House
Legislative
Analysis
Section

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COURT-ORDERED "ASSISTED OUTPATIENT TREATMENT"

House Bill 5825
Sponsor: Rep. Thomas M. George

House Bill 5826
Sponsor: Rep. Andrew Raczkowski

House Bill 5827
Sponsor: Rep. Virg Bernero

Committee: Health Policy
Complete to 4-18-02

A SUMMARY OF HOUSE BILLS 5825, 5826 AND 5827 AS INTRODUCED 4-9-02

House Bills 5825 and 5827 would amend the Mental Health Code to add a new chapter to allow an individual who was at least 18 years old to petition a court to order another individual to obtain "assisted outpatient treatment" and to specify procedures for the court to follow in considering the petition. House Bill 5826, which would add to the code definitions of several terms used in the proposed chapter, would define "assisted outpatient treatment" or "AOT" as the categories of outpatient services ordered by the court under the proposed chapter. AOT would include intensive case management services or assertive community treatment team services to provide care coordination. AOT could also include one or more of the following categories of services: medication; periodic blood tests or urinalysis to determine compliance with prescribed medications; individual or group therapy; day or partial day programming activities; vocational, educational, or self-help training or activities; alcohol or substance abuse treatment and counseling and periodic tests for the presence of alcohol or illegal drugs for an individual with a history of alcohol or substance abuse; supervision of living arrangements; and any other services within a local or unified services plan developed under the code that are prescribed to treat the individual's mental illness and to assist the individual in living and functioning in the community or to attempt to prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization. The bills are tie-barred. A more detailed summary of the bills' provisions follows.

House Bill 5825. House Bill 5825 would allow any individual who was 18 years of age or older to file with a "court" a petition for an order authorizing assisted outpatient treatment. (As defined in the Mental Health Code, "court" means "the probate court or the court with responsibility with regard to mental health services for the county of residence of the subject of a petition, or for the county in which the subject of a petition was found.") The petition would have to state several specific criteria, as well as facts supporting the petitioner's belief that the subject of the petition met each criterion, for court-ordered AOT. Before ordering an individual for whom treatment was proposed to receive AOT, the court would have to find that the individual met each criterion. Specifically, the court would have to find that the individual proposed for treatment was at least 18 years old, suffered from a mental illness, and was unlikely to survive safely in the community without supervision, based on a clinical determination. The

court would also have to find that the individual either had a history of lack of compliance with treatment for mental illness or was unlikely to voluntarily participate in treatment recommended in a treatment plan because of his or her mental illness. Further, the court would have to find that the individual needed assisted outpatient treatment in order to prevent a relapse or deterioration that was likely to result in serious harm to the individual or others. Finally, the court would have to find that the individual was incapable of making an informed medical decision and that it was likely that the individual would benefit from the treatment. A petition for an order authorizing AOT would have to state each of these criteria for AOT, including the facts supporting the petitioner's belief that the individual who was the subject of the petition met each criterion. The petition would also have to state that the subject of the petition either was present or was reasonably believed to be present in the county in which the petition was filed.

Individual with a durable power of attorney or advance directive. The bill states that nothing in the new chapter would prevent an individual with a durable power of attorney or advance directive from being subject to a petition for an order AOT. However, if the individual had executed a durable power of attorney or advance directive, the court would have to take into account any directions included in those instruments when creating a written treatment plan.

Affidavit. The petition would have to be accompanied by an affidavit of a physician or licensed psychologist other than the petitioner. The affidavit would have to state that, not more than ten days before the petition was filed, either of the following occurred:

- the physician or psychologist had personally examined the subject of the petition *and* he or she recommended AOT for the subject; or

- the physician or psychologist, or his or her designee, had made appropriate attempts to elicit the subject of the petition's cooperation but had not been successful in persuading the subject to submit to an examination, and the physician or psychologist had reason to suspect that the subject met the criteria for AOT.

