

Pennsylvania Mental Health Laws and Regulations: relevant excerpts for emergency physicians

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Notes:

On January 22, 2005, the Minor's Consent Act was amended by Act 147, which changed the law regarding consent to mental health treatment for Pennsylvania minors 14-17 years of age. Before Act 147, the consent requirements for voluntary inpatient treatment were found in the Mental Health Procedures Act (MHPA), and regulations found in the Mental Health Manual. These consent requirements still apply to mental health facilities, including any mental health establishment, hospital, clinic, institution, center, day care center, base service unit or community mental health center that provides for the diagnosis, treatment, care or rehabilitation of persons with mental illness. However, these facilities are also now subject to the amended Minor's Consent Act as well. The provisions of the Mental Health Procedures Act and the Minor's Consent Act, as amended by Act 147, that govern the consent requirements for mental health treatment for minors, are as follows.

a. Minors 14 Years and Older

(1) By Consent of the Minor

A minor who is 14 years or older who believes that s/he is in need of treatment and substantially understands the nature of treatment may consent to voluntary inpatient mental health examination and treatment. The consent must be voluntary and in writing,¹ and obtained after the minor is given an explanation of the prospective treatment and his/her rights. The consent of the minor's parent or legal guardian is not necessary; neither can a parent or legal guardian abrogate consent given by a minor on his or her own behalf.

Act 147 does not change the ability of a parent or legal guardian to object to a minor's inpatient mental health treatment provided pursuant to a minor's consent on his or her own behalf.

When a mental health facility accepts a minor 14 years of age or older for examination and treatment, based upon the minor's own consent, the facility's director must promptly notify the minor's parent, guardian or person standing *in loco parentis* that the minor has been admitted. The notification must explain the nature of the minor's proposed treatment, and inform the minor's parent/guardian that s/he has a right to file an objection in writing with the director of the facility or the county mental health/mental retardation administrator. The facility has to inform the parent/guardian by telephone where possible, and also by delivery of a form to the parent/guardian. If the facility director cannot locate the parent, guardian or person standing *in loco parentis*, the director shall take such action as s/he deems appropriate, including notifying appropriate child welfare agencies. If the parent/guardian files an objection, a hearing shall be held within 72 hours. The hearing will be held before a judge of the Court of Common Pleas or a mental health review officer appointed by the court, who shall determine whether or not the voluntary inpatient treatment is in the best interest of the minor.

Similarly, a minor age 14 years or older in a voluntary inpatient program, upon the minor's own consent, can be transferred to

another facility only with his/her written consent and only after being informed about the next facility's treatment setting and modalities. The facility shall send notice of the proposed transfer to the minor's parent/guardian, and indicate on the notice that the parent/guardian has a right to object to the transfer by requesting a hearing.

(2) By Consent of the Parent or Legal Guardian

Prior to the enactment of Act 147, with respect to voluntary inpatient treatment, the consent of a parent or legal guardian was not valid for a minor 14 years or older. With the enactment of Act 147, which amends the Minor's Consent Act and not the MHPA, a parent or legal guardian can consent to inpatient mental health treatment for minors 14-17 years of age on the recommendation of a physician who has examined the minor, and over the objections of the minor. A minor may not abrogate the consent provided by a parent or legal guardian on the minor's behalf. A parent or legal guardian who has provided consent to inpatient mental health treatment may revoke that consent, unless the minor 14-17 years of age has provided consent for continued inpatient mental health treatment.

Under Act 147, when a minor has given consent on his or her own behalf and then revoked that consent, the revocation is not effective if the parent or legal guardian has consented to continued treatment on the recommendation of a physician who has examined the minor.

If A Minor Objects to Mental Health Treatment Provided by Consent of the Parent or Legal Guardian

Because Act 147 amended the Minor's Consent Act to permit the parent or legal guardian to consent to inpatient mental health treatment for minors 14-17 years of age on the recommendation of a physician who has examined the minor, and over the objections of the minor, the Act also establishes a process for objecting minors to have their commitment reviewed by a court. Under Act 147, the following rules apply when a minor has been admitted for inpatient mental health treatment pursuant to a parent's consent:

- **The minor must be informed of his/her right to file a petition objecting to treatment.** At the time of admission, the director of the admitting facility (or his/her designee) must give the minor 14-17 years of age an explanation of the nature of the proposed treatment and the right to object by filing a petition with the Court of Common Pleas.

- **A petition must be filed on behalf of objecting minor by the facility.** If a minor wishes to object, the director of the facility (or his/her designee) must provide a form for the minor to fill out to give notice of his/her request for modification of or withdrawal from treatment. The director of the facility (or his/her designee) must file the signed petition with the Court of Common Pleas.

