

ISSUE DATE:

EFFECTIVE DATE:

NUMBER:

Subject:

Involuntary Outpatient Commitments

BY:

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Acting Secretary of Public Welfare**

SCOPE:

County Mental Health/Mental Retardation Administrators
Mental Health Hearing Officers
President Judges of County Common Pleas Courts
County District Attorneys
Public Defenders
Behavioral Health Managed Care Organizations
CEO's - State Psychiatric Hospitals
Regional Forensic Psychiatric Centers
Behavioral Health Providers
County Children and Youth Administrators
Children and Youth Providers
County Sheriffs
Emergency Room Physicians and Staff

PURPOSE:

The purpose of this Bulletin is to set forth policies and procedures for the Mental Health Procedures Act (MHPA) of 1976 (50 P.S. 7101) governing involuntary outpatient commitments. This Bulletin obsoletes Mental Health Bulletin 99-86-14 of May 8, 1986 and Mental Health Bulletin 99-87-07 of January 16, 1987.

BACKGROUND:

The MH/MR Act of 1966 established a state-supervised, county-administered system of community-based mental health services. This was not established as an entitlement program and the services were limited by available funding. The Act gave priority to adults with serious mental illness (SMI) and children with serious emotional disturbance (SED). The Act required co-ordination of services and a county-based centralized intake process. The required services included:

- Crisis/emergency response

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- Short-term inpatient psychiatric treatment
- Outpatient psychiatric treatment
- Aftercare for persons discharged from state psychiatric hospitals
- Partial hospitalization services
- Consultation, education and referrals

There were commitment provisions in the Act; however, over time, these provisions were found not to fully protect consumers and were declared to be legally null and void.

Mental Health Procedures Act of 1976

- As a result, in 1976 the MHPA was enacted which establishes rights and procedures for all involuntary treatment, inpatient or outpatient.

The Act defined adequate treatment to include: diagnosis, evaluation, therapy and/or rehabilitation needed to alleviate pain and distress and to facilitate the recovery of a person with mental illness. The Act also defines adequate treatment to include other services that supplement treatment and aid or promote recovery. In support of this requirement, community-based services have grown to include an array of supported/supervised residential options, intensive case management and mobile psychiatric treatment, psychiatric rehabilitation programs, and peer support initiatives.

Since the enactment of the MHPA, the Commonwealth has supported the development of a broad array of treatment and support services and in recent years, a significant growth in consumer-directed, recovery-supporting evidence-based and promising practices. It is clear that there are many possible approaches that motivate individuals to be fully engaged in their treatment plan either voluntarily or as approved by a Court. The following are examples of tools available to engage an individual and may be used to avoid an involuntary commitment or in conjunction with an involuntary commitment:

- Mental health advance directives are legal documents developed by an individual in order to consent to mental health treatment when a person has capacity for a time when a person does not have capacity to make mental health treatment decisions.
- Wellness Recovery Action Plans (WRAP) are formal documents developed by an individual when well to offer guidance for treatment decisions and crisis planning for times when a person is not well.
- Early intervention and jail diversion programs seek to intercept individuals at risk of incarceration and divert them to treatment as an alternative.
- Certified Peer Specialists provide a range of supportive services in a variety of settings and are often most successful at engaging an individual to accept or stay in treatment.

DISCUSSION:

BILL OF RIGHTS

Chapter 5100 of the Pennsylvania Code set forth the regulatory requirements of the MHPA. These rights apply to both children and adults. Every encounter with a consumer relating to the Mental Health Procedures Act should consider and recognize these rights and ensure that

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the consumer is aware of and understands these rights. In addition to legal representation, the person shall have access to peer specialist supports.

STANDARD FOR INVOLUNTARY COMMITMENTS

In accordance with the Chapter 5100 regulations, the standard of clear and present danger is met when a person has made a threat of harm to self or others; has made a threat to commit suicide; or has made a threat to commit an act of mutilation and has committed acts in furtherance of any such threats.