Petition procedures. The petitioner would have to cause written notice of the petition to be given to the subject of the petition. Notice would also be given to each of the following: the subject's legal counsel/attorney; the petitioner; the prosecuting or other attorney; the hospital director of any hospital in which the subject of a petition is hospitalized; the spouse of the subject of the petition if his or her whereabouts are known; the guardian, if any, of the subject of the petition; the patient advocate appointed by the subject of the petition, if a patient advocate was known to the petitioner or the community mental health services program director; the community mental health services program director in the county in which the subject of the petition resided; and other relatives or persons as the court determined. Unless an appearance had been entered on behalf of the subject of a petition, the court would have to appoint counsel to represent the subject of the petition within 48 hours after it received a petition and affidavit. The appointment of counsel and the appointed counsel would be subject to the code's current provisions.

Hearing. The court would be required to set a date for a hearing at a time not later than seven days after the date that the court received the petition, excluding Sundays and holidays. An adjournment of the hearing would be permitted only for good cause. In granting an adjournment, the court would have to consider the need for further examination by a physician or

licensed psychologist and the potential need to provide AOT expeditiously. If a new hearing date was set, the court would have to cause all of the following persons to be advised of the adjournment and new hearing date: the subject of the petition, any other individual receiving notice, the petitioner, the physician or licensed psychologist whose affidavit accompanied the petition, the appropriate community mental health services program director, and other individuals as the court determined necessary.

The court would have to hear testimony on a petition and could examine the subject alleged to be in need of AOT in or out of court. If the subject of the petition did not appear at the hearing and appropriate attempts to elicit the subject of the petition's attendance had failed, the court could conduct the hearing in the subject's absence. If the hearing was conducted without the subject of the petition, the court would have to set forth the factual basis for conducting the hearing without his or her presence.

The subject of a petition would have the right in any proceeding under the new chapter to present documents and witnesses and to cross-examine witnesses. The rules of evidence in civil actions would be applicable, except to the extent that specific exceptions had been provided for in the proposed chapter or elsewhere by statute or court rule.

Examination of subject of petition. In general, the court could not order AOT unless an examining physician or licensed psychologist, who had personally examined the subject of a petition within the time period commencing ten days before the filing of the petition, submitted an affidavit that included all of the following: the facts supporting the allegation that the subject met each of the criteria for AOT; a statement that the treatment was the least restrictive alternative; and a recommended plan for AOT. If the recommended AOT plan included medication, the physician's or licensed psychologist's affidavit would have to describe the types or classes of medication that could be authorized as well as the medication's beneficial and possible detrimental physical and mental effects. The affidavit would also have to recommend whether the medication was to be self-administered or administered by authorized personnel.

If the subject of a petition had originally refused to be examined by a physician or licensed psychologist, however, the court could ask the subject of the petition to consent to an examination by a court-appointed physician or licensed psychologist. If the subject of the petition did not consent and the court found reasonable cause to believe that the allegations in the petition were true, the court could order peace officers to take the subject of the petition into custody and transport him or her to a hospital for examination by a physician or licensed psychologist. The subject of the petition could be retained under such a court order for not more than 24 hours. (It appears that in such cases the examination would not have to occur within the time period commencing ten days before the filing of the petition.)

The examination of the subject of a petition could be performed by the physician or licensed psychologist whose affidavit accompanied the petition. The examination could also be performed by another physician or licensed psychologist who planned to submit an affidavit as the examining doctor at a hearing, if the doctor was granted privileges by that hospital or otherwise authorized by the hospital to do so.

Assisted outpatient treatment program. Each director of a community mental health services program would be required to operate, direct, and supervise an "assisted outpatient

treatment program." "Assisted outpatient treatment program" would be defined as the system to arrange for and coordinate the provision of AOT, to monitor treatment compliance by assisted outpatients, to evaluate the condition or needs of assisted outpatients, to take appropriate steps to address the needs of assisted outpatients, and to ensure compliance with court orders. Directors of community mental health services programs could operate joint AOT programs. The bill specifies that its provisions would not preclude the combination or coordination of efforts between local community mental health services programs and hospitals in providing and coordinating assisted outpatient treatment. Upon approval by the director of the Department of Community Health (DCH), a hospital director could operate, direct, and supervise an AOT program.

House Bill 5827. House Bill 5827 would add the second half of the new chapter dealing with AOT. In general, these provisions deal with the powers and duties of the court and the assisted outpatient treatment program director.