- **The objecting minor is entitled to a hearing within 72 hours.** Once the petition is filed, the court must promptly appoint an attorney for the minor and schedule a hearing to be held within 72 hours.

- **The court must find that treatment represents the least restrictive alternative.** For inpatient mental health treatment to continue against the minor's wishes, the court must find that treatment is in the best interest of the minor by finding all of the following by clear and convincing evidence: (a) the minor has a diagnosed mental disorder; (b) the disorder is treatable; (c) the disorder can be treated in the particular facility where the treatment is taking place; and (d) the proposed inpatient treatment represents the least restrictive alternative that is medically appropriate.

- **The court can initially order continued treatment for up to 20 days.** If the court finds (using the standard above) that continued

¹ When the minor gives consent but the consent cannot be obtained in writing, a statement on a form approved by the Department of Public Welfare documenting that the minor acknowledged the information presented and gave his/her consent shall be signed by the person presenting the information and at least one witness. The statement shall become part of the minor's records. Mental Health Manual, 55 Pa. Code § 5100.73(c).

treatment is in the best interests of an objecting minor, the court may order treatment to continue for a period of up to 20 days. The minor must be discharged (a) whenever the attending physician determines that the minor is no longer in need of treatment; or (b) at the end of the time period of the order; or (c) when the parent revokes consent, **whichever occurs first**.

• **At a review hearing, the court can subsequently order continued treatment for a period of up to 60 days.** If the attending physician determines that continued inpatient treatment will be necessary and the minor does not consent to continued treatment, the court shall conduct a review hearing prior to the end of the time period of the original order. The court will conduct the review hearing to determine whether the minor should be released or if continued treatment should be ordered for a period up to 60 days. The minor must be discharged: (a) whenever the attending physician determines that the minor is no longer in need of treatment; or (b) at the end of the time period of the order; or (c) when the parent revokes consent, **whichever occurs first**. This procedure for a 60 day period of treatment will continue until: (a) the court determines that the minor is no longer in need of treatment; or (b) the attending physician determines that the minor is no longer in need of treatment; or (c) the parent revokes consent, **whichever occurs first**.

b. Minors under the age of 14

The parent or legal guardian of a minor who is younger than 14 years of age may consent to voluntary inpatient mental health examination and treatment for the minor. In such cases, the parent/guardian shall be deemed as acting for the minor. The consent must be voluntary and in writing, and obtained after the parent or legal guardian is given an explanation of the prospective treatment and his/her rights. The parent or legal guardian of a minor who is younger than 14 years of age may effect the release of the minor from a voluntary inpatient mental health facility. If the parent/guardian did not agree at admission to a delayed release provision, the parent/guardian may immediately withdraw the minor from the facility. If the parent/guardian did agree at admission to a delayed release, the same rules as described in the preceding section apply to the parent/guardian. Similarly, the parent/guardian of a minor younger than 14 years of age must consent to any transfers.

Pennsylvania Code Title 50 - Mental Health
This chapter became law as part of the Act of July 9, 1976 (P.L. 817).

CHAPTER 15. MENTAL HEALTH PROCEDURES

ARTICLE I. GENERAL PROVISIONS.

§ 7101. Short title.

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§ 7114. Immunity from civil and criminal liability.

§ 7115. Venue and location of legal proceedings.

§ 7116. Continuity of care.

Excerpt:

7102. Statement of policy.

It is the policy of the Commonwealth of Pennsylvania to seek to assure the availability of adequate treatment to persons who are mentally ill, and it is the purpose of this act to establish procedures whereby this policy can be effected. The provisions of this act shall be interpreted in conformity with the principles of due process to make voluntary and involuntary treatment available where the need is great and its absence could result in serious harm to the mentally ill person or to others. Treatment on a voluntary basis shall be preferred to involuntary treatment; and in every case, the least restrictions consistent with adequate treatment shall be employed.²

Persons who are mentally retarded, senile, alcoholic, or drug dependent shall receive mental health treatment only if they are also diagnosed as mentally ill, but these conditions of themselves shall not be deemed to constitute mental illness:

Provided, however, That nothing in this act shall prohibit underutilized State facilities for the mentally ill to be made available for the treatment of alcohol abuse or drug addiction pursuant to the act of April 14, 1972 (P.L. 221, No. 63), known as the "Pennsylvania Drug and Alcohol Abuse Control Act." Chronically disabled persons 70 years of age or older who have been continuously hospitalized in a State operated facility for at least ten years shall not be subject to the procedures of this act. Such a person's inability to give a rational, informed consent shall not prohibit the department from continuing to provide all necessary treatment to such a person. However, if such a person protests

² This is the section that basically says "if the patient signed a 201 (voluntary) you can't 302 them (do an involuntary commitment.)"

treatment or residence at a State operated facility he shall be subject to the provisions of Article III.

