

Overview of Involuntary Hospitalization and Progressive Treatment Program Laws



**COMMITTEE TO STUDY COURT-ORDERED
TREATMENT FOR SUBSTANCE USE DISORDER**

SEPTEMBER 16, 2022

**Daniel Potenza, MD, Clinical Director
Dorothea Dix Psychiatric Center**

**Molly Moynihan, AAG
Office of the Attorney General**

Agenda



- **Overview of Involuntary Hospitalization Process**
 - Key Statutory Provisions
 - Protective Custody
 - Emergency Hospitalization Procedures (“Blue Paper”)
 - Judicial Procedure and Commitment (“White Paper”)

- **Overview of Progressive Treatment Program Process**
 - Key Statutory Provisions
 - Judicial Procedure
 - “Green Paper” Admission to Hospital

Involuntary Hospitalization Statutes



- Title 34-B, Ch. 3, Subch. 4 “Hospitalization”
 - Definitions (§ 3801)
 - Protective custody (§ 3862)
 - Emergency “blue paper” hospitalization (§ 3863)
 - Post-admission judicial procedures and commitment (§ 3664)
 - Discharge (§ 3871)
 - Other sections, including powers of the DHHS Commissioner (§ 3802), patient rights (§ 3802), habeas corpus (§ 3804), voluntary admission to a psychiatric hospital (§ 3831), freedom to leave (§ 3832), etc.

Involuntary Hospitalization: Definitions



- **Mentally ill person § 3801(5)**
 - A person having a psychiatric or other disease that substantially impairs that person's mental health or creates a substantial risk of suicide
 - Includes persons suffering effects from the use of drugs, narcotics, hallucinogens or intoxicants, including alcohol
 - A person with developmental disabilities or a person diagnosed as a sociopath is not for those reasons alone a mentally ill person

Involuntary Hospitalization: Definitions



- **Likelihood of Serious Harm (hospitalization) § 3801(4-A)**
 - (A) A substantial risk of harm to the person as manifested by recent threats of, or attempts at, suicide or serious self-inflicted harm
 - (B) A substantial risk of physical harm to other persons as manifested by recent homicidal or violent behavior or by recent conduct placing others in reasonable fear of serious physical harm
 - (C) A reasonable certainty that the person will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the person adequately from impairment or injury

Protective Custody § 3862



- When may a law enforcement officer take a person into protective custody?
 - If a law enforcement officer has probable cause to believe that a person may be **mentally ill** and due to that condition the person poses a **likelihood of serious harm** as defined in section 3801, subsection 4-A, paragraph A, B or C, or if a law enforcement officer knows that a person has an advance health care directive authorizing mental health treatment and the officer has probable cause to believe that the person lacks capacity
- What happens once the law enforcement officer decides to take the person into protective custody?
 - Law enforcement officer shall deliver the person immediately for examination by a medical practitioner

Emergency Involuntary Hospitalization (§ 3863)



- What steps must occur for a person to be admitted to a psychiatric hospital on an emergency basis?
 - Application
 - Certifying Examination
 - Judicial Endorsement
 - Admission to a Psychiatric Hospital
- “Blue Paper” sections
- What standards apply?
 - Person is mentally ill, and because of that illness, poses a likelihood of serious harm
 - Adequate community resources are unavailable for care and treatment of the person’s mental illness

Emergency Involuntary Hospitalization (§ 3863)



- What happens following the person's emergency admission to a psychiatric hospital? Discharge, voluntary stay, or continued involuntary admission?
 - Within 24 hours: staff medical practitioner must examine patient to certify in a second opinion the findings under Section 2 of the “blue paper;” otherwise, the person must be immediately discharged (§ 3863(7))
 - Within 3 days: hospital CAO determines if further hospitalization needed, and if so, whether patient can be admitted on a voluntary basis; if not, CAO (or Commissioner for non-state hospitals) initiates “white paper” application with the District Court (§ 3863(5-A))

Judicial Procedure & Commitment (§ 3864)



- “White paper” application filed in District Court
- Hospital CAO provides notice to the person and guardian or next of kin
 - Copy of application
 - Right to retain attorney or have one appointed
 - Right to select independent examiner
- District Court issues Notice of Hearing
 - Attorney and independent examiner appointed
 - Hearing set within 14 days of date of application
- Independent examiner meets with person and prepares report to the court

Judicial Procedure & Commitment (§ 3864)