Proposed treatment plan. The court could not order AOT unless an examining physician or licensed psychologist appointed by the AOT program director developed and provided to the court a proposed written treatment plan. The proposed treatment plan would have to include case management services or assertive community treatment teams to provide care coordination. If a proposed treatment plan included medication, the plan would have to state whether the medication should be self-administered or administered by authorized personnel and specify the type or types of medication most likely to provide maximum benefit for the subject of the petition. In developing a proposed treatment plan, the physician or licensed psychologist would have to provide an opportunity to actively participate in the development of the plan to all of the following persons: the subject of the petition; the subject of the petition's guardian, if applicable; the psychiatrist, physician, or licensed psychologist who had been providing services to the subject of the petition, if applicable; a relative, a close friend, or an individual otherwise concerned with the welfare of the subject of the petition; and the patient advocate, if applicable. If the petitioner was a director of a community mental health services program or his or her designee, the proposed treatment plan would have to be provided to the court before the hearing on the petition. If the petitioner was an individual other than the director of a community health services program or his or her designee, the proposed treatment plan would have to be provided to the court no later than the date set by the court (as described below under "Court's finding").

Affidavit. The court could not order AOT unless a physician or licensed psychologist submitted an affidavit to explain the proposed treatment plan. The affidavit would have to state the categories of AOT recommended, the rationale for each category, and facts establishing that the treatment was the least restrictive alternative. If the treatment plan recommended medication, the affidavit would also have to state the types or classes of medication recommended, the medication's beneficial and possible detrimental physical and mental effects, and whether the medication was to be self-administered or administered by an authorized professional.

Court's finding. If, after hearing all relevant evidence, the court found that the subject of a petition did not meet the criteria for AOT, the court would dismiss the petition. If the court found by clear and convincing evidence that the subject of the petition did meet the criteria for AOT and that there was no appropriate less restrictive alternative, the court could order the subject of the petition to receive AOT for an initial period not to exceed six months. The order

would have to set forth an AOT plan that included all of the categories of AOT that the subject of the petition would receive. The court could not order treatment that had not been recommended by the examining physician or licensed psychologist or included in the proposed treatment plan. If the court found by clear and convincing evidence that the subject of a petition met the criteria for AOT but the court had not yet been provided with the required proposed treatment plan and affidavit, the court would have to order the community mental health services program director (or his or her designee) to provide the court with the plan and affidavit not later than six days after the date of the order, excluding Sundays and holidays. The court could order the subject of the petition to be retained for an examination by a physician or licensed psychologist designated by the community mental health services program director or his or her designee. After receiving the proposed treatment plan and affidavit, the court could order AOT as otherwise provided.

A court could order the subject of a petition to self-administer psychotropic drugs or accept the administration of psychotropic drugs by authorized personnel, and the order could specify the types of psychotropic drugs. The order would be effective for the duration of the AOT.

A court order for AOT would have to direct the community mental health services program director (or his or her designee) to provide or arrange for all categories of AOT for the assisted outpatient throughout the period specified in the order.

Assisted outpatient treatment program director. The assisted outpatient treatment program director would be required to provide a written report to the applicable community mental health services program director within five days after the date the court order was issued. The written report would have to include all of the following: a copy of the court order; a copy of the written treatment plan; the identity of the case manager or assertive community treatment team, including the name and contact data of the organization that the case manager or assertive community treatment team member represented; the identity of the service providers; and the date on which services began or would begin.

The program director or his or her designee would have to petition the court for approval before instituting a proposed "material change" in the AOT order unless the change was addressed in the order. ("Material change" would mean an addition to or a deletion from a category of AOT from a court order that had been issued.) Notice of such a petition would have to be served on the individuals required to be served the original AOT petition. Changes other than material changes could be instituted by the AOT program director without prior court approval.

If the AOT program director or his or her designee determined that the assisted outpatient required further AOT, he or she could petition the court before the expiration of the period of AOT ordered by the court for a subsequent order authorizing continued AOT for up to one year after the original order's expiration date. If the director had not petitioned the court for a subsequent order within 15 days before the expiration date of the period of AOT ordered by the court, a parent, guardian, spouse, sibling, or child of an assisted outpatient could petition for a subsequent order. In general, the procedure for obtaining such a subsequent order would have to accord with the provisions of obtaining an original AOT order. If the petitioner for a subsequent order was an AOT program director and the assisted outpatient informed the court by affidavit that he or she agreed to continued AOT, however, the court could order continued AOT without

a hearing. If a petition for a subsequent AOT order had been filed, the initial order for AOT would remain in effect until a hearing was held on that petition.

