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**COUNTY OF ORANGE
HEALTH CARE AGENCY**

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October 13, 2011

TO: Supervisor Bill Campbell, Third District, Chairman
Supervisor John M. W. Moorlach, Second District, Vice Chairman
Supervisor Janet Nguyen, First District
Supervisor Shawn Nelson, Fourth District
Supervisor Patricia C. Bates, Fifth District

SUBJECT: AB 1421 (Laura's Law)

In response to community comments at the August 9, 2011 Board meeting, your Board requested that the Health Care Agency submit an informational paper on AB 1421 (Laura's Law). HCA, in conjunction with County Counsel, prepared the enclosed report on AB 1421 which includes background, analysis, advantages/disadvantages, and alternatives.

Please contact Mark Refowitz, Deputy Agency Director, HCA/Behavioral Health Services at (714) 834-6023 or mrefowitz@ochca.com if you have any questions or need more information.

Thank you.



for David L. Riley, Director

DLR:MRH 11-088

Enclosure

cc: Thomas G. Mauk, County Executive Officer

DISCUSSION AND ANALYSIS OF ASSEMBLY BILL 1421 – LAURA’S LAW

At the Board of Supervisors meeting on August 9, 2011, members of the public urged the Board to pass a resolution to implement Assembly Bill AB 1421.

This paper is to discuss (1) background and provisions of AB 1421, (2) financial and other aspects of implementing AB 1421, (3) advantages and disadvantages of implementing the law, and (4) options for Board consideration.

Executive Summary

AB 1421, known as Laura’s Law, was enacted on January 1, 2003. It established a discretionary program for counties allowing involuntary, court-imposed outpatient treatment for persons who are mentally ill and meet certain clinical criteria. AB 1421 is not effective in any county unless its board of supervisors (1) authorizes implementation by resolution and (2) makes a finding that no voluntary adult mental health program and no children’s mental health program will be reduced as a result of implementation.

An AB 1421 program must provide a wide array of specified services. It is a complex law that contains much detail for some of its provisions while remaining vague about others. It is very specific about notice, due process, right to counsel, and which services must be offered and how they must be provided. AB 1421 will sunset on January 1, 2013 unless extended.

Statewide, only Nevada County, a small Northern California county, has implemented an AB 1421 program. Several other counties have considered adopting AB 1421, but have not done so.

AB 1421 has the advantage of providing an additional, though limited, approach to compelling certain individuals to enter treatment. On the other hand, there are significant disadvantages including cost, new and complex requirements, civil liberty issues, and questions of effectiveness.

The preliminary cost estimate of an AB 1421 program for Orange County is approximately \$5.7 million to \$6.1 million annually for the Health Care Agency, Public Defender, and County Counsel. No state funding was appropriated for AB 1421, and it is doubtful whether Mental Health Services Act (Proposition 63) funds could be utilized. As a result, funds for the program would very likely have to come from a general fund budget augmentation.

Three options are provided for Board consideration: 1) Implement AB 1421, 2) Do not implement the law, or 3) Implement a pilot program of voluntary outpatient services program that has some AB 1421 aspects and is funded by Proposition 63.

Background

AB 1421, known as “Laura’s Law”, established the Assisted Outpatient Treatment (AOT) Demonstration Project Act of 2002. The law permits the court to order involuntary outpatient treatment for a person 18 and over who is severely mentally ill, who refuses voluntary treatment and who appears to be at risk for self-harm or grave disability. AB 1421 was derived in large measure

from New York State's 1999 Mental Hygiene Law known as "Kendra's Law," under which about 1,000 New York residents are served each year.

AB 1421 was effective January 1, 2003 and contained a five year sunset provision. It was renewed in 2008 for a second five year period, and is now due to sunset on January 1, 2013.

Adoption of AB 1421 is optional for each county. It requires a Board of Supervisors resolution to be implemented. The Legislature did not include a funding source for the program. As a result, individual counties must fund the program locally.

Passage of AB 1421 occurred in 2002, which was before voters approved Proposition 63 (Prop 63), the Mental Health Services Act (MHSA). At that time county mental health programs had few intensive outpatient programs, so that families and communities had very few resources to help individuals with mental health disorders.

With the November 2004 passage of Proposition 63, counties throughout the state have significantly improved access to voluntary services. A broad range of intensive voluntary services have been implemented in Orange County under MHSA, as described in the Attachment. Many of these new treatment services are geared specifically to individuals who resist seeking help or who have historically been underserved, including homeless mentally ill persons. HCA's budget for the current fiscal year includes \$45 million for these services.

Throughout California, there has been disagreement regarding whether AB 1421 should be implemented. While many family members and other advocates have sought to have the program implemented, it has met with opposition from clients, service providers, advocates and disability rights attorneys.

