

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. House Bill 1233

PRINTER NO. 4252

AMOUNT

No Fiscal Impact

FUND

General Fund

DATE INTRODUCED

April 17, 2017

PRIME SPONSOR

Representative Murt

DESCRIPTION

House Bill 1233 amends the Mental Health Procedures Act to establish a new standard for assisted outpatient treatment ("AOT") for seriously mentally ill individuals.

This bill defines "assisted outpatient treatment" as community-based outpatient social, medical, and behavioral health treatment services ordered by a court for a severely mentally disabled person, which may include one or more of the following services:

- Community psychiatric supportive treatment;
- Assertive community treatment;
- Medications;
- Individual or group therapy;
- Peer support services;
- Financial services;
- Housing or supervised living services;
- Alcohol or substance abuse treatment when the treatment is a co-occurring condition for a person with a primary diagnosis of mental health illness; and
- Any other service prescribed to treat a person's mental illness that either assists the person in living and functioning in the community or helps prevent a relapse or a deterioration of a person's condition that would be likely to result in a substantial risk of serious harm to the person or others.

The bill defines "qualified professional" as a mental health professional who has a graduate degree, or an international equivalent, from an institution accredited or evaluated by an organization recognized by the Department of Human Services (department) in a generally recognized clinical discipline that includes mental health clinical experience; has mental health clinical experience; and is licensed or certified by the Commonwealth.

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AOT Plan

House Bill 1233 describes an AOT plan as an individualized treatment plan developed by a qualified professional or the treatment team that is ordered by a court for involuntary outpatient civil commitment of a person. The legislation requires the plan to be reviewed by a psychiatrist or a licensed clinical psychologist prior to submission to the court.

The bill stipulates that the provisions regarding the AOT plan shall not be construed to require a county to provide a service that is not available in the county or for which there is no funding source or available provider.

AOT Implementation by Counties

The county administrator may determine annually that the county mental health and intellectual disabilities program will not provide AOT if the administrator complies with all of the following:

- Provides notice to the Secretary of Health that the county program will not provide AOT; and
- Notifies the county local authority of the decision not to offer AOT.

The bill requires the Secretary of Health to grant an annual waiver to any county that has provided notice.

Nothing in this section shall be construed to permit a county or the Secretary of Health to waive existing obligations of a county to serve seriously mentally ill residents.

AOT Implementation by Department

The Department of Human Services shall modify the standard involuntary commitment petition forms and process to describe, define and incorporate AOT.

The Department of Human Services shall develop a separate involuntary assisted outpatient treatment commitment petition form which includes:

- The eligibility criteria for AOT; and
- After consultation with the Pennsylvania College of Emergency Physicians, appropriate guidance and instructions to the petitioner on use of emergency departments in conjunction with the petition process for involuntary inpatient commitment or assisted outpatient treatment.

Determination of Need for AOT

The bill requires the need for AOT to be shown by clear and convincing evidence that the person would benefit from AOT as manifested by evidence of behavior that indicates all of the following:

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- The person is unlikely to survive safely in the community without supervision, based on a clinical determination;
- The person, because of the person's mental illness, is unlikely to participate voluntarily in necessary treatment, and the person has been offered voluntary treatment but has not accepted it or has refused to participate on a sustained basis in voluntary treatment;
- The person is in need of treatment in order to prevent a relapse or deterioration that would be likely to result in substantial risk of serious harm to others or himself; and
- The person has a history of lack of voluntary adherence to treatment for mental illness and one of the following applies:
 - Within the previous 12 months prior to the filing of a petition seeking AOT, the person's failure to adhere to treatment has been a significant factor in necessitating involuntary inpatient hospitalization or receipt of services in a forensic or other mental health unit of a correctional facility. The 12-month period may be extended under specified circumstances.
 - Within the previous 48 months, the person's failure to adhere to treatment resulted in one or more acts of serious violent behavior toward others or himself or threats of, or attempts at, serious physical harm to others or himself. The 48-month period may be extended under specified circumstances.

The bill stipulates that a person who meets only the AOT criteria as outlined above shall not be subject to involuntary inpatient hospitalization. Involuntary inpatient commitment requires a separate determination.

Procedures for Initiating AOT for Persons Already Subject to Involuntary Treatment

The bill authorizes the county administrator or the director of a facility to petition for AOT for persons who are already subject to involuntary inpatient treatment or who have a mental illness subject to treatment in a hospital, forensic facility or a correctional institution and are ready for release.

The bill requires the petition to be in writing, on a form adopted by the department, and to contain a statement of the facts constituting reasonable grounds to believe that the person is no longer in need of involuntary inpatient treatment and is determined to be in need of AOT. A copy of the petition shall be served on the person, their attorney, and those designated to be kept informed and shall include an explanation of the nature of the proceedings, the person's right to an attorney and to the services of an expert in the field of mental health.