Staying, vacating, or modifying order. In addition to another right or remedy available by law with respect to an order for AOT, on notice to the AOT program director and the original petitioner, the patient, his or her guardian, or his or her legal counsel could apply to the court to stay, vacate, or modify the order.

Failure/refusal to comply with order. If, in the clinical judgment of a physician or licensed psychologist, an assisted outpatient had failed or refused to comply with the treatment ordered by the court and efforts had been made to solicit compliance, the AOT program director or his or her designee would direct a peace officer to take into productive custody and transport the assisted outpatient to a facility designated to receive assisted outpatients by the community mental health services program director. A peace officer contacted for this purpose would be required to carry out this directive. At the designated facility, the assisted outpatient would be examined to determine whether he or she had a mental illness for which involuntary mental health treatment was necessary under the Mental Health Code. If an assisted outpatient was taken into protective custody, he or she could be retained for up to 72 hours for observation, care, and treatment and for further examination in the hospital to allow a physician or licensed psychologist to determine whether the assisted outpatient had a mental illness and was in need of "involuntary mental health treatment" in a hospital in accordance with the code. Continued involuntary hospitalization after the initial 72-hour period would have to accord with the provisions of the code relating to involuntary hospitalization. If at any time during the 72-hour period the assisted outpatient was determined not to meet the code's involuntary hospitalization provisions and did not agree to stay in the hospital as a voluntary or informal patient, he or she would have to be released.

An assisted outpatient could be medicated or tested over his or her objection if both of the following occurred: the assisted outpatient failed or refused to take medication or submit to testing as required by a court order issued under the proposed chapter; and the AOT program's physician or licensed psychologist determined that there had been sufficient efforts to solicit the assisted outpatient's compliance with the requirements of the court order. If it was necessary to enforce a court order in this manner, that enforcement could occur either at the assisted outpatient's residence or at a treatment center designated by the community mental health services program director or his or her designee, whichever location the assisted outpatient chose. An assisted outpatient who physically resisted such treatment or testing would be transported to a treatment center designated by the community mental health services program director or his or her designee. At the treatment center, a physician or licensed psychologist would administer the medication or testing in a manner that was clinically appropriate, safe, and consistent with the assisted outpatient's dignity and privacy. Subsequent retention of an assisted outpatient could only be made according to other provisions of the code. Upon request of an assisted outpatient's AOT program physician or licensed psychologist, an AOT program director, or the director's his or her designee, a peace officer would take the assisted outpatient into protective custody and transport him or her to the treatment center. An assisted outpatient could only be retained at a treatment center for the time period reasonably necessary to administer treatment or testing.

Miscellaneous. The determination by a court that an individual needed AOT would not be a determination that the individual was an incapacitated individual as defined in the Estates and Protected Individuals Code.

An individual making a false statement or providing false information or false testimony in a petition or hearing would be subject to criminal prosecution.

The bill states that nothing in the chapter would affect the ability of a hospital director to receive, admit, or retain patients who otherwise met the provisions of the act regarding receipt, retention, or admission.

The DCH, in consultation with the state court administrative office, would be required to prepare educational and training materials on the use of the chapter to be made available to local governmental units, providers of mental health services, judges, court personnel, law enforcement officials, and the general public.

House Bill 5826. House Bill 5826 would add several definitions to the Mental Health Code's list of general definitions. The bill would also make two other changes that appear to be technical in nature and do not appear to be related specifically to the proposed provisions dealing with assisted outpatient treatment. These changes are described below.

"Emergency situation." The bill would amend the code's basic definition of "emergency situation" to mean a situation in which an individual is experiencing a serious mental illness or a developmental disability or a *minor* is experiencing a serious emotional disturbance, and one or more of several conditions applies. Currently the latter part of this basic definition refers to a *child* who is experiencing a serious emotional disturbance.

Evaluation of family support subsidy program. The code currently requires the DCH to conduct an evaluation of the family support subsidy program annually and to forward its evaluation to the House and Senate committees with legislative oversight of *social* services and mental health. The bill would require instead that the DCH forward its evaluation to the House and Senate committees with legislative oversight of *human* services and mental health.

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■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.