7105. Treatment facilities.

Involuntary treatment and voluntary treatment funded in whole or in part by public moneys shall be available at a facility approved for such purposes by the county administrator (who shall be the County Mental Health and Mental Retardation Administrator of a county or counties, or his duly authorized delegate), or by the Department of Public Welfare, hereinafter cited as the "department." Approval of facilities shall be made by the appropriate authority which can be the department pursuant to regulations adopted by the department. Treatment may be ordered at the Veterans Administration or other agency of the United States upon receipt of a certificate that the person is eligible for such hospitalization or treatment and that there is available space for his care. Mental health facilities operated under the direct control of the Veterans Administration or other Federal agency are exempt from obtaining State approval. The department's standards for approval shall be at least as stringent as those of the joint commission for accreditation of hospitals and those of the Federal Government pursuant to Titles 18 and 19 of the Federal Social Security Act to the extent that the type of facility is one in which those standards are intended to apply. An exemption from the standards may be granted by the department for a period not in excess of one year and may be renewed. Notice of each exemption and the rationale for allowing the exemption must be published pursuant to the act of July 31, 1968 (P.L. 769, No. 240), known as the "Commonwealth Documents Law," and shall be prominently posted at the entrance to the main office and in the reception areas of the facility.

7114. Immunity from civil and criminal liability.

(a) **In the absence of willful misconduct or gross negligence, a county administrator, a director of a facility, a physician, a peace officer or any other authorized person** who participates in a decision that a person be examined or treated under this act, or that a person be discharged, or placed under partial hospitalization, outpatient care or leave of absence, or that the restraint upon such person be otherwise reduced, or a county administrator or other authorized person who denies an application for voluntary treatment or for involuntary emergency examination and treatment, shall not be civilly or criminally liable for such decision or for any of its consequences.

(b) A judge or a mental health review officer shall not be civilly or criminally liable for any actions taken or decisions made by him pursuant to the authority conferred by this act.

ARTICLE II. VOLUNTARY EXAMINATION AND TREATMENT.

§ 7201. Persons who may authorize voluntary treatment.

§ 7202. To whom application may be made.

§ 7203. Explanation and consent.

§ 7204. Notice to parents.

§ 7205. Physical examination and formulation of individualized treatment plan.

§ 7206. Withdrawal from voluntary inpatient treatment.

§ 7207. Transfer of person in voluntary treatment.

Excerpts:

7201. Persons who may authorize treatment

Any person 14 years of age or over who believes that he is in need of treatment and substantially understands the nature of voluntary treatment may submit himself to examination and treatment under this act, provided that the decision to do so is made voluntarily. A parent, guardian, or person standing in loco parentis to a child less than 14 years of age may subject such child to examination and treatment under this act, and in so doing shall be deemed to be acting for the child. Except as otherwise authorized in this act, all of the provisions of this act governing examination and treatment shall apply.

7202. To whom application may be made.

Application for voluntary examination and treatment shall be made to an approved facility or to the county administrator, Veterans Administration, or other agency of the United States operating a facility for the care and treatment of mental illness. When application is made to the county administrator he shall designate the approved facility for examination and for such treatment as may be appropriate.

7203. Explanation and consent.

Before a person is accepted for voluntary inpatient treatment, an explanation shall be made to him of each treatment, including the types of treatment in which he may be involved, and any restraints or restrictions to which he may be subject together with a statement of his rights under this act. **Consent shall be given in writing upon a form adopted by the department.** The consent shall include the following representations:

That he understands his treatment will involve inpatient status; that he is willing to be admitted to a designated facility for the purpose of such examination and treatment; and that he consents to such admission voluntarily, without coercion or duress; and, if applicable, that he has voluntarily agreed to remain in treatment for it specified period of no longer than 72 hours after having given written notice of his intent to withdraw from treatment. The consent shall be part of the person's record.

7206. *Withdrawal from voluntary inpatient treatment*

(a) A person in voluntary inpatient treatment may withdraw at any time by giving written notice unless, as stated in section 203, he has agreed in writing at the time of his admission that his release can be delayed following such notice for a period to be specified in its agreement, provided that such period shall not exceed 72 hours. Any patient converted from involuntary treatment ordered pursuant to either section 304 or 305 to voluntary treatment status shall agree to remain in treatment for 72 hours after having given written notice of his intent to withdraw from treatment.

(b) If the person is under the age of 14, his parent, legal guardian, or person standing in loco parentis may effect his release. If any responsible party believes that it would be in the best interest of a person under 14 years of age in voluntary treatment to be withdrawn therefrom or afforded treatment constituting a less restrictive alternative, such party may file a petition in the Juvenile Division of the court of common pleas for the county in which the person under 14 years of age resides, requesting a withdrawal from or modification of treatment. The court shall promptly appoint an attorney for such minor person and schedule a hearing to determine what inpatient treatment, if any, is in the minor's best interest. The hearing shall be held within ten days of receipt of the petition, unless continued upon the request of the attorney for such minor. The hearing shall be conducted in accordance with the rules governing outer Juvenile Court proceedings.