A number of counties, including San Diego, Sacramento, San Francisco, Marin, Nevada and Santa Barbara, have considered implementing AB 1421. However, only Nevada County a small county in Northern California and the home of Laura Wilcox, the young woman after whom the bill was named, has implemented Laura's Law. Nevada County has one person in the program currently.

In 2004, the Los Angeles County Board of Supervisors passed a board resolution to implement an AB 1421 pilot program. However, opponents of the program filed a lawsuit against the pilot program, claiming that it did not meet several statutory requirements. The Los Angeles County program is a pilot program that serves only a limited number of clients and is available only to those that are involved in the "criminal" justice system. Conversely, AB 1421 requires total implementation and involves "civil" court proceedings that do not involve crimes or the threat of punishment. In response to the lawsuit, Los Angeles County subsequently entered into a settlement agreement whereby it removed all references to AB 1421 and implemented a program similar to AB 1421 that focuses on low level criminal defendants.

Provisions of AB 1421

AB 1421 is a complex law that contains much detail for some of its provisions while remaining vague about others. It is very specific about notice, due process, right to counsel, and which services must be offered and how they must be provided. All specified services must be made available because the law does not provide for partial implementation.

AB 1421 provides for court-ordered outpatient mental health treatment. This treatment is also known as Assisted Outpatient Treatment (AOT). A person subject to AOT must live in the County and have a history of not participating in needed mental health treatment. The person must be unlikely to survive safely in the community without supervision, based on an investigation and resultant clinical determination. All persons placed on AOT must meet threshold criteria: the person's mental illness (1) has twice been a factor leading to psychiatric hospitalizations or incarcerations within the prior 36 months, or (2) has resulted in one or more actual or attempted serious acts of violence toward self or others within the prior 48 months.

If the criteria are satisfied, the County Mental Health Director or designee may file a certified petition with the court indicating that AOT is needed to help prevent relapse or deterioration that would likely result in grave disability or serious harm to self or others. Such a petition must establish that the person has been offered an opportunity to voluntarily participate in a treatment plan but continues not to engage in treatment and is deteriorating.

AB 1421 specifies that certain individuals can request an AOT evaluation. These include (1) immediate family members, (2) adults residing with the individual, (3) a hospital director or licensed mental health professional treating the individual, or (4) a peace officer, parole or probation officer supervising the individual.

Upon receiving a request from an individual noted above, the County Mental Health Director or designee is required to conduct an investigation. The Director or designee is permitted to file a petition only if it is determined likely that all necessary elements for an AOT petition can be proven by clear and convincing evidence. Prior to a petition being granted, an affidavit must be filed by a licensed mental health treatment provider certifying that he or she either personally examined the mentally ill person no more than 10 days prior to the filing of a petition or "made appropriate attempts to elicit the cooperation of the person...."

If the mentally ill person refuses to be examined, the court may request that the person consent to be examined. If the person does not consent and the court finds reasonable cause to believe that the allegations in the petition are true, the court may order the person be transported to a hospital or similar psychiatric evaluation facility for evaluation for a period not to exceed 72 hours. Such an evaluation is to determine if the mentally ill person meets the AB 1421 standard to determine whether it is appropriate to move forward with an AB 1421 hearing. An order for evaluation under this section is not an order for treatment. And, there is no requirement that the person being evaluated be held for the full 72 hours. Arguably, this pre-evaluation hold is the **ONLY** section of Laura's Law that offers a tool that doesn't already exist under the current Lanterman-Petris-Short (LPS) system.

If, after being evaluated, a determination is made that the mentally ill person meets the AB 1421 standard, the court may grant the County's petition if the court finds that "there is no appropriate and feasible less restrictive alternative" and order AOT treatment which can last up to six (6) months. The statute allows for additional court hearings during the term of the AOT order. The granting of the petition is a non-criminal legal process.

Once an AOT order has been issued, a treatment plan for the client is developed. However, there are no civil or criminal penalties for non-compliance with the treatment plan associated with the AOT Order. In light of the fact that the person subject to an AB 1421 petition is entitled to legal counsel, we expect that these mentally ill people will be advised by their attorneys that there are not

civil or criminal penalties for refusing to comply with an AOT order. Therefore, if a mentally ill person fails or refuses to comply with the treatment ordered by the court, AB 1421 provides only that the person may be detained up to 72 hours in an inpatient setting for further evaluation under Section 5150 of the Welfare and Institutions Code. However, if at any time “the person is determined not to meet the criteria of 5150, and does not agree to stay in the hospital as a voluntary patient...” he or she must be released. Thus if a person is not a danger to self, others or gravely disabled he or she must be released. This 5150 evaluation option is already available under current law. Some advocates and family members may believe that AB 1421 will solve the problems associated with homelessness and mentally illness, yet as stated above, failing to comply with treatment may only result in further evaluation under the existing LPS system.