The Supreme Court of Pennsylvania has held that “a civil commitment procedure can in no sense be equated with a criminal prosecution.” *In re: J.M.*, 726 A.2d 1041, 1047-48 (PA. 1999). The Court also explained that “if involuntary treatment is all that is available to protect a person from harm and even death, then the availability of this form of treatment is to be valued and encouraged” and further noted that “common sense must be applied in construing provisions of the Mental Health Procedures Act” id. at 1048.

Section 301(b) of the Act requires that clear and present danger to others shall be shown by establishing that within the past 30 days the person has inflicted or attempted to inflict serious bodily harm on another and that there is reasonable probability that such conduct will be repeated. The Pennsylvania Superior Court case, *Commonwealth v. Helms*, 506 A.2d 1384 (PA Super. 1986) provides that the threat of harm with an act in furtherance of that threat is one way that clear and present danger to others may be demonstrated, although other means may be used. However, behavior which occurred longer than 30 days before the petition is not sufficient to demonstrate current dangerousness unless the person has been found incompetent to be tried or has been acquitted by reason of lack of criminal responsibility on charges arising from conduct involving infliction of or attempt to inflict serious bodily harm on another. 50 P.S. § 7301(b).

In instances where a person poses a clear and present danger to himself or herself, clinical or other testimony (including family members, friends,) may be considered to demonstrate that a person’s judgment and insight is so severely impaired that he or she is engaging in behavior which is so grossly irrational or inappropriate to the situation that such behavior prevents him or her need for reasonable nourishment, personal care, medical care, shelter or self-protection and safety, and that serious physical debilitation, serious bodily injury or death may occur within 30 days unless adequate treatment is provided on an involuntary basis. 55 Pa Code § 5100.84(f)

Proper use of the existing outpatient commitment procedures should provide needed mental health treatment, services, and supports in the least restrictive setting appropriate to the needs of the individual. It is imperative that the treatment deemed necessary is actually provided under the treatment plan developed.

OBSELETE BULLETIN: This Bulletin obsoletes Mental Health Bulletin 99-86-14 of May 8, 1986 and Mental Health Bulletin 99-87-07 of January 16, 1987.

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| <p>COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO: Office of Mental Health and Substance Abuse Services, Bureau of Policy, Planning & Program Development, P.O. Box 2675, Harrisburg, PA 17105. General Office Number 717-772-7900.</p> |
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ANNEX A

STATEMENT OF POLICY

DEPARTMENT OF PUBLIC WELFARE

OFFICE OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

[55 Pa. Code Chapter 5100]

Mental Health Procedures

PROCEDURES FOR INVOLUNTARY OUTPATIENT COMMITMENTS

Commitments for involuntary outpatient treatment are provided pursuant to the MHPA.

- Section 303 (5100.87) – Extended involuntary emergency treatment not to exceed twenty (20) days;
- Section 304 (5100.88) – Court ordered involuntary treatment not to exceed ninety (90) days;
- Section 304 (b) – Procedure for extending court ordered involuntary treatment for persons already subject to involuntary treatment;
- Section 304 © - Procedures for Initiating Court Ordered Involuntary Treatment for Persons Not in Involuntary Treatment;
- Section 305 (5100.89) – Additional periods of court-ordered involuntary treatment not to exceed 180 days.
- Section 306 – Procedure for transfer on involuntarily committed persons from one level of restrictiveness to another level of restrictiveness.

The County Administrator is the person appointed to carry out the duties specified in Section 305 of the Mental Health and Mental Retardation Act of 1966 (P.S. 4305). All references to the County Administrator include any person designated by the County Administrator to perform such functions.

Contents of Petition

- A. Petition for Involuntary Outpatient Treatment of a person not currently in inpatient care:
1. Recite the facts that form the basis for believing that the person meets the criteria for involuntary treatment including any existing treatment plan to which the person is not in compliance. If an existing treatment plan is not being followed any statement from the individual as to the reason for non-compliance should be included in the recitation.
 2. State the reasons why voluntary treatment is unlikely to be successful and the reasons why involuntary treatment is likely to be more successful than an enhanced voluntary treatment program.
 3. Attach a copy of the current treatment plan (if any) and the proposed treatment plan.

