, and direct the overall treatment of patients. Psychologists can refer patients for admission to intermediate care facilities only if physicians provide the necessary medical care. The regulations for acute psychiatric hospitals require patients to be admitted by medical staff members who are lawfully authorized to diagnose, prescribe, and treat them. Table 1 also shows that if acute psychiatric hospitals permit psychologists to admit patients, the hospitals may do so only when physicians, including psychiatrists, provide the necessary medical care. The regulations also allow psychologists in acute psychiatric hospitals to formulate patients' diagnoses and develop and implement patient treatment plans. All three types of facilities permit only physicians to order the restraint and seclusion of patients.

TABLE 1

Health Services' Regulations Regarding Patient Care and Treatment in California Health Facilities

Type of Facility and Activities	Require Physicians to Perform	Permit Psychologists to Perform
Intermediate Care Facility		
Admit patient	Yes	Yes*
Diagnose patient	Yes	No
Direct overall treatment of patient	Yes	No
Order seclusion and restraint of patient	Yes	No
Skilled Nursing Facility		
Admit patient	Yes	No
Diagnose patient	Yes	No
Direct overall treatment of patient	Yes	No
Order seclusion and restraint of patient	Yes	No
Acute Psychiatric Hospital		
Admit patient	Yes	Yes†
Formulate patient diagnosis	Yes	Yes
Develop and implement patient treatment plan	Yes	Yes
Order seclusion and restraint of patient	Yes	No

Source: California Code of Regulations, Title 22.

* Psychologists may refer patients for admission only if physicians provide the necessary medical care.

† If a hospital permits psychologists on its medical staff to admit patients, the hospital may do so only if a physician provides the necessary medical care.

As shown in Table 2, the regulations for intermediate care facilities and skilled nursing facilities affect the care and treatment of three-fourths of the patients in the department's four hospitals. As of April 2004, intermediate care and skilled nursing facilities accounted for 76 percent of these patients. Patients treated in intermediate care and skilled nursing facilities represented 88 percent of all patients at Atascadero State Hospital (Atascadero), 98 percent of all patients at Napa State Hospital (Napa), and 72 percent of all patients at Patton State Hospital (Patton). In Metropolitan State Hospital (Metropolitan), however, 79 percent of patients were being treated in the acute psychiatric hospital.

TABLE 2

Distribution of Patients Among Different Types of Facilities in the Department's Hospitals

		Intermediate Care and Skilled Nursing Facilities		Acute Psychiatric Hospital	
Hospital	Total Number of Patients	Number of Patients	Percentage of Patients	Number of Patients	Percentage of Patients
Atascadero State Hospital	1,288	1,138	88%	150	12%
Metropolitan State Hospital	667	142	21	525	79
Napa State Hospital	1,092	1,073	98	19	2
Patton State Hospital	1,376	992	72	384	28
Totals	**4,423**	**3,345**	**76%**	**1,078**	**24%**

Source: Department of Mental Health patient census data as of April 28, 2004.

Thus, as of April 2004 state regulations require physicians to assume the overall care and treatment for 76 percent of the patients residing in the department's four hospitals because these patients require intermediate care or skilled nursing. As a result, the department has taken the position that physicians must be in charge of the overall care and treatment for a vast majority of its hospitals' population.

FEDERAL REGULATIONS RESTRICT TO PHYSICIANS THE RESPONSIBILITY TO DIRECT THE TREATMENT AND CARE OF MEDICARE AND MEDICAID PATIENTS IN THE DEPARTMENT'S HOSPITALS

In addition to state regulations that govern the care and treatment of certain patients in the department's hospitals, federal regulations apply to patients covered by the Medicare program and the Medicaid program. In particular, federal

regulations governing Medicare patients in psychiatric hospitals require physicians to be responsible for patient care. These regulations define psychiatric hospitals as hospitals primarily engaged in providing psychiatric services for the diagnosis and treatment of mentally ill persons. In addition, the regulations state that Medicare will pay for inpatient care in psychiatric hospitals only if physicians periodically certify their patients' need for services.

Federal regulations for Medicaid patients also specify that physicians must direct inpatient hospital services for the care and treatment of patients over age 65 in institutions for mental diseases and for inpatient psychiatric services for individuals under age 21. To be paid for its care of patients covered by either program, the department must follow these federal regulations. As of April 2004, Medicare patients accounted for 20 percent and Medicaid patients for 2 percent of the population in the four hospitals.

THE DEPARTMENT AND ITS HOSPITALS HAVE ATTEMPTED TO IMPLEMENT THE REQUIREMENTS OF CHAPTER 717 AND EARLIER LEGISLATION, YET A KEY ISSUE REMAINS UNRESOLVED

The department and its hospitals have taken steps to implement the requirements of the amendments to Section 1316.5, including Chapter 717, by ensuring that bylaws at each hospital allow psychologists to be part of the medical staff. Our review found that, apparently as a result of the 1996 legislation that amended Section 1316.5, each hospital amended its bylaws in 1997 to grant medical staff membership to psychologists. Accordingly, the medical staff at each hospital now includes psychologists.

Apparently as a result of 1996 legislation, each hospital amended its bylaws in 1997 to grant medical staff membership to psychologists.

Although psychologists are included on the medical staff at the four hospitals, the bylaws and regulations consider them to be members of treatment teams rather than attending clinicians. Specifically, the bylaws at Metropolitan and Napa specify that physicians maintain the overall responsibility for patient treatment within their treatment teams. Thus, the bylaws at these hospitals limit the responsibilities of psychologists. The bylaws at Atascadero and Patton are silent about whether psychologists may serve as attending clinicians in patient care and treatment. The rules and regulations at each hospital state that physicians are to serve as the principal providers of patient care.

Psychologists at the department's hospitals have contended that the bylaws and regulations limit their ability to practice within the full scope of their licenses, since these bylaws and regulations do not permit them to act as attending clinicians and to order the restraint and seclusion of patients. In addition, some psychologists have asserted that the bylaws discriminate against them. The psychologists base their assertion on the provision of Section 1316.5 that allows the rights and privileges of medical staff to be restricted only based on their demonstrated competence.

The Department and Its Hospitals Engaged in Efforts to Consider How Psychologists Could Lead Treatment Teams

In 2000, to address the psychologists' concerns and to further its effort to implement Chapter 717, the department established a work group on clinical privileges. The work group comprised psychologists, medical directors, and chiefs of staff from the four hospitals, and its intent was to consider, among other issues, how a qualified psychologist could be privileged and assigned to serve as an attending clinician in each hospital (see text box).

An **attending clinician**, which describes medical staff such as a physician or psychologist, is typically defined as someone who is responsible for admitting patients, providing their diagnosis of record, and preparing their overall treatment plan.

After a series of meetings, the department's deputy director of Long Term Care Services requested that a psychology subcommittee of the work group define the duties and limitations of a psychologist serving as an attending clinician; describe the education, experience, and competency standards for psychologists acting as attending clinicians; and define the quality assurance mechanisms needed to maintain the system of care for patients in the hospitals. The psychology subcommittee provided its definitions and its description of standards in a February 2002 report.

In defining the duties and limitations, the subcommittee stated that psychologists acting as attending clinicians would not be able to practice beyond their scope of license. The subcommittee further asserted that when psychologists who serve as attending clinicians believe patients require services beyond their competence, license, and clinical privileges, the psychologists would have to refer patients to another licensed practitioner with the appropriate qualifications to provide the services. In addition, the subcommittee's report listed several duties psychologists would be expected to perform as attending clinicians in the department's hospitals. The duties included approving the admission and

discharge of patients, assuming primary responsibility for managing a patient's care and treatment, formulating the diagnosis of record, writing orders for patients—including restraint and seclusion—in accordance with hospital policy, and leading the treatment team in developing patient treatment plans.

Subsequent to the psychology subcommittee report, the department's deputy director of Long Term Care Services assigned to the chiefs of staff of the four hospitals the responsibility for describing how members of treatment teams—particularly psychiatrists and psychologists—could contribute to patient care and treatment within the scope of their respective licenses. In their May 2002 report, the chiefs of staff primarily addressed areas in which they agreed and disagreed with the psychology subcommittee's report. The chiefs of staff agreed with many of the duties the psychology subcommittee listed as appropriate for attending clinicians. In addition, they identified several other duties that psychologists could perform to contribute to patient care. However, the chiefs of staff disagreed with some duties the psychology subcommittee identified, such as writing orders for the restraint and seclusion of patients, arguing that these either are not permitted by state law or regulations or are outside psychologists' scope of practice.

The chiefs of staff of the four hospitals asserted that, since attending clinicians would have no authority for the medical aspects of patient care outside their scope of practice, the psychologist clinicians would be unable to override physician members of the treatment team and would, in effect, abdicate the responsibility for the overall care of patients.