(c) Nothing in this act shall be construed to require a facility to continue inpatient treatment where the director of the facility determines such treatment is not medically indicated. Any dispute between a facility and a county administrator as to the medical necessity for voluntary inpatient treatment of a person shall be decided by the Commissioner of Mental Health or his designate.

ARTICLE III. INVOLUNTARY EXAMINATION AND TREATMENT.

§ 7301. **Persons who may be subject to involuntary emergency examination and treatment.**

§ 7302. **Involuntary emergency examination and treatment authorized by a physician-not to exceed one hundred twenty hours.**

§ 7303. **Extended involuntary emergency treatment certified by a judge or mental health review officer-not to exceed twenty days.**

§ 7304. **Court-ordered involuntary treatment not to exceed twenty days.**

§ 7305. **Additional periods of court-ordered involuntary treatment.**

§ 7306. **Transfer of persons in involuntary treatment.**

Excerpts:

7301. *Persons who may be subject to involuntary emergency examination and treatment*

(a) **Persons Subject.** -- Whenever a person is severely mentally ill and in need of immediate treatment, he may be made subject to involuntary emergency examination and treatment. A person is severely mentally disabled when, as a result of mental illness, his capacity to exercise self-control, judgment and discretion in the conduct of his affairs and social relations or to care for his own personal needs is so lessened that he poses a clear and present danger of harm to others or to himself.

(b) **Determination of Clear and Present Danger.** --

(1) **Clear and present danger to others shall be shown by establishing that within the past 30 days the person has inflicted or attempted to inflict serious bodily harm on another and that there is a reasonable probability that such conduct will be repeated. If, however, the person has been found incompetent to be tried or has been acquitted by reason of lack of criminal responsibility all charges arising from conduct involving infliction of or attempt to inflict substantial bodily harm on another, such 30-day limitation shall not apply so long as an application for examination and treatment is filed within 30 days after the date of such determination or verdict. In such case, if clear and present danger to others may be shown by establishing that the conduct charged in the criminal proceeding did occur, and that there is a reasonable probability that such conduct will be repeated. For the purpose of this section, a clear and present danger of harm to others may be demonstrated by proof that the person has**

made threats of harm and has committed acts in furtherance of the threat to commit harm.

(2) Clear and present danger to himself shall be shown by establishing that within the past 30 days:

(i) the person has acted in such manner as to evidence that he would be unable, without care, supervision and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety, and that there is a reasonable probability that death, serious bodily injury or serious physical debilitation would ensue within 30 days unless adequate treatment were afforded under this act; or

(ii) the person has attempted suicide and that there is a reasonable probability of suicide unless adequate treatment is afforded under this act. **For the purposes of this subsection, a clear and present danger may be demonstrated by the proof that the person has made threats to commit suicide and has committed acts which are in furtherance of the threat to commit suicide;** or

(iii) the person has substantially mutilated himself or attempted to mutilate himself substantially and that there is the reasonable probability of mutilation unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present danger shall be established by proof that the person has made threats to commit mutilation and has committed acts which are in furtherance of the threat to commit mutilation.

7302. Involuntary emergency examination and treatment authorized by a physician -- not to exceed seventy-two hours.

(a) Application for Examination. -- Emergency examination may be undertaken at a treatment facility upon the certification of a physician stating the need for such examination; or upon a warrant issued by the county administrator authorizing such examination; or without a warrant upon application by a physician or other authorized person who has personally observed conduct showing the need for such examination.

(i) Warrant for Emergency Examination.-- Upon written application by a physician or other responsible party setting forth facts constituting reasonable grounds to believe a person is severely mentally disabled and in need of immediate treatment, the county administrator may issue a warrant requiring a person authorized by him, or any peace officer, to take such person to the facility specified in the warrant.

(ii) Emergency Examination Without a Warrant.-- Upon personal observation of the conduct

of a person constituting reasonable grounds to believe that he is severely mentally disabled and in need of immediate treatment, any physician or peace officer, or anyone authorized by the county administrator may take such person to an approved facility for an emergency examination. Upon arrival, he shall make a written statement setting forth the grounds for believing the person is in need of such examination.