At intervals of not less than 60 days during an AOT order, the director of the outpatient treatment program must file an affidavit with the court affirming that the person continues to meet the criteria for AOT. At these times, the mentally ill person has the right to a hearing to determine whether or not he or she still meets the criteria for AOT. At that hearing, the burden of proof for the continuation of the AOT order is on the director of the AOT program. During each of these 60-day periods the person may also file a petition for a writ of habeas corpus that would require the director of the AOT program to defend the legality of a sustained AOT petition and related treatment order. This could result in the filing of two reports with the court in any given 60 day period.

Contrary to some claims, AOT has no specific provision for involuntary medication. This limitation is significant because proponents of AOT often cite mandatory medication compliance as a critical element for effective treatment. Additionally, AB 1421 does not allow for any specific release from HIPPA privacy rules regarding access to medical records. As a result, family members may be disappointed to learn that, absent a waiver, AB 1421 does not authorize family participation in AOT treatment.

Another AB 1421 requirement is to implement a comprehensive training and education program to improve the delivery of services to AOT recipients. This training must be provided to AOT mental health treatment providers, law enforcement officials and court hearing officers.

Implementation Issues

Funding

No state funding was appropriated to support implementation of AB 1421 or AOT service provision. Furthermore, since AB 1421 is a local discretionary program, the county’s costs cannot be claimed under SB 90.

There is considerable doubt whether MHSA funds could be used for AB 1421 services. Based on County Counsel’s initial review of the issue, they have advised that MHSA funding may only be used for voluntary programs and that funding of involuntary treatment and court personnel is prohibited. There are strong arguments that AB 1421 is an involuntary program. Opponents of the law have previously indicated that they will challenge the use of any portion of existing voluntary treatment programs to carry out an AOT order.

Existing HCA voluntary programs cannot be reduced to fund an AB 1421 program because AB 1421 requires that “...no voluntary mental health program serving adults and no children’s mental health program may be reduced as a result of the implementation.” Consequently, it is very

likely that AOT programs can be financed only by additional local General Fund appropriations or by funding shifts from involuntary mental health programs.

Orange County's current involuntary programs are primarily inpatient and residential treatment programs used for evaluation and treatment of persons already placed on conservatorship. Shifting funds from them would reduce services for the most fragile and vulnerable patient population that has the most severe mental health impairments. This would be extremely detrimental to both the community and those individuals.

An additional consideration is that the County would be required to offer the same AB 1421 services on a voluntary basis to all individuals requesting them, whether or not the County Mental Health Director or designee has filed an AB 1421 petition. Currently various MHSA programs are available; however, there will not be sufficient capacity in these programs to accommodate all new referrals. It is unclear what the legal consequences would be if an individual requested intensive treatment that existing programs were unable to accommodate due to a lack of funding.

Potential Cost

The preliminary assessment of the County cost of an AOT program includes: (1) direct treatment costs, (2) other HCA costs, (3) Public Defender costs, and (4) County Counsel costs.

The total combined costs to develop, implement and operate an AB 1421 program are estimated at between \$5.7 million and \$6.1 million. Those costs are discussed below.

Direct Treatment Costs

Orange County's direct treatment cost for patients similar to those covered by AB 1421 is \$23,648 per client annually. The formula Nevada County used to estimate number of persons to receive services under AB 1421 (based on New York's experience with Kendra's Law) was one person for every 25,000 residents. Applying this formula in Orange County would result in 120 persons. The approximate contracted direct treatment costs for 120 clients would thus be 120 times \$23,648, or \$2,837,760.

Other HCA Costs

HCA costs would be incurred in the following areas:

- Clinical Psychologists to provide evaluations to determine whether the criteria of AB 1421 are met, to prepare the certified petition and to provide court testimony.
- Licensed masters level clinicians to conduct clinical analysis of the history and current status of the person's behavioral disorder and to prepare court documents.
- Bachelor's level and/or paraprofessional staff to provide outreach to targeted persons to engage in voluntary programs and to link those referred for assessment to the AB 1421 program.

- A supervisor and support staff for overall program oversight and supervision, and to respond to client, family and community questions and concerns.
- Costs associated with providing comprehensive education and training to improve the delivery of services to AOT recipients.
- County services and supplies including computers, software, rent, office supplies, mileage reimbursement, administrative costs, etc.

The other HCA costs would be approximately \$1,883,073.

Public Defender and County Counsel Costs

Both the Office of the Public Defender and County Counsel would have a need for additional staffing as well as additional ancillary costs, including the hiring of professional experts and other professional services. The approximate costs for each office would range between \$476,000 and \$676,000 annually.