The primary area of disagreement in the report by the chiefs of staff was the psychology subcommittee's assertion that assigning psychologists to act as attending clinicians did not give the psychologists the authority to provide services beyond their scope of practice. The chiefs of staff indicated that this assertion ran contrary to the structure of medical systems of care. They explained that attending clinicians are responsible for many medical activities, such as prescribing medication, that are outside a psychologist's scope of practice and that they must be able to override other members of the treatment team, including other physicians. The chiefs of staff thus asserted that, since attending clinicians would have no authority for the medical aspects of patient care outside their scope of practice, the psychologist clinicians would be unable to override physician members of the treatment team and would, in effect, abdicate the responsibility for overall care of patients.

The Department Issued a Special Order to Specify Activities Psychologists Are Permitted to Perform in Its Hospitals

After the work group subcommittee and the chiefs of staff issued their reports, the department issued in January 2003 a special order that specified 27 activities psychologists are permitted to

perform in its hospitals. These activities are listed in Table 3. The department uses special orders to communicate its policies and directions to the four hospitals. As part of the department's special order process, it typically prepares and distributes a draft to each hospital for review. It then seeks comments from staff at the hospitals and makes revisions as necessary before it issues the special order. The department based the 27 activities listed in the January 2003 special order primarily on the duties that the report issued by the psychology subcommittee and the one issued by the chiefs of staff agreed upon.

TABLE 3

Activities That Psychologists Are Permitted to Perform in the Department's Four Hospitals, According to Its January 2003 Special Order

1	Request nonmedical consultations.
2	Order or provide psychological, educational, and neurophysical assessments and therapy.
3	Order or provide psychological assessments and diagnosis.
4	Order or provide behavioral assessments and behavioral management plan development.
5	Provide risk assessment.
6	Provide crisis intervention.
7	Provide post-incident debriefing and crisis intervention.
8	Provide assessment of suicide risk.
9	Develop treatment plans for the attending clinician's review and approval.
10	Order or provide individual and/or group therapy.
11	Order or provide family therapy.
12	Order or provide biofeedback, where approved by the hospital.
13	Order or provide hypnotherapy, where approved by the hospital.
14	Develop criteria for release from restraint and seclusion.
15	Assess a patient's readiness for release from restraint and seclusion.
16	Prepare court reports and testify.
17	Testify at hearings.
18	Conduct preadmission nonmedical screening.
19	Plan, implement, evaluate, and report on core curriculum and treatment.
20	Order grounds privileges, close and constant supervision, and/or escort ratios.
21	Recommend therapeutic treatment and behavioral interventions.
22	Coordinate and monitor the implementation of the treatment plan for assigned patients.
23	Educate patients and staff regarding signs, symptoms, and treatment of mental illnesses.
24	Consult with unit staff and others regarding individual patients, mental illness, treatment approaches, and behavioral assessments and interventions.
25	Write treatment orders as delegated by the assigned physician.
26	Perform the duties of the psychologist of the day.
27	Function as a treatment team facilitator or coordinator.

Although the department's special order clarified for the hospitals the activities that could be assigned to psychologists, it also stated that these activities must be part of a patient's approved treatment plan or delegated by the physician responsible for a patient's care. Moreover, the department reiterated that physicians are given the overall responsibility for each patient's care. Further, even though the special order identified several types of treatments and assessments psychologists could order for patients, it did not include the ability to either act as the attending clinician or to order the restraint and seclusion of patients. As a result, the department's special order did not resolve psychologists' concerns about these two issues.

Disagreements Remain About Whether the Department Has Fully Implemented Chapter 717

Psychologists base their contention that Chapter 717 has not yet been implemented on their inability to work within the full scope of their license, which they assert permits them to act as attending clinician and to order the restraint and seclusion of patients.

Many of the psychologists we interviewed at the department's four hospitals contend that Chapter 717 has not yet been fully implemented. The psychologists base their contention on their inability to work within the full scope of their license, which they assert permits them to act as attending clinician and to order the restraint and seclusion of patients. In contrast, most of the psychiatrists and other hospital administrative staff we interviewed asserted that the department has fully implemented Chapter 717 because it has ensured that psychologists are included on the medical staff and are able to apply for clinical privileges at each hospital. In addition, several psychiatrists and administrative staff we interviewed stated that psychologists cannot order the seclusion and restraint of patients because either a required physical evaluation is beyond the psychologists' scope of license or state regulations do not authorize psychologists to take the action.

More importantly, the department asserts that it has implemented the intent of Chapter 717 and has addressed the psychologists' concerns to the extent possible within the framework that governs patient care at the hospitals. Specifically, it has concluded that state regulations authorize only a physician to order the seclusion and restraint of patients within the health facilities in its hospitals. In addition, the department has stated that its special order has clarified the activities psychologists are allowed to perform in the hospitals. The department asserts that Section 1316.5 provides that state-operated health facilities may establish bylaws that limit the privileges and activities of psychologists. It further asserts

that Section 1316.5 does not require these facilities to provide services they do not otherwise offer. For example, if one of the department's hospitals does not provide treatment for chemical dependency, the regulations do not require it to extend that privilege to its psychologists. Thus, the department contends that its hospitals are not required to offer services, and grant privileges to provide those services, that the hospitals do not already offer to ensure that psychologists may practice within the full scope of their licenses.

In an effort to resolve the issue of whether to allow psychologists to serve as attending clinicians, in 2003 the department requested that the medical staff leadership at its hospitals develop pilot projects allowing psychologists to perform this role. In response to the request, medical staff at Atascadero, Napa, and Patton developed concepts for pilot projects. Psychologists at these hospitals were largely responsible for developing the pilot projects. However, according to the department, these pilot projects were not fully developed because of differences in ideology and expectations between psychologists and psychiatrists at the hospitals. The department stated that it is still working to promote solutions to satisfy its psychologists, psychiatrists, legal requirements, and standards of care for its patients.

THE CALIFORNIA SUPREME COURT CONCLUDED THAT PSYCHOLOGISTS MAY TAKE PRIMARY RESPONSIBILITY FOR PATIENT CARE AND TREATMENT WITHIN THEIR SCOPE OF PRACTICE

The Supreme Court ruled in 1990 that under state law an acute psychiatric hospital that admits psychologists to its staff may permit the psychologists to take primary responsibility for the admission, treatment, and discharge of patients.

The California Supreme Court (Supreme Court) ruled in 1990 that under state law an acute psychiatric hospital that admits psychologists to its staff may permit the psychologists to take primary responsibility for the admission, treatment, and discharge of patients. In the case, *California Association of Psychology Providers v. Rank* (Rank decision), a psychologists' organization challenged Health Services' regulations prohibiting hospitals from permitting a psychologist to assume primary responsibility for the diagnosis and treatment of patients. These regulations specified that psychiatrists were responsible for formulating the diagnoses in patient treatment plans. However, the Supreme Court concluded that under the Business and Professions Code, Section 2903, psychologists are licensed to diagnose and treat the psychological problems of individual patients. It further concluded that under the version of Section 1316.5 in effect at that time, psychologists are permitted

to assume responsibilities in hospitals within the scope of their license. In view of the authority conferred on psychologists by those statutes, the Supreme Court found that it follows that psychologists are allowed to assume responsibility for diagnosing and treating the psychological problems of patients in hospitals.

The Supreme Court further concluded that the authority to diagnose and treat psychological problems implies the authority to admit patients for these purposes. It also noted that the Legislature intended to change existing regulations and practices that prevented hospitals from fully using the services of psychologists to diagnose and treat patients when it enacted Section 1316.5 in 1978 and then added language in 1980 declaring that if a hospital offered services that both physicians and psychologists could perform, such services could be performed by either without discrimination. Thus, the Supreme Court held that the Health Services' regulations requiring a psychiatrist to supervise the diagnosis and treatment of all admitted mental patients were invalid for acute care hospitals and acute psychiatric hospitals. In response to a trial court order earlier in the case, Health Services had adopted new regulations permitting psychologists to assume the primary responsibility for the diagnosis and treatment of patients in these two types of health facilities.

The department contends that although the Rank decision applies to its hospitals, the decision has little application in practice because the vast majority of the patients in its hospitals are on medication for treatment of symptoms of psychoses and other severe mental and emotional disorders. For example, as of April 2004, 98 percent of the patients in the four hospitals received medication, and 89 percent received psychotropic medications, which are prescribed to stabilize or improve the mood, mental status, or behavior of the patients. In order to treat a patient who requires medication, a practitioner must be able to issue prescriptions when needed. The department contends that because prescribing medication is beyond psychologists' current scope of license, giving them this ability would conflict with a provision of Section 1316.5. We agree that prescribing medication is beyond the scope of a psychologist's license. Further, state and federal regulations may preclude a psychologist from acting as an attending clinician or ordering restraint and seclusion for the vast majority if not all of the patients in its hospitals' care. Nonetheless, it is

the department's responsibility to ensure that, to the extent possible, psychologists are given privileges within the scope of their licenses and demonstrated competence.