(b) Examination and Determination of Need for Emergency Treatment. -- A person taken to a facility shall be examined by a physician within two hours of arrival in order to determine if the person is severely mentally disabled within the meaning of section 301[1] and in need of immediate treatment. If it is determined that the person is severely mentally disabled and in need of emergency treatment, treatment shall be begun immediately. If the physician does not so find, or if at any time it appears there is no longer a need for immediate treatment, the person shall be released and returned to such place as he may reasonably direct. The physician shall make a record of the examination and his findings. In no event shall a person be accepted for involuntary emergency treatment application was granted for such treatment if a previous application was granted for such treatment and the new application is not based on behavior occurring after the earlier application.

(c) Notification of Rights at Emergency Examination. -- Upon arrival at the facility, the person shall be informed of the reasons for emergency examination and of his right to communicate immediately with others. He shall be given reasonable use of the telephone. He shall be requested to furnish the names of parties whom he may want notified of his custody and informed of his status. The county administrator or the director of the facility shall:

(1) give notice to such parties of the whereabouts and status of the person, how and when he may be contacted and visited, and how they may obtain information concerning him while he is in inpatient treatment; and

(2) take reasonable steps to assure that while the person is detained, the health and safety needs of any of his dependents are met, and that his personal property and the premises he occupies are secure.

(d) Duration of Emergency Examination and Treatment. -- A person who is in treatment pursuant to this section shall be discharged whenever it is determined that he is no longer in need of treatment and in any event within 120 hours, unless within such period:

- (1) he is admitted in voluntary treatment pursuant to section 202 of this act;[2] or
- (2) a certification for extended involuntary emergency treatment is filed pursuant to section 303 of this act.[3]

[1] Section 7301 of this title.

[2] Section 7302 of this title.

[3] Section 7303 of this title.

 from:
<http://www.pacode.com/secure/data/055/chapter5100/chap5100toc.html>

**Pennsylvania Code, Title 55 - Public Welfare
 Part VII - Mental Health Manual [Regulations]
 Chapter 5100 - Mental Health Procedures
 Partial Outline:**

INVOLUNTARY TREATMENT

- 5100.81. Involuntary examination and treatment.
- 5100.82. Jurisdiction and venue of legal proceedings.
- 5100.83. Generally.
- 5100.84. Persons who may be subject to involuntary emergency examination and treatment.
- 5100.85. Standards.
- 5100.86. Involuntary emergency examination and treatment not to exceed 120 hours.
- 5100.87. Extended involuntary emergency treatment not to exceed 20 days.
- 5100.88. Court-ordered involuntary treatment not to exceed 90 days.
- 5100.89. Additional periods of court-ordered involuntary treatment not to exceed 180 days.
- 5100.90. Transfers of persons in involuntary treatment.
- 5100.90a. State mental hospital admission of involuntarily committed individuals - statement of policy.

Authority

The provisions of this Chapter 5100 issued under sections 107-116 of the Mental Health Procedures Act (50 P.S. 7107-7116); and the Mental Health and Mental Retardation Act of 1996 (50 P.S. 4101-4704), unless otherwise noted.

Source

The provisions of this Chapter 5100 adopted January 26, 1979, effective January 27, 1979, 9 Pa.B. 315; amended October 12, 1979, effective October 13, 1979, 9 Pa.B. 3460.

Relevant Excerpts:

5100.81. Involuntary examination and treatment.

(a) A person may be subject to an involuntary examination only at facilities approved and designated for that purpose by the administrator.

(b) No facility shall be designated unless it has an approved plan to comply with section 302(c)(2) of the act (50 PS S 7302(c)(2)), and this chapter. The plan shall be jointly developed by the administrator and facility director, utilizing available county resources.

(c) The administrator, at least on an annual basis, shall advise the public, through notice in one newspaper of general circulation in the county, of the facilities he has designated to provide involuntary emergency examination and treatment.

5100.82. Jurisdiction and venue of legal proceedings.

(a) A court ordering involuntary treatment may retain jurisdiction over subsequent proceedings. If jurisdiction is initially exercised by the court of the county in which the person is, jurisdiction shall be transferred to the county of the person's most current residence except in cases committed under section 401 of the act (50 P.S. 7401). For persons committed under section 401 of the act, jurisdiction shall be transferred to the court having jurisdiction over the person's criminal status. Security provisions for a person committed under section 401 of the act may be reduced only by the court with jurisdiction over the person's criminal status.

(b) Hearings may be held at facilities in all cases. In light of the difficulties involved in transporting patients and staff, and the impact upon patient care, every effort shall be made to hold hearings at the facility.

(c) Records of hearings shall be confidential as part of the patient's records.

5100.83. Generally.

(a) A person may be subject to an involuntary examination only at facilities approved and designated for that purpose by the administrator.

(b) No facility shall be designated unless it has an approved plan to comply with section 302(c)(2) of the act (50 P.S. 7302(c)). The plan shall be jointly developed by the administrator and facility director, utilizing available county resources.

