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BILL ANALYSIS



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Senate Bills 683 through 686 (as introduced 9-16-03)

Sponsor: Senator Tom George (S.B. 683)  
Senator Bruce Patterson (S.B. 684)  
Senator Virg Bernero (S.B. 685)  
Senator Gilda Z. Jacobs (S.B. 686)

Committee: Health Policy

Date Completed: 10-21-03

**CONTENT**

**The bills would amend the Mental Health Code to do all of the following:**

- **Extend the definition of "person requiring treatment" to someone not complying with recommended treatment, under certain circumstances; and provide that the person would be eligible for "assisted outpatient treatment" (AOT).**
- **Allow an individual to file a petition with the court asserting that a person met the criteria for AOT.**
- **Require the court to order the subject of a petition to receive AOT through a community mental health services program (CMHSP), if he or she met the criteria and were not scheduled to begin outpatient treatment.**
- **Require an AOT order to include case management services or assertive community treatment team services, and identify other treatment that could be included.**
- **Require a court, in developing an order for AOT, to consider any preferences and medication experiences of the subject of the petition, as well as any directions included in a durable power of attorney or advance directive.**
- **Allow a court to order AOT as an alternative to hospitalization.**
- **Limit the duration of AOT ordered by a court under an order of involuntary mental health treatment.**
- **Require an agency or mental health professional immediately to report an individual who did not comply with a court order for AOT.**
- **Allow a court to require, without a hearing, that a noncompliant individual**

**be hospitalized for the duration of the order.**

The bills are tie-barred to each other. They are described in further detail below.

**Senate Bill 683**

The bill would amend the definition of "person requiring treatment" in Chapter 4 of the Code, which provides for civil admission and discharge procedures, including court-ordered involuntary treatment for a person requiring treatment. Currently, the term means any of the following:

- An individual who has mental illness, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself or herself or another person, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.
- An individual who has mental illness, and who as a result of that mental illness is unable to attend to his or her basic physical needs such as food, clothing, or shelter that must be attended to in order to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.
- An individual with mental illness, whose judgment is so impaired that he or she is unable to understand his or her need for treatment and whose continued behavior as a result of the mental illness can reasonably be expected, on the basis of competent clinical opinion, to result in significant physical harm to himself, herself, or others.

The bill would add to the definition an individual who had mental illness, who was noncompliant with treatment that had been recommended by a mental health professional, and whose noncompliance with treatment had been a factor in the individual's placement in a psychiatric hospital, prison, or jail at least twice within the last 36 months or in the individual's committing one or more acts, attempts, or threats of serious violent behavior toward himself, herself, or others within the last 48 months. An individual meeting these criteria would be eligible to receive AOT under Section 433 or 469a (which would be added and amended, respectively, by Senate Bill 684).

### **Senate Bill 684**

#### AOT Petition & Order

Under the bill, any individual at least 18 years old could file a petition with the court asserting that a person met the criteria for AOT specified in Section 401(d) (which Senate Bill 683 would add). The petition would have to contain the facts that were the basis for the assertion; the names and addresses, if known, of any witnesses to the facts; and the name and address of the nearest relative or guardian, if known, or, if none, a friend, if known, of the subject of the petition.

Upon receiving the petition, the court would have to inform the subject and the CMHSP serving the community in which he or she lived that the court was undertaking an investigation to determine whether the subject met the criteria for AOT.

If the court's investigation verified that the subject of the petition met the criteria for AOT and was not scheduled to begin a course of outpatient mental health treatment that included case management services or assertive community treatment team services, the court would have to order the person to receive AOT through his or her local CMHSP. The order would have to include case management services or assertive community treatment team services. The order could include any of the following:

- Medication.
- Blood or urinalysis tests to determine compliance with prescribed medications.
- Individual or group therapy.