In 1994 Health Services issued a memorandum to administrators of hospitals containing any of the five types of health facilities in an effort to amend the regulations to permit psychologists to order either restraint or seclusion.

A psychologists' organization in 1993 filed a petition with Health Services requesting that it amend its regulations governing the use of restraint and seclusion in five types of health facilities, including acute psychiatric hospitals, skilled nursing facilities, and intermediate care facilities, to be consistent with Section 1316.5 and the Rank decision. Health Services agreed with the petition and in 1994 issued a memorandum to administrators of hospitals containing any of the five types of health facilities in an effort to amend the regulations to permit psychologists to order either restraint or seclusion.

Although Health Services later acknowledged that the amendments were not adopted in accordance with the requirements of the Administrative Procedure Act (act), it believed it could have the flexibility to issue the amendments temporarily until it could later amend the regulations through the appropriate process. However, the Office of Administrative Law concluded in 2001 that these regulations must be adopted in accordance with the rulemaking provisions of the act unless they were expressly exempted. According to the policy section chief for Health Services' Licensing and Certification Division, Health Services is currently drafting revised regulations. It plans to submit these revised regulations to the Office of Administrative Law in late 2004. As a result, the regulations governing the use of restraint and seclusion in acute psychiatric hospitals, skilled nursing facilities, and intermediate care facilities have remained unchanged. Thus, psychologists in the department's four hospitals are currently not permitted to order restraint and seclusion.

THE LEGISLATIVE COUNSEL ALSO CONCLUDED THAT PSYCHOLOGISTS MAY TAKE PRIMARY RESPONSIBILITY FOR PATIENT CARE AND TREATMENT WITHIN THEIR SCOPE OF PRACTICE

In 1999, the Legislative Counsel issued an opinion that state-operated health facilities are not permitted to implement bylaws that require physicians to have primary responsibility for each patient's diagnosis and treatment when the facilities offer care or services within the scope of practice of psychologists. The Legislative Counsel relied on the Rank decision in stating that these health facilities may not implement bylaws that

restrict psychologists' duties so as to prevent them from being responsible for a patient's diagnosis and treatment. The Legislative Counsel also considered the intent of the 1996 amendments to Section 1316.5 and the 1998 amendments that resulted from Chapter 717. In its analysis, the Legislative Counsel stated that the 1996 amendment intended to elevate psychologists to allow them to practice to the full extent of their education, training, and scope of practice. In addition, it stated that the 1998 amendment's intent was to facilitate progress in meeting the nondiscrimination goals previously established. Thus, the Legislative Counsel concluded that bylaws at these health facilities may not limit primary responsibility for each patient's diagnosis and treatment to physicians only. As a result, psychologists are allowed to carry out these responsibilities within their scope of practice.

The Office of Administrative Law says that, unless Health Services uses the appropriate process to amend its regulations, these regulations restrict to physicians the authority to order the restraint and seclusion of patients in the department's hospitals.

The conclusion reached by the Office of Administrative Law clarifies that, unless Health Services uses the appropriate process to amend the regulations it has set forth, these regulations restrict to physicians the authority to order the restraint and seclusion of patients in the department's hospitals. In addition, the opinions issued by the California Supreme Court and the Legislative Counsel appear to clarify that psychologists have the statutory authority to act as attending clinicians within their scope of practice in the department's hospitals. However, since the department contends that the conclusions have little relevance because a high proportion of the patients in its hospitals are on medication that psychologists are not authorized to prescribe, the issue has not yet been fully resolved.

RECOMMENDATION

The department should work to resolve the continuing issue regarding whether psychologists can serve as attending clinicians in its four hospitals. This effort should include providing leadership and guidance to the administrators, psychiatrists, and psychologists at each hospital to find reasonable solutions to satisfy the statutory and regulatory requirements that govern patient care in its hospitals. ■

CHAPTER 2

Representation on Key Committees and the Privileges Available to Psychologists Have Changed Little Since 1998, and Some Other Entities Allow Psychologists More Privileges

CHAPTER SUMMARY

Chapter 717, Statutes of 1998 (Chapter 717), commonly referred to as Assembly Bill 947, requires the hospitals operated by the Department of Mental Health (department), if possible, to include psychologists in the review and evaluation of qualifications for staff privileges. Our review of the composition of three key committees involved in these activities at the four hospitals demonstrated that, with few exceptions, the psychiatrists on these committees outnumber the psychologists. For instance, since 1997 psychiatrists have outnumbered psychologists on the credentials committees at three hospitals by ratios of 4-to-1. The passage of Chapter 717 in 1998 has had little effect in changing the composition of one of the committees, while psychologist representation was either mixed or improved on the other two. We also found that, even after the passage of Chapter 717, psychologists are generally underrepresented on key committees in proportion to their presence on the medical staff. For example, while psychologists make up 36 percent of the medical staff at Napa State Hospital (Napa), they hold only 10 percent of the positions on the medical executive committee.

When we reviewed applications for medical staff membership and clinical privileges in the department's hospitals, we noted no significant change in the types of privileges available to psychologists since Chapter 717 was enacted. Although the department's hospitals added privileges for which psychologists can apply, we determined that these changes did not result from the department's implementation of Chapter 717. Also, although we noted differences in the privileges available to psychologists and psychiatrists, they appear to be justified. For example, psychiatrists can apply for "pharmacotherapy" privileges—the ability to treat diseases with drugs—but psychologists cannot.

Some private hospitals in California and the laws in some other states allow more privileges for psychologists than do the department's four hospitals. We contacted three private hospitals within the State to compare the practice of psychology as it is performed in the department's hospitals with the practice conducted in private hospitals. Two of the three private hospitals allow psychologists to apply for more privileges than do the state hospitals. For example, the Sutter Center for Psychiatry allows psychologists to apply for attending privileges; however, currently there are no psychologists on medical staff at the Sutter Center for Psychiatry.

Although California is considered among the more progressive states in terms of the functions that psychologists can perform in state hospitals, some states we reviewed have laws that allow more privileges for their psychologists. For example, Louisiana state law allows psychologists to order the seclusion and restraint of patients. However, we also found that psychologists might not actually perform some functions even though state statutes authorize them.

Administrative Functions of Three Key Committees

Medical Executive Committee

- Recommends actions to the governing body on medical-administrative matters.
- Reviews the qualifications, credentials, performance, professional competence, and character of applicants and staff members.
- Makes recommendations to the executive director or governing body for staff appointments, reappointments, and clinical privileges.
- Determines the mechanism for reviewing credentials and delineating individual clinical privileges.
- Participates in the development of all medical staff and hospital policy, practice, and planning.
- Evaluates the medical care rendered to patients in the hospital.

Credentials Committee

- Reviews and evaluates the qualifications of each practitioner applying for initial appointment or reappointment to the medical staff, or modification of clinical privileges.
- Makes privileging recommendations for each applicant in reports to the medical executive committee.
- Investigates, reviews, and reports on matters referred by the chief of staff or the medical executive committee regarding an applicant or medical staff member.

Bylaws Committee

- Conducts an annual review of the medical staff bylaws, hospital rules and regulations, and forms promulgated by the medical staff and hospital departments and divisions.
- Submits recommendations for change to the medical executive committee.

PSYCHOLOGISTS ARE GENERALLY UNDERREPRESENTED ON KEY COMMITTEES

Three committees are charged with essential responsibilities and play a large role in the administration of each hospital. The medical executive committee and credentials committee provide important services involving the review and approval of applications for medical staff membership and clinical privileges. Each hospital has a medical executive committee and a credentials committee. In addition, Atascadero State Hospital (Atascadero) and Patton State Hospital (Patton) have bylaws committees. In lieu of a bylaws committee, Metropolitan State Hospital (Metropolitan) selects an ad hoc committee at least every other year to review or amend the bylaws, and at least every two years the medical executive committee at Napa reviews the bylaws and makes recommendations for change. The three key committees perform a variety of administrative functions (see text box).

Psychiatrists and psychologists at the department's four hospitals serve on the committees we reviewed for one-year terms. At Atascadero and Patton, the chairs and members of all committees are appointed by the chief of staff, subject to approval by the medical executive committee. The chief of staff at Napa appoints the chair and members of all committees, with the appointment of committee chairs subject to the executive director's approval. The chairs and members of all committees at Metropolitan are appointed by the medical executive committee, subject to the approval of the executive director. Medical staff members at Atascadero, Metropolitan, and Patton who hold an administrative title such as department chair, officer of the medical staff, or medical director are automatically members of the medical executive committee. The automatic appointment of these members allows the medical executive committees at these three hospitals to offer final approval of the appointment of members to other committees.