(c) The administrator, at least on an annual basis, shall advise the public, through notice in one newspaper of general circulation in the county, of the facilities he has designated to provide involuntary emergency examination and treatment.

5100.84. Persons who may be subject to involuntary emergency examination and treatment.

(a) Persons 14 through 17 years of age may be subject to involuntary emergency examination and treatment only in an approved mental health facility capable of providing a treatment program appropriate to the person. Persons 5 through 13 years of age may be subject to involuntary emergency examination and treatment only in an approved mental health facility capable of providing a treatment program appropriate to the child. Persons from birth through 4 years of age may be subject to involuntary emergency examination and treatment only in a mental health facility capable of providing a treatment program appropriate to the child. Should no such facility exist within the county of residence, the nearest appropriate facility shall be designated by the county administrator. Longer term involuntary treatment for the age groups listed in this section, must be conducted by agencies with age appropriate programs which are approved by the Department and designated by the county administrator when public monies are utilized for treatment.

(b) Persons 18 years of age and older may be subject to involuntary emergency examination at an approved facility designated for such purpose by the administrator. Involuntary emergency treatment may be provided at the examining facility or any other designated and approved facility appropriate to the person's needs. Travel arrangements between the examining facility and the treating facility shall be arranged as needed as soon as possible to permit transportation appropriate to the person's needs.

(c) **The determination of whether the standards of clear and present danger are met should always include a consideration of the person's probable behavior if adequate treatment is not provided on either an emergency or subsequent basis.**

(d) **The standards of clear and present danger may be met when a person has made a threat of harm to self or others; has made a threat to commit suicide; or has made a threat to commit an act of mutilation and has committed acts in furtherance of any such threats.**

(e) **Examining physicians should consider the probability that the person would be unable**

without care, supervision, and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter or self-protection, and safety in accordance with section 301(b)(2)(i) of the act (50 P.S. 7301(b)(2)(i)).

(f) **When the petition for commitment filed under section 301(b)(2)(i) alleges that a person poses a clear and present danger to himself, clinical or other testimony may be considered which demonstrates that the person's judgment and insight is so severely impaired that he or she is engaging in uncontrollable behavior which is so grossly irrational or grossly inappropriate to the situation that such behavior prevents him from satisfying his need for reasonable nourishment, personal care, medical care, shelter or self-protection and safety, and that serious physical debilitation, serious bodily injury or death may occur within 30 days unless adequate treatment is provided on an involuntary basis.**

(g) An attempt under sections 301(b)(2)(ii) and (iii) of the act (50 P. S. 7301(b)(2)(ii) and (iii)), occurs:

(1) When a person clearly articulates or demonstrates an intention to commit suicide or mutilate himself and has committed an overt action in furtherance of the intended action; or

(2) When the person has actually performed such acts.

Notes of Decisions

Jury Instructions

Although the court did not charge the jury on these regulations which specify that a suicide attempt consists of an intent to commit suicide and an overt act in furtherance of the intended action, there was no error because 50 P. S. 7301 fully and accurately conveyed the applicable law. *Mertz v. Temple University Hospital*, 29 Phila. 467 (1995).

Suicide

The writing of suicide notes can be considered an overt act in furtherance of a suicide. *Mertz v. Temple University Hospital*, 29 Phila. 467 (1995).

A psychiatrist who discharged a patient brought to a hospital's psychiatric emergency room for involuntary commitment under the Mental Health Procedures Act (50 P. S. 7101-7503), was held liable to three minors injured when the patient blew up a row house while committing suicide. *Mertz v. Temple University Hospital*, 29 Phila. 467 (1995).

5100.85. Standards.

The standards of section 301 of the act (50 P. S. 7301), for determination of severe mental disability and present danger are to be applied so as to determine whether emergency commitment is necessary under section 302 of the act (50 P.S. 302), or whether a court-ordered commitment under section 304(c) of the act (50 P.S. 7304(c)), is appropriate:

(1) The application of the standards in section 301 of the act, for emergency commitment, including the requirement of overt behavior, shall be based at least upon the following factors:

(i) There is a definite need for mental health intervention without delay to assist a person on an emergency basis;

(ii) The clear and present danger is so imminent that mental health intervention without delay is required to prevent injury or harm from occurring;

(iii) There is reasonable probability that if intervention is unduly delayed the severity of the clear and present danger will increase; or

(iv) There is reasonable probability that the person, with his presently available supports, cannot continue to adequately meet his own needs if mental health intervention is unduly delayed.