The bill requires a hearing on the petition to be held within 5 days after the filing of the petition. Treatment may be maintained pending the determination of the petition.

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Procedures for Initiating AOT for Persons Not in Involuntary Treatment

House Bill 1233 authorizes any responsible party to file a petition in the court of common pleas requesting AOT for any person determined to be in need of AOT and who is not already in involuntary treatment or AOT.

The bill requires the petition to be in writing on a form adopted by the department, which states the reasonable grounds to believe that the person is in need of AOT. The petition shall include the name of any examining physician and one of the following statements:

- A statement of a psychiatrist or a statement signed by a clinical psychologist and a statement signed by a physician stipulating that the person who issued the petition has examined the person and is of the opinion that the person is in need of AOT.
- A written statement by the applicant, under oath, that the person has refused to submit to an examination by a psychiatrist, or by a clinical psychologist and physician.

The bill requires the court to appoint an attorney to represent the person and set a date for a hearing if the petition demonstrates reasonable cause. The court shall direct the person to appear for a hearing by summons. The legislation authorizes the court to issue a warrant if it believes that the person will not appear voluntarily.

Upon motion by the court, the petitioner or the individual, the court may order an examination by a psychiatrist or other qualified professional if all of the following occurs:

- A qualified professional, who is appointed by the court and who is not a psychiatrist or licensed clinical psychologist, is selected from a panel designated by the county administrator based on specified experience and expertise;
- The examination is conducted on an outpatient basis and the person has the right to have counsel present; and
- The written report is given to the court and counsel at least 48 hours prior to the hearing.

AOT Hearing Procedure

The bill requires a hearing to be conducted in accordance with the following:

- A treatment team shall provide a written proposed AOT plan to the court, which shall state all recommended treatment services and treatment providers;
- In developing the AOT plan, the treatment team shall take into account any existing advance directive for mental health treatment and shall provide the following persons with an opportunity to participate:
 - The person believed to be in need of court-ordered AOT;
 - All current treating providers;

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- Upon the request of the person believed to be in need of treatment, an individual significant to the person including any relative, close friend or individual otherwise concerned with the welfare of the person; and
- Any authorized guardian or other surrogate decision-maker.
- The AOT plan shall include case management services or an assertive community treatment team to provide care coordination and AOT services recommended by the treatment team. Any plan that includes medication shall state whether the medication should be self-administered or administered by a specified provider. Prohibits forced administration of medication;
- A qualified professional, who has personally examined the individual within 10 days of the filing of the petition, shall provide testimony in support of the finding that the individual meets all of the criteria for AOT and in support of the AOT plan;
- A decision shall be rendered within 48 hours after the presentation of evidence; and
- If the person is found to be in need of AOT, the court shall order the person to receive AOT for a period not to exceed 90 days. If the AOT plan includes medications, the court order shall authorize the treatment team to perform routine medication management in accordance with their professional judgment and under the supervision of the prescribing physician.

If a person fails to adhere materially to the AOT plan, the court may impose any of the following:

- Set a modification hearing;
- Amend the AOT plan; and
- Issue an order for the person to be examined in accordance with section 302 to determine if the person meets the standards for involuntary inpatient treatment.

If the court determines the person has failed to adhere to the AOT plan, the court may not hold the person in contempt or otherwise sanction the person solely based on his or her failure to comply.

The person subject to AOT may petition the court for enforcement of a service specifically included in their AOT plan.

A copy of the treatment plan shall be made available to the court for purposes of proceedings for failing to adhere to the plan or the person subject to AOT petitioning the court for a specific service included in their AOT.

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Extension of AOT

If a court determines that the person subject to AOT continues to meet the criteria for AOT, treatment may be extended for a period not to exceed 180 days. At the expiration of the extended period of AOT, the court may order treatment for an additional 180 days upon the application of the county administrator or the treatment team. The additional period of involuntary treatment shall not exceed 180 days.

This act shall take effect in 180 days.

FISCAL IMPACT:

House Bill 1233 will have no adverse impact to the Commonwealth. The Department of Human Services can accomplish the implementation of House Bill 1233 within existing staffing and administrative funding levels. House Bill 1233 does not require a county to include AOT as a treatment services if it is not available in the county or if there is no funding available for AOT. In addition, the county can annually decide not to provide AOT. If the county provides AOT, there should be savings from a reduction in costs related to the use of outpatient treatment compared to inpatient hospitalization and incarceration. Based upon *The State and Community Consideration for Demonstrating the Cost-Effectiveness of AOT Services Report*, which analyzed the implementation of AOT in New York State, the average total system cost per person prior to AOT was \$104,518, the average total system cost per person post AOT was \$49,729 and an average net savings of \$54,789 per person. According to the report, the savings were attributed to the reduction in "the incidence of psychiatric emergency crisis services, hospitalization, and criminal justice involvement" which was greater than the higher community mental health service costs.