



35 East Gay Street ■ Suite 401 ■ Columbus, OH 43215-3138 ■ Phone: 614/228-0747 ■ Fax: 614/228-0740 ■ www.TheOhioCouncil.org

The Ohio Council of Behavioral Health & Family Services Providers

SB 43

Court Ordered Outpatient Treatment

FAQ for Behavioral Health Providers

1. What does SB 43 do and when did it become law?

Ohio's recently passed Court Ordered Outpatient Treatment Law (SB 43) went into effect September 17, 2014.

The intent of this law is to give family members and caretakers a means to access behavioral health treatment services on behalf of a mentally ill person when that person has a demonstrated history of deteriorating and becomes dangerous to self or others before the person meets the "imminent risk" criteria required for involuntary inpatient hospitalization.

2. Does SB 43 require any new courts or programs?

No. It is anticipated that the implementation and use of court ordered outpatient treatment will vary greatly across Ohio. Although courts may decide to do so, the law does not require courts to establish specific specialty dockets, dedicated treatment teams or any other new programs. Thus, providers should take this opportunity to work collaboratively with their local probate judges, court personnel, ADAMH boards, law enforcement and community stakeholders to identify appropriate processes and responses to court ordered outpatient treatment.

3. Did the General Assembly increase funding for court ordered mental health?

No. The law did not include any additional funding for services. There is concern that implementation may exacerbate existing challenges related to access and capacity. Therefore, providers are urged to work with their courts and ADAMH Boards to ensure both capacity and funding for services exists.

4. How will a court order outpatient services and to whom will a person be committed?

Using the same type of process that has traditionally been used to hospitalize people with mental illness, a court may find that a person is a "mentally ill person subject to court order" and may order such person committed to an

entity or person, including an ADAMH board or service provider designated by an ADAMH board, in order to receive outpatient treatment. An order to commit a person for outpatient treatment may include a requirement to provide information to an ADAMH board or provider designated by an ADAMH board regarding a person's progress with a treatment plan.

5. Who determines what treatment a "mentally ill person subject to a court order" should receive?

The entity or person to whom the person has been committed shall determine the appropriate outpatient treatment. If a court commits a person to an entity or person who is not a treatment provider, it is important that a treatment provider be involved in developing the treatment plan to ensure that the services provided are clinically appropriate. The process for involving a provider in treatment decisions may be included in a court order or may be included as part of procedures developed by stakeholders implementing this law.

6. What services may be included in a court-ordered outpatient treatment situation?

The treatment plan shall be based on patient needs and the active participation of the patient in establishing objectives and goals for treatment shall be documented. In establishing the treatment plan, consideration should be given to the availability of services which may include but are not limited to all of the following:

- a) Community psychiatric supportive treatment ("CPST")
- b) Medications
- c) Individual or group therapy
- d) Assertive community treatment
- e) Peer support services
- f) Financial services
- g) Housing or supervised living services
- h) Alcohol or substance abuse treatment

- i) Any other services prescribed to treat the patient's mental illness and to either assist the patient in living and functioning in the community or to help prevent a relapse or a deterioration of the patient's current condition.

Note that CPST, medication and therapy (a)-(c) are Medicaid-covered services. Substance abuse services (h) may also be covered by Medicaid. Assertive community treatment (d) and peer support services (e) are not covered by Medicaid. Financial services (f) and housing services (g) are not health care or mental health services and are not covered by Medicaid.

Given the breadth of services which may be included in a treatment plan and the uncertainty of funding for non-Medicaid services, it will be important for providers to establish a clear understanding with their courts and ADAMH Boards regarding to whom a person will be committed, the process by which clinicians will develop a treatment plan, the scope of services which may be included in treatment plans, and funding for services provided to people receiving court ordered outpatient services. Payment is discussed in more detail in FAQ #9.

7. What information, to whom, and under what circumstances may a provider disclose information about a person receiving court ordered outpatient treatment?

Ideally, when the probate court issues an order that finds that a person is a "mentally ill person subject to court order" and requires such person to receive outpatient services, that order should include requirements for disclosure about treatment.

The court order should specify the circumstances under which a provider is required to disclose information, describe the information to be disclosed, and identify the entity(ies) or person(s) to whom the provider is required to disclose the information. For example, the court may want to order the provider to provide reports about a person's attendance, participation and/or compliance with a treatment plan either on a regular schedule or as requested by the court in order for the court to determine whether continued commitment to outpatient services is appropriate. The court might also

order the provider to notify the court, and/or the ADAMH Board if the person is committed to the ADAMH Board, if the person fails to comply with a treatment plan.

It would also be helpful if the court's order required the "mentally ill person subject to court order" to (1) attend treatment and comply with the treatment plan and (2) sign an authorization for the provider to disclose information to the court (and ADAMH Board if applicable) regarding treatment and compliance with the treatment plan. Further, the court order should require the provider to report to the court if the person fails to comply with these requirements.