Psychiatrists Outnumber Psychologists on Most Key Committees

Psychiatrists outnumber psychologists on the majority of the three key committees at the department's four hospitals. The disparity is generally greater at Napa and Metropolitan than at Atascadero and Patton. To determine the impact, if any, of Chapter 717 on these committees, we requested membership information for several years before and after Chapter 717 was enacted. However, the earliest information that Atascadero could provide was for 2001. As a result, comparative committee membership data was available for all four hospitals only for the three-year period from 2001 to 2004. Appendix B identifies in detail the membership information for the three committees at each hospital for all years provided.

Since 1997 psychiatrists have generally outnumbered psychologists by a ratio of roughly 2-to-1 on the medical executive committees at Metropolitan, Napa, and Patton.

Psychiatrists held more positions than psychologists on the medical executive committee at each hospital for all three years that comparative data was available. For example, during committee year 2001–02 psychiatrists at Patton held seven positions, while psychologists held only two positions. As of 1998, each hospital's bylaws included a requirement that at least 50 percent of the members on the medical executive committee be physicians. This percentage has been exceeded by a large margin. Since 1997 psychiatrists have generally outnumbered psychologists by a ratio of roughly 2-to-1 on the medical executive committees at Metropolitan, Napa, and

Patton, the three hospitals that provided data prior to the enactment of Chapter 717. For some years the disparity was as much as 9-to-1 at Metropolitan and 8-to-1 at Napa.

At three hospitals, psychiatrists have outnumbered psychologists on the credentials committee by an average of 4-to-1 since 1997.

Psychiatrists also outnumbered psychologists on the credentials committees at most of the four hospitals. At three hospitals, psychiatrists have outnumbered psychologists on the credentials committee by an average of 4-to-1 since 1997. However, at Atascadero, psychiatrists and psychologists were equally represented on the credentials committee during the committee years ending 2003 and 2004.

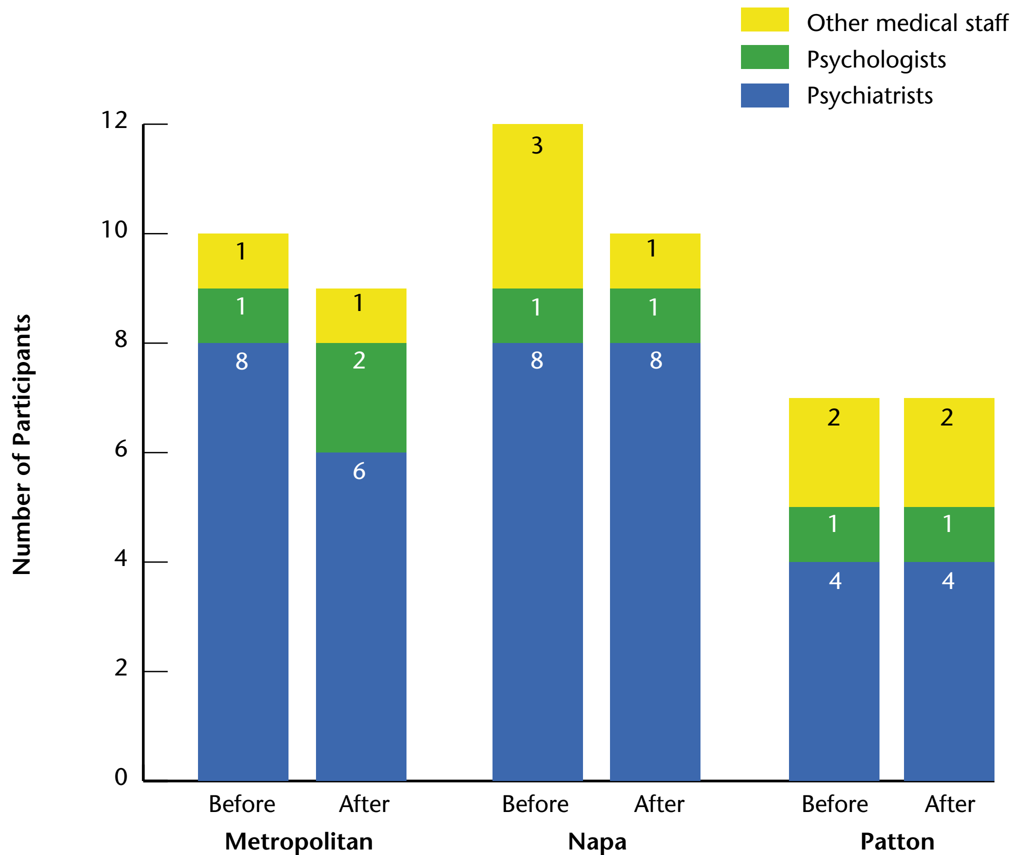
For the three years for which bylaws committee membership information is available from both Atascadero and Patton, psychiatrists were in the majority at each hospital. In the past three years, the ratio of psychiatrists to psychologists on the committee at Atascadero ranged from 7-to-2 to 4-to-2, while the ratio at Patton ranged from 7-to-3 to 6-to-3. The passage of Chapter 717 did not result in significant changes in the membership composition of one type of committee, and it produced mixed or improved psychologist representation for the others. Specifically, our analysis found no material change in the membership of the medical executive committee at three of the department's four hospitals. Figure 4 presents, for the three hospitals that provided pre- and post-Chapter 717 data, the composition of the medical executive committee membership, showing the number of psychologists, psychiatrists, and other members of the medical staff serving on the committee before and after the legislation took effect. As the figure shows, the numbers of psychologists and psychiatrists on the medical executive committee remained relatively unchanged after the enactment of Chapter 717 at Metropolitan, Napa, and Patton. As was previously stated, we could not analyze the committee membership information at Atascadero because it could not provide us with information about committee makeup prior to the enactment of Chapter 717. Nevertheless, its medical executive committee membership has a high ratio of psychiatrists to psychologists for the three years for which information is available.

Our review of the credentials committees found somewhat mixed results. For example, after the passage of Chapter 717, the ratio of psychiatrists to psychologists on the credentials committee at Napa remained relatively the same, going from 3-to-1 in 1998 to 2-to-1 in 2004. The ratio on the credentials committee at Patton ranged from 4-to-0 for the committee year

ending in 1998 to 5-to-2 for the committee year ending in 2004. At Metropolitan, the ratio of psychiatrists to psychologists on the credentials committee improved from 10-to-0 in 1998 to 4-to-3 in 2004. On the bylaws committee at Patton, the ratio of psychiatrists to psychologists also improved after the enactment of Chapter 717, from 4-to-0 for the committee year ending in 1998 to 6-to-3 for the committee year ending in 2004.

FIGURE 4

Medical Executive Committee Membership at Three Hospitals Before and After Chapter 717 Was Enacted



Source: Medical executive committee members list from each hospital.

Note: The figure includes only voting members of the committees.

Psychologists Are Not Proportionally Represented on Key Committees

The percentage of psychologists on the medical executive committees at all four hospitals, to a lesser or greater degree, does not approximate their percentage on the medical staff.

Our review of the composition of three key committees at the hospitals also revealed that psychologists are generally underrepresented on the committees in proportion to their numbers on the medical staff at the department's hospitals. In particular, the percentage of psychologists on the medical executive committees at all four hospitals, to a lesser or greater degree, does not approximate their percentage on the medical staff.