- Hearing: § 3864(5)
 - Held at hospital
 - Confidential
 - Participants include patient, counsel, court, examiner, expert psychiatric witness, others
- Required Findings: § 3864(6)
 - Clear and convincing evidence that the person is **mentally ill** and that the person's recent actions and behavior demonstrate that the person's illness poses a **likelihood of serious harm**;
 - Adequate community resources for care and treatment of the person's mental illness are unavailable;
 - Inpatient hospitalization is the best available means for treatment of the patient; and
 - Court is satisfied with individualized treatment plan offered by the hospital
- Maximum Length of Commitment: § 3864(7)
 - Initial hearing: Court may order commitment for a period not to exceed 4 months
 - Subsequent hearings: for a period not to exceed one year

Post-Commitment Considerations



- **Discharge (§ 3871)**
 - Examination of patient required “as often as practicable, but no less often than every 30 days” to determine patient’s mental status and need for continuing hospitalization
 - Mandatory conditions for discharge include when “conditions justifying hospitalization no longer obtain”
- **Continued Involuntary Hospitalization (§ 3864(8))**
 - If deemed necessary, new “white paper” application submitted and same judicial process triggered

Progressive Treatment Program (§ 3873-A)



- What is the Progressive Treatment Program (PTP)?
 - The PTP is a form of court-ordered outpatient services for patients with severe and persistent mental illness who would benefit from an individualized treatment plan in the community.

Progressive Treatment Program: Definitions



- Likelihood of serious harm (§ 3801(4-A)(D))
 - In view of the person's treatment history, current behavior and inability to make an informed decision, a reasonable likelihood that the person's mental health will deteriorate and that the person will in the foreseeable future pose a likelihood of serious harm as defined in paragraphs A, B or C

- Severe and persistent mental illness (§ 3801(8-A))
 - Diagnosis of one or more qualifying mental illness or disorders plus a listed disability or functional impairment that has persisted continuously or intermittently or is expected to persist for at least one year as a result of that disease or disorder
 - ✦ Qualifying mental illnesses or disorders:
 - schizophrenia, schizoaffective disorder or other psychotic disorder major depressive disorder, bipolar disorder or a combination of mental disorders sufficiently disabling to meet the criteria of functional disability
 - ✦ Listed disabilities or functional impairments which must result from the diagnosed qualifying mental illness or disorder include:
 - inability to adequately manage one's own finances, inability to perform activities of daily living and inability to behave in ways that do not bring the attention of law enforcement for dangerous acts or for acts that manifest the person's inability to protect the person from harm.

Progressive Treatment Program: Judicial Process



- **Criteria for PTP admission (§ 3873-A(1))**
 - Patient suffers from severe and persistent mental illness
 - Patient poses a likelihood of serious harm
 - Benefit of a suitable individualized treatment plan
 - Available licensed and qualified community providers to support the treatment plan
 - Patient unlikely to follow the plan voluntarily
 - Court-ordered compliance will help protect the patient from interruptions in treatment, relapses or deterioration of mental health
 - Compliance will enable the patient to survive more safely in a community setting without posing a likelihood of serious harm

Progressive Treatment Program: Judicial Process



- **Application to District Court**
 - Certificate of a medical practitioner that criteria for PTP satisfied
 - Proposed individualized treatment plan
 - Identification of one or more licensed and qualified community providers willing to support the plan
- **Applicant provides notice to the person and guardian or next of kin**
 - Copy of application
 - Right to retain attorney or have one appointed
 - Right to select independent examiner
- **District Court issues Notice of Hearing**
 - Attorney and independent examiner appointed
 - Hearing set within 14 days of date of application
- **Independent examiner meets with person and prepares report to the court**
- **Hearing**

Progressive Treatment Program



- **PTP Order**
 - Following hearing, District Court may enter patient's admission to the PTP for a period of up to 12 months directing patient to follow plan and identifying incentives for compliance and potential consequences for non-compliance

- **Post-Order**
 - "Green Paper" (§ 3873-A(7)(B))
 - ✦ Court may endorse an application for the patient's admission to a psychiatric hospital under the emergency hospitalization procedures set forth in § 3863 conditioned upon a certificate from a medical practitioner that the patient has failed to comply with an essential requirement of the treatment plan

 - Motion for Enforcement (§ 3873-A(8))

 - Motion to dissolve, modify, or to extend the term of the treatment plan for an additional term of one year (§ 3873-A(9))

Conclusion



- Questions