(2) The application for the standards under section 301 of the act for a court-ordered commitment, including the requirement of overt behavior under section 304(c) of the act (50 P. S.7304(c)), shall be based upon the following factors, among others:

(i) There is no emergency basis and mental health intervention may be delayed;

(ii) The clear and present danger is not so imminent that intervention without delay is necessary to protect life and limb;

(iii) There is reasonable probability that the severity of the clear and present danger is sufficiently low that emergency intervention without delay is unnecessary; or

(iv) There is reasonable probability that the person can continue to meet his needs; however, marginally, by utilizing his presently available supports until a hearing under section 304 of the act (50 P.S. 7304), can be conducted.

§100.86. Involuntary emergency examination and treatment not to exceed 120 hours.

(a) Written applications, warrants, and written statements made under section 302 of the act (50 P.S.

7302), shall be made on Form MH-783 issued by the Department.

(b) A State-operated facility shall not accept an application for involuntary emergency examination and treatment unless there is a preexisting agreement of waiver approved by the Deputy Secretary of Mental Health, between the State facility and the administrator which designates the State facility as the only provider of inpatient services in the county program; or, there is a preexisting letter of agreement approved by the regional commissioner of mental health, between the State facility and the administrator which designates the State facility as:

(1) A substitute provider of inpatient services when an emergency need arises and there are no other appropriate and approved facilities available; or

(2) A provider of specialized forensic inpatient services when a need for security arises. Such letters of agreement shall define the nature of security to be available and the responsibilities of both the State facility and the Administrator for specific services including aftercare planning and referral.

(c) Any person authorized under section 302 of the act to take a person to a treatment facility for involuntary emergency examination and treatment shall explain to the person in need of such examination and treatment the nature and purpose of the action to be undertaken.

(d) The escorting individual shall make every effort to use the least force necessary and shall act to the extent possible in a courteous manner toward such individual giving attention to the dignity of the person. Transportation to and from a facility remains the ultimate responsibility of the administrator.

(e) Upon arrival at a facility previously designated as a provider of emergency examinations. Form MH-783 shall be completed and Form MH-783-B shall be given to the person subject to the examination. The person shall be informed of his right to counsel and be advised that if he cannot afford counsel, counsel can be provided.

(f) If the examining physician determines that the person is not severely mentally disabled or not in need of immediate treatment, the administrator shall be notified of the results of the examination and shall assure that the person is provided with transportation to an appropriate location within the community, as he may request.

(g) If the person is determined to be severely mentally disabled and in need of immediate treatment:

(1) The examining physician shall make certain that the person has received a copy of forms MH-782,

Bill of Rights, and MH-783-A, Explanation of Rights Under Involuntary Emergency Commitment.

(2) The facility shall notify the administrator, if applicable, that:

(i) No warrant has been issued and there is reasonable probability that a previous application, based upon the same behavior, had been sought;

(ii) A bed is needed at another facility; or

(iii) Public funding will be involved.

(3) When the examining facility recommends emergency involuntary treatment and has no bed available, the administrator in designating a facility for treatment, shall also authorize transportation between facilities.

(h) The administrator shall designate an appropriate treatment facility which may be the examining facility or, if no bed is available there, the nearest appropriate facility which is capable of immediately providing such treatment. **If county OMH funding is not involved, the patient's choice of facilities is to be respected whenever an appropriate bed is available.**

i) The involuntary emergency treatment of the individual, or the arrangement of such, shall be initiated immediately but shall be limited to:

(1) Conducting a physical examination.

(2) Performing diagnostic evaluations of the individual's mental health.

(3) Providing that necessary treatment required to protect the health and safety of the individual and others. As a first priority, the treating physician shall seek to respond to the emergency condition necessitating commitment unless the individual consents to additional treatment.

(j) Examination preliminaries.

(1) The facility shall deliver Forms MH-782, and MH-783-A to each person to be examined and shall inform him or her of the purpose and nature of the examination.

(2) The person shall be requested to furnish the names of up to three parties whom he may want notified and kept informed of his status. The parties may, at the request of the patient, be informed of any major change in the person's status, including transfer, escape, major change in medical condition or discharge.

(3) The person shall be informed of his right to counsel.

(4) Reasonable use of the telephone shall mean at least three completed phone calls. If assistance is required, the facility shall assist the individual in completing phone calls. The cost of any toll calls shall be borne by the person in need of treatment, although

actual payment shall not be a precondition to the person's use of the telephone.

(5) The treating facility shall immediately undertake to obtain information regarding what steps should be taken to assure that the health and safety needs of any dependents of the person are safeguarded and that his personal property and premises are secured.

(6) The facility shall immediately communicate the information obtained to the office or person designated by the administrator.

(7) Before any facility is designated as the provider of involuntary emergency examination and treatment, the administrator shall have specified in writing the procedures to be followed by his office and those facilities to be designated in carrying out of the responsibilities of section 302(c)(2) of the act (50 P. S. 7302(c)(2)). These procedures must specify what types of reasonable actions shall be taken, how quickly they shall be taken, and who is responsible for them. Such procedures shall be based on the availability of resources within the community.