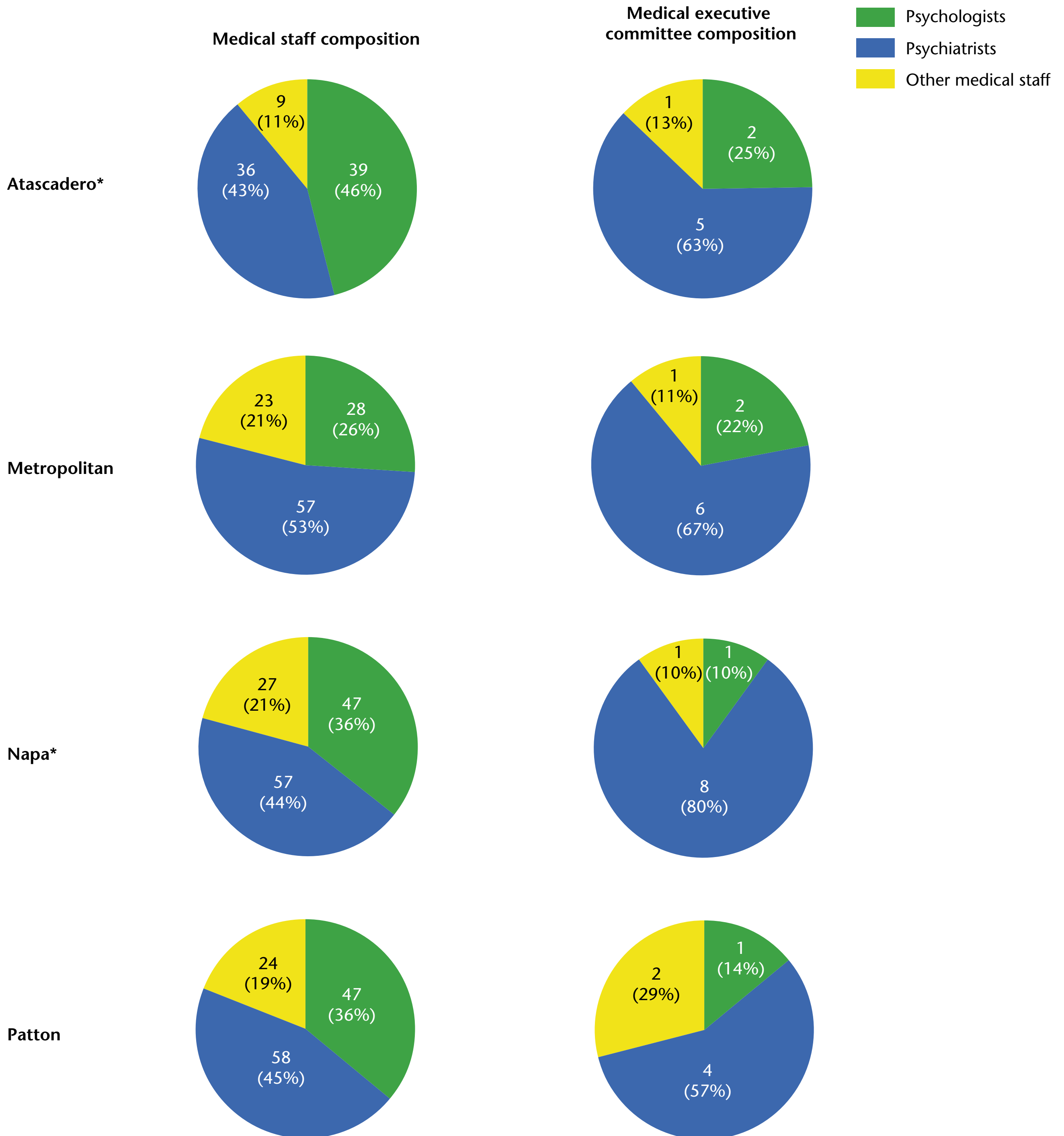
Figure 5 shows, for the committee year ending in 2004, a side-by-side comparison of the makeup of the medical staff and the makeup of the medical executive committee at each hospital. As the figure shows, the percentage of psychologists on the medical executive committee at Metropolitan is only slightly lower than the percentage of psychologists on the medical staff. At the three other hospitals, however, psychologists are less well represented on the medical executive committee. For example, psychologists make up 36 percent of the medical staff at Napa and psychiatrists make up 44 percent of the medical staff. On the medical executive committee, however, psychologists represent only 10 percent—just over a quarter of their percentage on the medical staff—while psychiatrists hold 80 percent of the committee positions, nearly twice their percentage on the medical staff.

The composition of the credentials and bylaws committees at the hospitals exhibited the same disparities, though they were not as pronounced as those for the medical executive committee. According to the most recent data available, for example, psychologists at Patton make up 36 percent of the medical staff but only 22 percent of the credentials committee, while psychiatrists at Patton represent 45 percent of the medical staff but 56 percent of the credentials committee. Similarly, the most recent data indicates that on the bylaws committee at Atascadero, psychologists only hold 33 percent of the committee positions while they make up 46 percent of the medical staff.

Since these three committees play a significant role in the administration of each hospital, we believe it is important that they comprise, as closely as possible, the proportionate numbers of psychologists, psychiatrists, and other medical staff.

FIGURE 5

Breakdown of the Medical Staff and the Medical Executive Committee at the Department's Four Hospitals, Committee Year 2003–04



Source: Lists of medical staff and medical executive committee members from each hospital.

* Percentages do not equal 100 because of rounding.

THE PRIVILEGES AVAILABLE TO PSYCHOLOGISTS HAVE NOT CHANGED APPRECIABLY SINCE CHAPTER 717 WAS ENACTED

The privileges available to psychologists at each of the hospitals changed slightly after Chapter 717 was implemented, but the changes apparently were not because of Chapter 717 and did not result in a significant expansion of actual privileges for psychologists. For example, the privileges available at Atascadero before Chapter 717 included "suicide precaution and level of risk assessment" and "contribution to approval of psychiatric treatment plan and diagnosis of emotional and mental disorders." Although these privileges do not appear on the current privilege application, their omission does not represent a reduction in privileges. Instead, administrative directives at Atascadero now authorize all psychologists to perform these services. We focused on the privilege application form because it lists all the privileges the hospital allows psychologists to apply for.

Some current privileges available at Metropolitan that were not available before Chapter 717 include "child psychology," "geriatric psychology," and "adult psychology." According to the vice-chair of the psychology department at Metropolitan, the hospital added these privileges because it expanded its patient population, not because of the Chapter 717 legislation. At Napa, privileges for "treatment planning" and "hospital care management of adult psychiatric patients" were added to the privilege application for psychologists after Chapter 717. However, according to the chair of the psychology department credentials committee at Napa, these are not new privileges. Instead, the wording on the privilege application was changed to better define practices already available to psychologists before Chapter 717. Finally, psychologists at Patton can now apply for "diagnosis" as part of their core privileges, which was not available on the application before the passage of Chapter 717. Nevertheless, according to the chief of the psychology department at Patton, this privilege has not changed. The chief stated that, as was the case before Chapter 717, a psychologist can give input toward the diagnosis in a team setting but still cannot form the official diagnosis of record.

Eight Privileges for Psychologists Added After Chapter 717

- Adult psychology.
- Child/adolescent psychology.
- Geriatric psychology.
- Multi-axial diagnosis.
- Treatment planning.
- Basic standardized assessment.
- Hospital care management of adult psychiatric clients and consultation.
- Documentation of the basis for the diagnosis of a report or note in the medical chart.

The department surveyed its hospitals and in May 2003 identified eight[2] privileges made available to psychologists after Chapter 717 was enacted (see text box). However, these eight privileges did not appear to result in additional privileges actually becoming available to psychologists. More importantly, the department stated that it was not possible to determine whether these privileges were added as a direct result of the implementation of Chapter 717.

The first three privileges—adult psychology, child/adolescent psychology, and geriatric psychology—are available at Metropolitan. As we stated previously, Metropolitan added these privileges because of changes in the hospital population rather than because of Chapter 717. The remaining five privileges are available at Napa. We previously stated that the privileges for treatment planning and hospital care management of adult psychiatric patients and consultation are not new privileges, according to the chair of the psychology department credentials committee at Napa. In addition, psychologists could apply for "multi-axial diagnosis" and "documentation of the basis for diagnosis of a report or note in the medical chart" privileges before Chapter 717 was enacted. Finally, the "basic standardized assessment" privilege is currently available only at Napa. However, the chair of the psychology department credentials committee told us that Napa combined two privileges that appeared on the application before Chapter 717 into the basic standardized assessment privilege that appears on the current application.

The Differences Between Privileges Available to Psychologists and Those Available to Psychiatrists Appear Justified

As we discussed in the Introduction, Chapter 717 required the department's hospitals to establish rules and bylaws that include provisions for medical staff membership and clinical privileges for psychologists within the scope of their license. Our review of the standard applications for privileges revealed that, although the types of clinical privileges available to psychologists differ from those available to psychiatrists, these differences appear justified. The differences relate mainly to the differences in the professional and educational backgrounds of the two professions. For example, the department's hospitals offer pharmacotherapy, "psychopharmacology procedures,"

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[2] The department originally identified nine new privileges. However, Napa subsequently determined that one was mistakenly characterized as a privilege.

and “electroconvulsive therapy” privileges only to psychiatrists. Psychopharmacology is the study of the effects of drugs on the mind and behavior, and pharmacotherapy is the treatment of diseases, especially mental illnesses, with drugs. Psychologists cannot hold these privileges because the scope of their license does not permit them to prescribe drugs or administer electroconvulsive therapy. In contrast, only psychologists can apply for privileges such as psychological evaluation and assessment, because psychiatrists do not specialize in these services.

Psychologists could not apply for the ability to order restraint and seclusion or to act as an attending clinician because the application form approved at each hospital does not list them as privileges.