This type of order will require a provider to communicate with the ordering court (and ADAMH Board if applicable) regarding a person's compliance with the treatment plan developed in response to the court ordered treatment. Both Ohio law and HIPAA permit disclosures pursuant to this type of court order.

In order to ensure communication regarding court-ordered treatment, the provider must be ordered so that it is required, rather than simply permitted, to notify the court (and an ADAMH board if applicable) if a person subject to a court order fails to show up to begin court ordered treatment or stops attending the court ordered treatment or in any way fails to comply with the treatment plan.

8. If substance abuse services are part of a court-ordered treatment plan, how can a provider make disclosures?

If substance abuse services are included in a person's treatment plan, federal rules governing disclosure of substance abuse treatment information may provide some challenges to providers in disclosing information about substance abuse services provided pursuant to the treatment plan. However, if the court orders the person to authorize the provider to disclose information regarding compliance with the treatment plan to the court, and if the person does so, the provider may make disclosures regarding substance abuse treatment. If the patient refuses to authorize disclosures, or

revokes such authorization, in violation of such a court order, the court may order further proceedings to evaluate the situation and the person's noncompliance.

Further, if the court orders the provider to report noncompliance with the a court order, the provider may report the failure to comply in a general way and without specifically disclosing information regarding the substance abuse services. If a provider reports noncompliance with a court order, the court may determine it is appropriate to hold further hearings and, if necessary, issue further orders for disclosure regarding substance abuse treatment information pursuant to procedures outlined in 42 C.F.R. Part 2 or as otherwise permitted by law.

9. How will providers be paid for services provided to a "mentally ill person subject to court order"?

Short answer: For people who are Medicaid eligible, a provider may bill Medicaid for services covered by Medicaid. For people who are not Medicaid eligible or for services that are not covered by Medicaid, a provider will need to a contract with a payor, such as an ADAMH board.

Additional payment and contracting considerations: it is advisable for providers who will serve people who are court ordered for outpatient treatment to negotiate agreements governing the process, parameters and payment for court ordered outpatient services. Such agreements may be stand-alone agreements or may be included in a provider's agreement with an ADAMH Board for non-Medicaid services.

Key Issues for Negotiation of Agreements Governing Court Ordered Outpatient Services:

- To whom will the court commit people (i.e., the ADAMH board or a provider designated by the ADAMH board);
- Responsibility for creating a treatment plan;
- Services which will be available to include on treatment plans;
- Provider treatment capacity and activity limitations and priority of treatment issues;
- Responsibility for payment for services included on a treatment plan;

- Payment rates and process for payment;
- Process for reporting compliance/non-compliance with court-ordered treatment.

It is important that the roles and responsibilities for court-ordered treatment are established because the law provides only a process by which a person may be court ordered into treatment but leaves the details regarding the treatment to be provided to be determined locally. The law includes a wide array of services which may be included as part of a treatment plan, including services such as housing and financial services. While such services are important, neither housing nor financial services are mental health treatment services and community mental health agencies may not be equipped or qualified to provide these services. Depending upon the area, such services may not be available and/or there may not be funds available to pay providers or others to provide these services. Before providers agree to provide such services or agree to accept people for court-ordered treatment who need such services, providers should be sure they have arrangements in place which would permit them to provide and be paid for such services.

Even for traditional community behavioral health services, providers will need to have contracts in place for payment for non-Medicaid services. If a provider already has a contract for non-Medicaid services with a county ADAMH board, the provider will need to negotiate provisions and funding regarding court-ordered treatment. This may be difficult since it is hard to predict the volume of services which will be needed for court-ordered treatment. Providers and boards should negotiate priorities and a plan in the event court-ordered treatment impacts availability of services to traditional non-Medicaid clients.

10. Is court-ordered treatment “forced medication”?

No. Involuntary administration of medication may only occur in extremely limited circumstances when a person is involuntarily hospitalized.

11. What impact do advanced directives have on court-ordered treatment?

If a person subject to court-ordered treatment has executed an advanced directive for mental health treatment, the treatment team developing the person's treatment plan must consider any directions contained in the person's advanced directive in the development of the person's treatment plan.

12. What does the bill's immunity provision mean?

The bill provides immunity to providers (and others) from criminal and civil liability, when they, acting in good faith upon actual knowledge or information thought by them to be reliable, assist in the hospitalization or discharge, determination of appropriate treatment, court ordered treatment or related judicial proceedings. See, O.R.C. § 5122.34. This provision does not change a provider's responsibility under Ohio's Duty to Protect Law found at O.R.C. § 2305.51. This provision does not change a provider's professional duty of care and does not provide any immunity for alleged negligent or intentional acts.