4. Attach a notice which informs the person that:

- A petition has been filed with the Court of Common Pleas for a hearing to determine if the person is in need of involuntary outpatient treatment and that the person has the right to attend the hearing.
- State the date, time and place at which the hearing is to be held.
- The name and telephone of an attorney who has been appointed for the person unless the person obtains his/her own attorney.
- Explain that the individual has the right to be accompanied by any chosen person to support him or her through the hearing process. The person also has a right to have a mental health expert of his/her choosing.
- The Court, under its own direction or by request through the petitioner, may order a psychiatric evaluation. An individual's attorney may be present during the evaluation, if requested. A copy of the evaluation must be made available to the person's counsel no later than 48 hours prior to the hearing.

5. Place the notice described above on the front of the Petition delivered to the person at least three (3) days before the hearing. The notice on the front of the Petition will include all of the elements covered under #4 above.

B. Procedures for Persons not Currently in Treatment or Receiving Voluntary Care:

1. An original Petition should be filed with the Court of Common Pleas with a copy to the County Administrator.
2. Service must be three days prior to the hearing.
3. A hearing shall be scheduled in accordance with the provisions in Section 304(c).
4. The person will be served with a copy of the Petition by the County Administrator or Petitioner.
5. Immediate notice shall be given to the Public Defenders Office.
6. Prior to the hearing, it may be necessary to have a prior determination of dangerousness to one's self in order for the court to order an involuntary outpatient evaluation. The request for an evaluation can be made by the person, the court or the County Administrator. A copy of the evaluation will be made available to the person's attorney at least 48 hours before the hearing.

C. Procedures for Persons who do Not Comply with an Involuntary Outpatient Commitment:

1. In the event of noncompliance as described in the treatment plan, the County Administrator shall notify the person of noncompliance and schedule a meeting to address the issues. The County Administrator will assess the severity of the situation and schedule the meeting as soon as deemed appropriate.

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- a. The individual, the designees of any providers that are to provide treatment, supports, and services under the outpatient treatment plan, and any person designated by the individual for support will be present.
 - b. Reasons for non-compliance, including the unavailability of services and transportation, medication side-effects, or any other reasons stated by the individual will be noted in the treatment plan and as part of any record of the meeting.
2. Every effort will be made to resolve any barriers to compliance that are discovered at the meeting, including, but not limited to, services that are unavailable, transportation issues, and medication side-effects.
 3. If noncompliance continues or if it is clear at the hearing that noncompliance will continue, the County Administrator may petition for a Section 306 hearing. The Petition may request a psychiatric evaluation, a modification of the involuntary commitment, or involuntary inpatient care.
 - a. It should be noted that a person must meet the clear and present danger standard as required by the Act in order to continue under any involuntary outpatient or inpatient commitment.
 - b. A transfer that constitutes greater restraint requires a hearing to determine if the transfer is necessary and appropriate.
 4. A 302 commitment may also be done in emergency circumstances.

D. Extensions of Involuntary Outpatient Commitment:

1. Additional periods of involuntary outpatient commitment may be petitioned for and ordered by the Court in accordance with Sections 304 (b) and 305.
2. The County Administrator shall be responsible for the filing of the Petition for extended treatment and staff and other responsible people will provide testimony and documentation in support thereof.

E. Involuntary Outpatient Commitment Will Terminate When:

1. The person is no longer in need of the services and/or no longer meets the criteria for involuntary commitment.
2. The involuntary outpatient commitment is converted to voluntary outpatient treatment or
3. The commitment expires without renewal or
4. The person is hospitalized under a Section 302 commitment and the hospital files a 306 petition to convert the remaining time on the outpatient commitment to an inpatient commitment.

Notice shall be given to the person that conveys the date of termination of the outpatient commitment. It should be noted that involuntary outpatient commitment is not intended to be a permanent commitment.

GRIEVANCE AND APPEAL PROCEDURES: INVOLUNTARY OUTPATIENT COMMITMENT

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All persons who have been involuntarily committed to outpatient treatment services have the right to file a grievance based on the grievance process approved by the County Administrator.

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