- Day or partial day programs.
- Educational and vocational training.
- Supervised living.
- Alcohol or substance abuse treatment, or both.
- Alcohol or substance abuse testing, or both, for individuals with a history of alcohol and substance abuse and for whom that testing was necessary to prevent a deterioration of their condition. A court order for alcohol or substance abuse testing would be subject to review every six months.
- Any other services prescribed to treat the individual's mental illness and either assist the person in living and functioning in the community or help prevent a relapse or deterioration that could reasonably be predicted to result in suicide or the need for hospitalization.

#### Power of Attorney & Advance Directives

In developing an order for AOT, the court would have to consider any preferences and medication experiences reported by the subject of the petition or his or her designated representative, as well as any directions included in a durable power of attorney or an advance directive that existed.

If the subject had not previously executed a durable power of attorney or advance directive, the responsible CMHSP, before the AOT order's expiration date, would have to ascertain whether the subject desired to establish an advance directive. If so, the CMHSP would have to offer to provide assistance in developing one.

#### Alternative to Hospitalization

The Code requires a court to review a report on alternatives to hospitalization before ordering a course of treatment for an individual found to be a person requiring treatment. The report must be prepared by the CMHSP, a public or private agency, or another individual found suitable by the court within the 15 days before the court issues the order. After reviewing the report, the court must do all of the following:

- Determine whether the alternative treatment program is adequate to meet the individual's needs and is sufficient to prevent harm the individual may inflict upon himself or herself or upon others in

the near future.

- Determine whether there is an agency or mental health professional available to supervise the alternative treatment program.
- Inquire as to the individual's desires regarding alternatives to hospitalization.

If the court determines that there is an adequate and available alternative treatment program, the court must issue an order for alternative treatment or combined hospitalization and alternative treatment. Under the bill, if the court ordered AOT as the alternative to hospitalization, the order would have to include case management services or assertive community treatment team services. The bill's provisions regarding the content of an AOT order, and consideration of preferences, medication experiences, and directions in a power of attorney or advance directive, would apply.

### **Senate Bill 685**

#### Duration of Treatment

Currently, upon receiving an application under Section 423 of the Code or a petition under Section 434, and finding that an individual is a person requiring treatment, the court must issue an initial order of involuntary mental health treatment, which is limited in duration as follows:

- An initial order of hospitalization cannot exceed 60 days.
- An initial order of alternative treatment cannot exceed 90 days.
- An initial order of combined hospitalization and alternative treatment cannot exceed 90 days, and the hospitalization portion cannot exceed 60 days.

The bill would add that an initial order of AOT could not exceed 180 days. An initial order for combined hospitalization and AOT could not exceed 180 days, with the hospitalization portion being not more than 60 days.

(Under Section 423, a hospital designated by the Department of Community Health or by a CMHSP must hospitalize an individual presented to the hospital, pending receipt of a clinical certificate by a psychiatrist stating that the individual is a person requiring treatment, if an application, a physician's or licensed

psychologist's clinical certificate, and an authorization by a preadmission screening unit have been executed.

Under Section 434, anyone at least 18 years old may file a petition with the court asserting that an individual is a person requiring treatment. The petition must be accompanied by the clinical certificate of a physician or licensed psychologist, unless after reasonable effort the petitioner could not secure an examination. In that case, an affidavit setting forth the reasons an examination could not be secured also must be filed. A clinical certificate accompanying a petition must have been executed within 72 hours before the petition is filed and after personal examination of the individual.)

Upon receiving a petition under Section 473 (described below) before the initial order expires, and finding that the person continues to be a person requiring treatment, the court must issue a second order for involuntary mental health treatment, limited in duration as follows:

- A second order of hospitalization cannot exceed 90 days.
- A second order of alternative treatment cannot exceed one year.
- A second order of combined hospitalization and alternative treatment cannot exceed one year, and the hospitalization portion cannot exceed 90 days.

Under the bill, a second order of assisted outpatient treatment could not exceed one year.