Our review of the applications also revealed that psychologists could not apply for the ability to order restraint and seclusion or to act as an attending clinician because the application form approved by the medical executive committee and governing body at each hospital does not list them as privileges. As shown in Table 1 on page 20, state regulations permit only physicians to order the restraint and seclusion of patients in the health facilities within the department's hospitals. The table also shows that the regulations provide psychologists with limited ability to perform the key activities of an attending clinician, and these activities are largely restricted to acute psychiatric hospitals. However, psychologists are not currently performing these activities. According to the data provided by the department, 98 percent of the patient population is receiving some sort of medication. Therefore, in order to treat these patients, practitioners would need to prescribe medication when necessary. As a result, it is the department's position that giving psychologists this ability would exceed the scope of their license and conflict with Health and Safety Code, Section 1316.5. We agree that prescribing medication is beyond the scope of a psychologist's license. Further, as we discuss in Chapter 1, state and federal regulations may preclude a psychologist from acting as an attending clinician or ordering restraint and seclusion for the vast majority if not all of the patients in its hospitals' care. Nonetheless, it is the department's responsibility to ensure that to the extent possible psychologists are given privileges within the scope of their licenses and demonstrated competence.

The Four Hospitals Approved All Medical Staff and Privilege Applications We Reviewed

The four hospitals approved 100 percent of the applications we reviewed that were submitted by psychologists and psychiatrists for medical staff membership and allowed privileges. Specifically, the hospitals approved all 182 of the applications for either medical staff membership or clinical privileges we reviewed from a sample of 20 psychologists and 20 psychiatrists representing

all four hospitals. However, as discussed in the previous section, we found that psychologists could not apply for the ability to order seclusion and restraint or to act as an attending clinician.

In examining the psychologists' files, we noted that they all applied for medical staff membership beginning around 1998. Although Chapter 717 was enacted in January 1999, our review shows that the department's hospitals began to comply with the requirement that hospitals offer psychologists medical staff membership as early as 1997.

In two instances, psychologists at Metropolitan attempted to request attending clinician privileges that were not permitted by the hospital and were not listed on the current privilege application form. The medical executive committee denied these privileges.

Although our review found no instances in which the hospitals rejected applications for allowed privileges, we noted two instances in which psychologists at Metropolitan attempted to request attending clinician privileges that were not permitted by the hospital and were not listed on the current psychologist privilege application form. In August 1999, three psychologists at Metropolitan revised the "privileges requested" section of their applications to include "primary care responsibility," which includes such services as team leadership, diagnosing, and writing orders for seclusion and restraint and suicide precautions. The medical executive committee at Metropolitan denied these privileges by recommending that no additional privileges beyond those listed on the approved application forms be granted to psychologists.

The psychology department at Metropolitan then amended the privilege application form to include primary care responsibility for psychologists. The psychology department forwarded the application to the medical executive committee at Metropolitan for approval. In a November 1999 meeting, the medical executive committee considered the amended application and approved the form but deleted the primary care responsibility privilege. In effect, this approval revised the form back to its original content and denied psychologists the ability to apply for primary care responsibility. The executive director at Metropolitan later explained that the hospital denied the unlisted privilege requests because, in amending the form, the psychologists had submitted application forms not yet approved by the medical staff, the application forms presented a scheme of privileging yet to be proposed to the medical staff, and the hospital had no criteria on which to judge psychologists for granting this privilege.

In 2003, two psychologists at Metropolitan again attempted to apply for privileges to admit, diagnose, write orders, and serve as attending clinician by attaching an addendum to the privilege application that outlined these expanded privileges.

The addendum stated, “California law specifically requires that psychologists be made eligible for these privileges and assignments when specific criteria are met and applied in good faith and in a nondiscriminatory manner” and quoted Health and Safety Code, Section 1316.5. The medical staff at Metropolitan approved the psychologists’ applications but, according to the psychologists, rejected the addenda because the hospital had not approved them.

The psychologists contacted the department and requested that it intervene to accomplish full implementation of Chapter 717. The department’s response addressed the reasons that Metropolitan rejected the psychologists’ requests for expanded privileges. Specifically, the department stated that the two psychologists had listed privileges not yet established by Metropolitan’s department of psychology, medical staff, and governing body. In addition, the department stated that Metropolitan’s medical staff had not approved the amendment to the application form. Furthermore, the department reminded psychologists at Metropolitan that they may apply for all established clinical privileges within the scope of their license and for which they meet the education, experience, and current competency criteria established for each requested privilege. Thus, the department stated that if psychologists want to expand the privileges available to them, they must follow the established channels. In the Introduction we discuss the process to establish new privileges.

SOME PRIVATE HOSPITALS ALLOW PSYCHOLOGISTS TO PERFORM MORE FUNCTIONS THAN STATE HOSPITALS DO

Although Chapter 717 requires the department’s hospitals to establish procedures for psychologists to apply for medical staff membership and clinical privileges, it permits but does not require private facilities within the State to establish similar procedures. We contacted three private hospitals to compare the medical staff status and privileges available to psychologists to those in the department’s hospitals. As we discussed previously in this report, the department’s four hospitals allow psychologists to serve on the medical staff, but none of the hospitals allow psychologists to serve as attending clinicians. Two of the private hospitals have procedures for psychologists to apply for medical staff membership, but the third does not.

Table 4 compares psychologist functions among the three private hospitals and those of the department. Heritage Oaks Hospital and the Sutter Center for Psychiatry allow psychologists to hold medical staff membership. The Sutter Center for Psychiatry's rules and regulations explicitly allow psychologists to be admitted to the medical staff if they meet specified criteria regarding their education and professional experience. In contrast, Kaiser's Los Angeles Mental Health Center does not have psychologists on its medical staff. Instead, psychologists in this hospital serve as allied health professionals. Allied health professionals are nonphysicians whose work requires them to exercise independent judgment in the diagnosis and treatment of patients.

TABLE 4

A Comparison of Psychologist Functions Among the Department's Hospitals and Selected Private Hospitals

	Allowed to Serve on Medical Staff	Allowed Clinical Privileges	Allowed to Serve as Attending Clinician	Allowed to Order Seclusion and Restraint
Department of Mental Health hospitals	Yes	Yes	No	No
Heritage Oaks Hospital	Yes	Yes	Yes	Yes
Kaiser's Los Angeles Mental Health Center	No	Yes	No	No
Sutter Center for Psychiatry	Yes	Yes	Yes	No

Source: Department of Mental Health and individual private hospitals.

According to administrators at the Sutter Center for Psychiatry and Heritage Oaks Hospital, although psychologists are allowed to serve on their medical staff, only psychologists at Heritage Oaks Hospital currently hold medical staff membership. The administrator of the Sutter Center for Psychiatry stated that there are currently no psychologists on the medical staff.

Table 4 also shows that both Heritage Oaks Hospital and the Sutter Center for Psychiatry allow psychologists to obtain attending clinician privileges, although only psychologists at Heritage Oaks Hospital currently hold these privileges. Only Heritage Oaks Hospital authorizes psychologists to write orders for seclusion and restraint. Like the department's hospitals, the other two private hospitals do not allow psychologists to write such orders. For example, the policy at Sutter Center for Psychiatry authorizes psychiatrists to order seclusion and restraint but contains no such provision for psychologists.

NATIONALLY, CALIFORNIA RANKS AMONG THE MOST PROGRESSIVE STATES IN OFFERING STATUS AND CLINICAL PRIVILEGES TO PSYCHOLOGISTS

To provide a comparative perspective on psychologists' status in California state hospitals versus the status available in other states, we contacted two national organizations—the American Psychological Association and the National Conference of State Legislatures—familiar with the responsibilities of psychologists in other states. Using the information provided by these organizations, we determined that California is among the more progressive states regarding the status of psychologists in state hospitals. In particular, California is one of only 17 states and the District of Columbia that allow psychologists to practice in a hospital setting.

Table 5 lists the states and the year in which this ability was extended to psychologists by statute or regulation. As the table shows, California was the first state to allow psychologists to practice in state hospitals, doing so in 1978. The District of Columbia, Georgia, and North Carolina followed in 1983. In 1998 Nebraska became the most recent state to authorize this status. Although these laws and regulations vary in their provisions, they typically allow psychologists to use the health facilities and obtain privileges, generally requiring a nondiscriminatory evaluation of a psychologist's application for such privileges. For example, several states—including Florida, Iowa, and Maryland—require hospitals to establish rules for consideration of a psychologist's application for clinical privileges.

TABLE 5

States and District That Allow Psychologists to Join Hospital Medical Staff or Obtain Clinical Privileges, by the Year Enacted

State	Year Enacted	State	Year Enacted
California	1978	Louisiana	1992
District of Columbia	1983	Iowa	1993
Georgia	1983	Connecticut	1995
North Carolina	1983	Oklahoma	1995
Florida	1990	Missouri*	1996
Maryland	1990	New Jersey	1996
Ohio	1991	New Mexico*	1996
Wisconsin	1991	Utah*	1996
Hawaii*	1992	Nebraska	1998

Source: National Conference of State Legislatures.

* Promulgated by regulations. All others enacted by statute.