(8) The administrator's office shall coordinate and record any action taken in each case. At least annually the administrator and each approved facility shall review and consider needed amendments to the procedures.

(k) Reasonable steps to assure that the health and safety needs of a person's dependents are met and the property is secure.

(1) The actions of a facility director or county administrator taken under section 302(c)(2) of the act should be well defined, and reflective of local resources.

(2) Because of community differences, no one Statewide plan can serve all possible contingencies. The act contemplates that reasonable efforts be taken to assure protection of person's dependents and property. The efforts must, as a minimum include a documented assessment of the patient's need for protective services. This would mean that those initially working with a patient would attempt to determine what is needed by talking with the patient or his family or friends. Once the information is gathered, it should be transmitted to the person responsible for implementation of protective services or if incomplete, this fact should be transmitted to those responsible for a more thorough assessment. The act does not contemplate that mental health professionals will actually provide all needed services for all patients but relies upon professional linkage referral and follow-up to assure that the needed protections are in fact, provided and maintained. The

implementation of protective services requires community organization efforts by the county administrator's office in developing interagency liaison on continuing basis.

(3) Each mental health administrative unit should develop its own plan which addresses the most typical or usual contingencies. State in the plan that deviations will be handled on a case-by-case basis. The most essential element in meeting the requirement of this section is for the county administrator to have a well-developed local plan which shows the involvement of all possible resources, such as local health, welfare, housing agencies, and protective services determines which individuals, or agencies are responsible for particular activities and when they are to be involved. The plan should show initial procedures for involving the patient's family, legally responsible relatives, or friends designated by the patient. Agencies should be utilized only as necessary. The plan should define the communication flow and the specific duties and responsibilities for action of the mental health provider agencies, the administrator's office, and protective agencies. The plan should also indicate general provisions for the resolution of problems and how exceptional cases will be provided for.

(4) Once a referral is made and the information is conveyed to the appropriate agencies, the only remaining responsibility for the administrator is the periodic follow up necessary to demonstrate that the protection continues to be made available to the patient in need.

(5) Plans developed under this section should be reviewed at least annually by the participating agencies and will be subject to review and approval by the office of Mental Health.

Notes of Decisions

Under the terms of the Mental Health and Mental Retardation Act of 1966 and the Mental Health Procedures Act, when a court orders treatment at a designated State mental hospital, the designated facility must admit the patient for treatment; at that time, the facility is without recourse to deny admission. In re Bishop, 717 A.2d 1114 (Pa. Cmwlth. 1998).

§100.90. Transfers of persons in involuntary treatment.

(a) When the treatment team or director of a facility, or both, determine that a transfer of a person in involuntary treatment is appropriate, they shall notify the county administrator of the planned transfer, setting out the reasons for the transfer which shall then be reviewed by the county administrator to determine

whether the appropriate services are available and to arrange for continuity of care if the person is referred from a State mental health facility.

(b) Where a transfer of a person in involuntary treatment will involve a transfer to another county, the county administrator of the receiving county will be notified, and shall review the transfer as in subsection (a).

(c) Transfers of persons in involuntary treatment may only be made to an approved facility during the term of any given commitment unless there is a court order prohibiting such an action.

(d) A patient's transfer from inpatient to partial hospitalization or outpatient facilities or programs, or from a partial program to an outpatient program, does not affect the original involuntary commitment order. Where a patient's transfer will result in greater restraints being placed upon the patient, the transfer shall occur only after a hearing when it is determined that the transfer is necessary and supportive to the patient's treatment plan.

(e) For purposes of this section, an entire State hospital or private psychiatric hospital shall be considered to be one facility, except for those distinct parts designated as either forensic units or intermediate care units.

(f) Transfers within the mental health system of persons admitted or committed from a prison or correctional facility shall not be effected without approval of the court having criminal jurisdiction over the person.

(g) Except in an emergency, persons in treatment under section 304(g)(2) 7304(g)(2)), may be transferred if prior notice has been given to and no objection has been received with 20 days from the judge and district attorney from the committing court.

(h) In an emergency and on a temporary basis, persons in treatment under section 304(g)(2) of the act, may only be transferred for acute medical treatment when life or health would be in immediate danger without such transfer. When such transfers are accomplished, the court and district attorney of the committing court must be notified. The expected duration of such transfer, security measures, and reasons for transfer should be described in the notice.

(i) Transfers of persons in treatment under section 304(g)(2) to a more secure facility in order to protect the person or others from life threatening behavior must be ordered by the court.

(j) Interstate transfers of persons on involuntary commitment status shall be coordinated by the Department's Office of Interstate Compact.