Upon receiving a petition under Section 473 before the second order expires, and finding that the individual continues to be a person requiring treatment, the court must issue a continued order for involuntary mental health treatment that is limited in duration as follows:

- A continuing order for hospitalization cannot exceed one year.
- A continuing order of alternative treatment cannot exceed one year.
- A continuing order of combined hospitalization and alternative treatment cannot exceed one year, and the hospitalization portion cannot exceed 90 days.

Under the bill, a continuing order of AOT could not exceed one year.

#### Petition for Continuing Order

Section 473 states that at least 14 days before the expiration of an initial, second, or continuing order of involuntary mental health treatment, a hospital director, agency, or mental health professional supervising an individual's alternative treatment must file a petition for a second or continuing order if the hospital director or supervisor believes the person continues to be a person requiring treatment and is likely to refuse treatment on a voluntary basis when the order expires. The petition must contain a statement setting forth the reasons for the determination that the person continues to be a person requiring treatment, a statement describing the individual's treatment program, the results of that course of treatment, and a clinical estimate as to the time further treatment will be required. The petition also must be accompanied by a clinical certificate executed by a psychiatrist.

Under the bill, a hospital director, agency, or mental health professional supervising a person's AOT would be subject to the same requirement.

#### Noncompliance with AOT Order

Under the bill, if an agency or mental health professional supervising an individual's AOT determined that he or she was not complying with the court order, the agency or mental health professional would have to notify the court immediately. If it came to the court's attention that a person subject to an AOT order was not complying with it, the court could require, without a hearing, that the individual be hospitalized for the duration of the order. The court could direct peace officers to transport the individual to a designated facility, and could specify conditions under which the person could return to AOT before the order expired.

#### **Senate Bill 686**

The bill would define "assisted outpatient treatment" as the categories of outpatient services ordered by the court under Section 433 or 469a (pursuant to Senate Bill 684). The term would include intensive case

management services or assertive community treatment team services to provide care coordination. Assisted outpatient treatment also could 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.
- Periodic testing for alcohol or illegal drugs for a person with a history of alcohol or substance abuse.
- Supervision of living arrangements.

In addition, AOT could include any other services within a local or unified services plan developed under the Code, which services were prescribed to treat the individual's mental illness and to assist the person in living and functioning in the community or to attempt to prevent a relapse or deterioration that could reasonably be predicted to result in suicide or the need for hospitalization.

MCL 330.1401 (S.B. 683)  
330.1469a et al. (S.B. 684)  
330.1472a et al. (S.B. 685)  
330.100a & 330.1161 (S.B. 686)

Legislative Analyst: Julie Koval

#### **FISCAL IMPACT**

Requiring CMHSPs to provide services under a court order via assisted outpatient treatment would not produce a direct cost to the State. A person under court order is either Medicaid eligible or not Medicaid eligible.

If the person is Medicaid eligible, the CMHSP receives payments under a capitation model, not a fee-for-service model, so the costs of the treatment are absorbed by the CMHSP.

If the person is not Medicaid eligible, the CMHSP must pay for the services by using its non-Medicaid State funding. This would result in less funding being available for services to other non-Medicaid CMHSP clients, but, as non-Medicaid services are not an entitlement,

there would be no increase in cost, just a shift in who receives services and who is put on a waiting list.

There would be a cost increase for pharmaceuticals for Medicaid-eligible individuals, as pharmaceutical costs are paid by the State, not by the CMHSP. There are many new psychotropic medications that are quite helpful in treatment, but are also expensive. Without experience-based data on the number of individuals ordered to receive assisted outpatient treatment, it is difficult to estimate the cost, although it would be relatively small compared with the annual adjustments to the Pharmaceutical Services line item. For instance, if 100 individuals were ordered to receive assisted community treatment and their medications cost an average of \$10,000 per year, the net cost increase would be \$1,000,000 Gross and \$441,100 GF/GP.

The bills also would potentially increase local court costs by requiring court investigations on petitions of AOT criteria and regular reviews of court orders for alcohol or substance abuse testing.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.