ALTHOUGH STATUTES IN OTHER STATES DEFINE THE PRACTICE OF PSYCHOLOGY BROADLY, THEY MAY AUTHORIZE PSYCHOLOGISTS TO PERFORM MORE FUNCTIONS THAN CALIFORNIA DOES

As we discussed in Chapter 1, state law broadly defines the practice of psychology in California but does not include provisions for specific privileges. To compare this definition with those of other states, as well as other pertinent characteristics, we reviewed the relevant statutes in four other states considered progressive with regard to psychologists' privileges—Florida, Louisiana, Nebraska, and Wisconsin. We chose these states because they have confronted similar issues regarding the extent of psychologists' responsibilities in state hospitals. The statutes in each state define the practice of psychology similarly to the California statutes. In addition, these definitions did not contain any provisions related to privileges such as serving as attending clinician or ordering seclusion and restraint.

Some State Laws Authorize Psychologists to Obtain Attending or Admitting Privileges, Although in Practice Psychologists May Not Actually Use These Privileges

Table 6 on the following page compares various aspects of the practice of psychology in state hospitals located in California, Florida, Louisiana, Nebraska, and Wisconsin. All four of the other states grant clinical privileges to psychologists, and the statutes in three of them allow psychologists to be granted medical staff membership. The fourth state, Wisconsin, statutorily authorizes hospital staff privileges for psychologists, but its statutes do not address medical staff status for them.

The four states also provide psychologists the authority to admit patients to state hospitals or to obtain attending clinician privileges. One state authorized these privileges only after legal action by a group of psychologists. Specifically, in 2002 Nebraska psychologists working in three state hospitals agreed to a legal settlement with the state regarding the clinical privileges available to psychologists. As part of the agreement, Nebraska permits psychologists in its state hospitals to treat patients independently, without direction or supervision. In contrast, Wisconsin state law explicitly authorizes psychologists to admit patients to its state hospitals. In emergency situations, Louisiana also allows psychologists to admit patients who are determined to be a danger to themselves.

TABLE 6

Membership Status and Privileges Authorized by Statute for Psychologists at State Hospitals in California Compared to State Hospitals in Selected States

	Medical Staff Membership	Clinical or Hospital Privileges	Attending or Admitting Clinician	Order Seclusion and Restraint
California	Yes	Yes	No	No
Florida	Yes	Yes	Yes	No
Louisiana	Yes	Yes	Yes*	Yes
Nebraska	Yes	Yes	Yes†	Unknown‡
Wisconsin	Unknown§	Yes	Yes	Yes‖

Source: State statute Web sites and other states' mental health departments.

* The statute allows psychologists to admit patients in emergency situations.

† A federal district court approved a settlement between psychologists and the state of Nebraska that permits psychologists to independently treat patients within their scope of license.

‡ The statutes are silent regarding seclusion and restraint.

§ The statutes are silent regarding medical staff membership.

‖ The statutes provides psychologists the authority to seclude by isolation but not to restrain patients.

Although the four other states we reviewed statutorily authorize attending or admitting privileges, psychologists might not actually practice these privileges in state hospitals. Psychologists and administrators at several of the state hospitals we contacted indicated that psychologists did not actually hold these privileges at their hospitals. For instance, although the hospital bylaws at the Norfolk Regional Center in Nebraska do not prohibit a psychologist from obtaining attending clinician status, the bylaws also do not authorize a psychologist to perform this function. The chief executive officer of the Norfolk Regional Center clarified the application of the bylaws to psychologists by stating that they cannot be attending clinicians at his facility. Likewise, according to the psychology director at Northeast Florida State Hospital, psychologists do not currently serve as attending clinicians. However, he stated that the hospital is in the process of revising its bylaws to extend this privilege to psychologists.

Some States Permit Psychologists to Order Seclusion and Restraint of Patients, but They Might Not Carry Out This Function

As we discussed in Chapter 1, California regulations explicitly require physicians to order the seclusion and restraint of patients in health facilities such as the department's hospitals. Our inquiries of other states again revealed that some states statutorily authorize

psychologists to do so, although others do not. As previously shown in Table 6, Florida and Nebraska do not specifically authorize psychologists to order seclusion and restraint. Florida regulations, in particular, specify that only a physician may do so. Nebraska statute appears to be silent on this issue. The chief executive officer at the Norfolk Regional Center in Nebraska indicated that he was not aware of a statute or regulation that addresses seclusion and restraint. Conversely, a Louisiana statute explicitly allows psychologists these privileges. A Wisconsin statute expressly grants psychologists the authority to order isolation of patients, but it does not allow them to order restraint.

The psychology director at the Mendota Mental Health Institute in Wisconsin said that, although psychologists are authorized to order isolation, they do not perform this activity at his facility.

We again found that psychologists might not actually perform these functions in practice. For instance, the psychology director at the Mendota Mental Health Institute in Wisconsin said that, although psychologists are authorized to order isolation, they do not perform this activity at his facility. He added that only physicians order seclusion and restraint. Similarly, according to the psychology department director at Southeast Louisiana Hospital, none of the psychologists at the hospital order seclusion and restraint. Thus, although the four states we reviewed statutorily authorize psychologists to perform more functions than those authorized in California for the department's hospitals, psychologists at the facilities we contacted do not necessarily carry out these functions.

RECOMMENDATION

To ensure the appropriate level of representation for psychologists on key committees, the department should direct its hospitals to annually review the composition of their medical staffs and the proportion of psychologists, psychiatrists, and other medical staff on their medical executive, credentials, and, if applicable, bylaws committees. Each hospital should modify, to the extent possible, the membership of these committees to more closely reflect the composition of its medical staff.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

Date: July 6, 2004

Staff: Doug Cordiner, CGFM, Audit Principal
Russ Hayden, CGFM
Jeff Cummins
Jeana Kenyon, CPA, CMA, CFM
Fae Li
John Sorrenti

APPENDIX A

The History of Health and Safety Code, Section 1316.5

In 1978, the Legislature enacted Health and Safety Code, Section 1316.5 (Section 1316.5) to establish staff privileges for psychologists in health facilities within the State. As originally approved, Section 1316.5 authorized health facilities to expand staff and professional services they offered to include licensed psychologists who have the appropriate training and clinical experience. Since its enactment, the Legislature has amended Section 1316.5 four times. Table A.1 summarizes the section as approved and its amendments.

TABLE A.1

Health and Safety Code, Section 1316.5, and Subsequent Amendments

Year Approved	Chapter Number	Summary of Relevant Provisions
1978	116	Authorized health facilities to establish rules to enable the appointment of psychologists as members of the professional staff and committees. Defined a psychologist as one licensed by the State who possesses a doctorate degree in psychology from an accredited educational institution and who has no less than two years clinical experience in appropriate health facilities.
1980	730	Revised "professional staff" to "medical staff." Clarified that health facilities are not required to offer specific health services not otherwise offered. Required that if a health facility with licensed physicians and psychologists on the medical staff offers health services that both physicians and psychologists are authorized to perform, the services could be performed by either, without discrimination. Required that health facilities providing staff privileges to psychologists include psychologists on the staff who process, review, evaluate, and determine qualifications for staff privileges.
1996	826	Required state-operated health facilities to establish rules, regulations, and procedures to consider applications for medical staff membership and clinical privileges by psychologists. However, it continued to allow health facilities not operated by the State to have rules enabling the appointment of psychologists on terms and conditions established by the facility. Required three departments, including the Department of Mental Health, to report to the Legislature by January 1, 2001, on the impact of medical staff membership and privileges for clinical psychologists on quality-of-care and cost-effectiveness issues. Specified that the statute does not intend to expand the scope of licensure for psychologists. Provided for the repeal of the section by January 1, 2002, to be replaced with a section that did not differentiate, in its provisions for psychologists, between state-operated health facilities and other health facilities, unless a later statute deleted or extended this date.

continued on next page

Year Approved	Chapter Number	Summary of Relevant Provisions
1998	717	Strengthened the requirements for state-operated health facilities related to psychologists. Specifically, these facilities must do the following: • Establish rules and bylaws that allow psychologists to apply for medical staff membership and privileges within their scope of license, and allow psychologists the right to pursue and practice full privileges within the scope of their license, restricted only by their demonstrated competence. • Within their rules and regulations, not discriminate against medical staff members based on their medical degrees or doctoral degrees in psychology within their scope of license. • Include psychologists among the staff that process, review, evaluate, and determine qualifications for staff privileges; and that regulate admission and conduct suspension and termination of staff appointment of psychologists. Specified that state-operated health facilities are not required to offer health services not otherwise offered. Deferred until January 1, 2006, the reporting deadline for the Department of Mental Health and two other departments. Delayed until January 1, 2007, the repeal and replacement of the section.
2003	230	Eliminated the requirement to repeal and replace the section.

Source: Health and Safety Code and chaptered legislation.

APPENDIX B

Membership Data for Committees at Department of Mental Health Hospitals

Three committees at hospitals run by the Department of Mental Health (department) play an important role in the administration of the hospitals: the medical executive committee, the credentials committee, and the bylaws committee.[3] The medical executive committee influences the policies and practices of the hospitals. The medical executive and credentials committees review and evaluate applications for medical staff membership and clinical privileges. The bylaws committee reviews the medical staff bylaws and hospital rules and regulations and recommends any changes to the medical executive committee. Where available, we obtained membership information about the number of psychiatrists, psychologists, and other medical staff serving on each committee for the past 10 years. Patton State Hospital (Patton) and Napa State Hospital (Napa) provided committee membership information beginning with committee year 1994–95. Metropolitan State Hospital (Metropolitan) provided information starting in committee year 1997–98 and Atascadero State Hospital (Atascadero) provided information starting in committee year 2001–02. The hospitals' one-year terms for committee membership begin in different months. The committee terms at Atascadero run from April through March, whereas the committee year at Napa runs from November through October for its medical executive committee and from January through December for its credentials committee. Metropolitan and Patton committee years run from July through June. Table B.1 on the following pages presents the detailed committee membership information by committee and hospital.

[3] Only Atascadero and Patton have bylaws committees. An ad hoc committee selected at Metropolitan and the medical executive committee at Napa perform this function at least every other year.

TABLE B.1

Composition of Key Committees at the Four Department of Mental Health Hospitals

Medical Executive Committees*

Committee Year	Psychiatrists		Psychologists		Other Medical Staff		Total Committee Members
	Committee Members	Percentage of Total	Committee Members	Percentage of Total	Committee Members	Percentage of Total	
Atascadero State Hospital							
2001–02	5	63%	2	25%	1	13%	8
2002–03	6	67	2	22	1	11	9
2003–04	5	63	2	25	1	13	8
Metropolitan State Hospital							
1997–98	8	80%	1	10%	1	10%	10
1998–99	8	80	1	10	1	10	10
1999–2000	9	82	1	9	1	9	11
2000–01	7	78	1	11	1	11	9
2001–02	6	75	1	13	1	13	8
2002–03	8	80	1	10	1	10	10
2003–04	6	67	2	22	1	11	9
Napa State Hospital							
1994–95	8	80%	1	10%	1	10%	10
1995–96	8	67	1	8	3	25	12
1996–97	9	82	1	9	1	9	11
1997–98	8	67	1	8	3	25	12
1998–99	6	60	2	20	2	20	10
1999–2000	7	58	2	17	3	25	12
2000–01	7	58	2	17	3	25	12
2001–02	5	50	3	30	2	20	10
2002–03	8	80	1	10	1	10	10
2003–04	8	80	1	10	1	10	10
Patton State Hospital							
1994–95	7	78%	0	0%	2	22%	9
1995–96	5	62	0	0	3	38	8
1996–97	4	67	0	0	2	33	6
1997–98	4	57	1	14	2	29	7
1998–99	4	57	1	14	2	29	7
1999–2000	5	71	1	14	1	14	7
2000–01	6	60	3	30	1	10	10
2001–02	7	70	2	20	1	10	10
2002–03	4	67	1	17	1	17	6
2003–04	4	57	1	14	2	29	7

Credentials Committees

Committee Year	Psychiatrists		Psychologists		Other Medical Staff		Total Committee Members
	Committee Members	Percentage of Total	Committee Members	Percentage of Total	Committee Members	Percentage of Total	
Atascadero State Hospital							
2001–02	3	43%	2	29%	2	29%	7
2002–03	4	40	4	40	2	20	10
2003–04	3	43	3	43	1	14	7
Metropolitan State Hospital†							
1997–98	10	77%	0	0%	3	23%	13
1998–99	11	79	0	0	3	21	14
1999–2000	9	60	3	20	3	20	15
2000–01	8	57	3	21	3	21	14
2001–02	8	57	3	21	3	21	14
2002–03	7	54	3	23	3	23	13
2003–04	4	40	3	30	3	30	10
Napa State Hospital							
1995	1	17%	1	17%	4	67%	6
1996	2	40	1	20	2	40	5
1997	3	43	1	14	3	43	7
1998	3	50	1	17	2	33	6
1999	2	33	1	17	3	50	6
2000	3	43	1	14	3	43	7
2001	3	43	1	14	3	43	7
2002	3	43	1	14	3	43	7
2003	2	40	1	20	2	40	5
2004	2	40	1	20	2	40	5
Patton State Hospital							
1994–95	3	60%	0	0%	2	40%	5
1995–96	4	67	0	0	2	33	6
1996–97	3	60	0	0	2	40	5
1997–98	4	67	0	0	2	33	6
1998–99	4	44	3	33	2	22	9
1999–2000	1	17	2	33	3	50	6
2000–01	3	33	2	22	4	44	9
2001–02	3	38	2	25	3	38	8
2002–03	3	38	2	25	3	38	8
2003–04	5	56	2	22	2	22	9

continued on next page

Bylaws Committees[‡]

Committee Year	Psychiatrists		Psychologists		Other Medical Staff		Total Committee Members
	Committee Members	Percentage of Total	Committee Members	Percentage of Total	Committee Members	Percentage of Total	
Atascadero State Hospital							
2001–02	7	70%	2	20%	1	10%	10
2002–03	7	58	5	42	0	0	12
2003–04	4	67	2	33	0	0	6
Patton State Hospital							
1994–95	2	50%	0	0%	2	50%	4
1995–96	3	75	0	0	1	25	4
1996–97	4	80	0	0	1	20	5
1997–98	4	67	0	0	2	33	6
1998–99	3	43	2	29	2	29	7
1999–2000	3	43	2	29	2	29	7
2000–01	6	55	3	27	2	18	11
2001–02	7	64	3	27	1	9	11
2002–03	7	64	3	27	1	9	11
2003–04	6	60	3	30	1	10	10

Note: The percentages shown in the table may not total 100 percent due to rounding.

* Membership data for the medical executive committee includes only voting members.

† The official name of the committee for Metropolitan State Hospital is the Credentials and Privileges Committee.

‡ Only Atascadero and Patton have bylaws committees. An ad hoc committee selected at Metropolitan and the medical executive committee at Napa perform this function at least every other year.

Agency's comments provided as text only.

Health and Human Services Agency
1600 Ninth Street, Room 460
Sacramento, CA 95814

June 21, 2004

Elaine M. Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Thank you for forwarding a draft copy of the Bureau of State Audits' report titled "Department of Mental Health: State and Federal Regulations Have Hampered Its Implementation Of Legislation Meant to Strengthen the Status of Psychologists at Its Hospitals, and Psychologists Are Not Adequately Represented on Key Hospital Committees." I am forwarding to you the Department of Mental Health's responses to the review findings.

If you have any questions, please call Lauren Gomez, HHSA Chief of Administration and Financial Management, at (916) 654-0662.

Sincerely,

(Signed by: Eileen Cubanski)

Eileen Cubanski
Assistant Secretary

Enclosures

California Department of Mental Health
1600 9th Street
Sacramento, CA 95814

June 21, 2004

Elaine M. Howle*
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Via: Kimberly Belshé
Secretary
Health and Human Services Agency

Dear Ms. Howle:

Thank you for the opportunity to review the draft report of your evaluation of the Department of Mental Health's (DMH) implementation of Chapter 717, Statutes of 1998 (AB 947). DMH appreciates the objective and conscientious manner in which your staff conducted the evaluation.

We agree with the two basic findings in your report: (1) that DMH has made substantial progress towards meeting the requirements of AB 947; and (2) that state and federal regulations have hampered the remainder of our efforts towards the complete implementation of AB 947.

As recommended in your report, DMH will continue to meet with both sides of the medical staffs to find common ground, and to identify and incorporate examples of where psychiatrists and psychologists can work together in a collegial relationship to resolve any remaining issues of concern to the medical staff. Finally, where appropriate, DMH will direct its hospitals to make the membership of medical staff committees more proportionate with the overall medical staff membership as recommended in the draft report.

Again, I want to thank you for the opportunity to review the report. DMH staff also appreciated the chance to work with your staff, as we found them to be professional and instructive. If you have any questions, please feel free to call me, or John Rodriguez, Deputy Director for Long Term Care Services at (916) 654-2413.

Sincerely,

(Signed by: Stephen W. Mayberg)

STEPHEN W. MAYBERG, Ph.D.
Director

* California State Auditor's comment appears on page 57.

COMMENT

California State Auditor's Comment on the Response From the California Department of Mental Health

To provide clarity and perspective, we are commenting on the California Department of Mental Health's (department) response to our audit. The number below corresponds to the number we have placed in the department's response.

As we state on page 17, we concluded the framework of state and federal laws and regulations that govern patient care and treatment at the department's hospitals has constrained its ability to fully implement Chapter 717, Statutes of 1998, commonly known as Assembly Bill 947.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
  Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press