In summary, the total approximate budget for an estimated 120 clients would be between \$5,672,833 to \$6,072,833, as follows:

Public Defender Costs:	\$476,000 to \$676,000
County Counsel Costs:	\$476,000 to \$676,000
Contracted Treatment Services Costs:	\$2,837,760
<u>HCA County Staff and Services Costs:</u>	<u>\$1,833,073</u>
Total	\$5,672,833 to \$6,072,833

Timeline

HCA would require 6 to 12 months to design and properly implement an AOT program. This would include:

- Designing a new Mental Health Civil Court program in coordination with the Probate Court, Office of the Public Defender and County Counsel.
- Determining whether the program would be funded by reducing involuntary mental health programs or by additional local General Fund appropriations. As part of this determination, an assessment of the impact on existing involuntary programs would be needed.
- Hiring of staff, procuring treatment services and educating the various stakeholders.

AB 1421 is currently set to sunset on January 1, 2013. If your Board chooses to implement AB 1421, given the expected time and expense to establish such a program, it might be prudent to postpone implementation until it is determined whether AB 1421 will be extended or made permanent, especially considering the likelihood of implementation delay due to potential lawsuits challenging implementation of the law.

Advantages and Disadvantages

Advantages

1. Provides an additional treatment resource for the community.

By implementing AB 1421, there would be an additional option available to family members and mental health professionals to assist resistant clients in obtaining treatment. It could result in more of these persons engaging in treatment programs. Correspondingly, some of the potential negative outcomes associated with mental illness, such as self-harm and criminal activity, may be decreased.

2. Allows family members to request service and may help noncompliant persons in obtaining and engaging in treatment.

The ability of non-public safety and non-medical personnel to request (through the County Mental Health Director or designee) court-ordered involuntary treatment in a non-criminal setting is a significant factor for support of AB 1421. Many family members and others strongly support AB 1421, believing that their noncompliant loved ones will, through this program, obtain needed treatment. They believe that AB 1421 is an effective tool to require seriously mentally ill individuals to get help before they become a danger to themselves or others, and that this law will help stop the revolving door of homelessness, hospitalization and incarceration. They also believe that it ultimately will reduce the public costs associated with these individuals when they do not receive treatment.

Disadvantages

1. Lack of funding.

Funding for the services required to be provided under AB 1421 continues to be a major barrier to implementation. The preliminary estimated cost is \$5.7 to \$6.1 million per year, and it is questionable whether MHSA funding could be used. Additional local General Fund appropriations could be needed for implementation.

2. Offers only limited new tools.

Other than the pre-evaluation hold of up to 72 hours and court oversight, AB 1421 does not offer any additional statutory framework for involuntary treatment that is not already in place and available. Specifically, the Lanterman-Petris-Short (LPS) Act provides an array of involuntary commitment procedures including 72 hour holds, 14-day holds, 180-day commitments for imminently dangerous persons, and temporary and permanent conservatorships. These holds can be used in cases where individuals are suspected of being a danger to self or others or gravely disabled as a result of their mental illness. Under AB 1421, there is no enforcement mechanism that does not already exist within the LPS statutory scheme, even if an individual fails to comply with a treatment order.

Moreover, because many persons who are subjects of AOT petitions and orders may not be actual HCA patients, and because AB1421 does not address HIPPA, the Mental Health Director or their designee may not be entitled to access to certain client records due to HIPPA restrictions without a court order or waiver from the patient.

3. Limits personal choice.

There are legitimate reasons why a person may want to opt out of treatment, including the fact that side effects of psychiatric medications can be severely uncomfortable and can involve health risks. Many believe that informed choice in regard to treatment is essential to recovery and maintaining one's mental health. Furthermore, negative experiences with involuntary treatment may make people more hesitant to access any form of treatment at a later point in time.

4. Civil liberty concerns.

Many clients are opposed to AB 1421 because of civil liberty concerns, as are some client and patients' rights organizations, citing "choice, not coercion". Involuntary mental health treatment is a sensitive topic that has long been debated in the mental health field. Opponents of AB 1421 argue that current provisions of the Lanterman-Petris-Short (LPS) act rightfully uphold an individual's freedom and preserve an individual's right to manage his or her health care. Under LPS, treatment may not be provided involuntarily unless it is proven that the individual is gravely disabled or is considered a danger to themselves or others.

5. May not provide the type of enhanced treatment, or avoidance of negative impacts of mental illness, that proponents hope for.

The types of treatment services offered under an AB 1421 program are comparable to the new MHSA programs that have been implemented in Orange County. As a result, the desirability of spending substantial public funds on this program, at a time when resources are diminishing, is debatable.

Additionally, based on the fact that AB 1421 does not set aside HIPPA protections, some family members may be disappointed to learn that, absent a waiver, AB 1421 does not provide family members the ability to participate in treatment with their loved ones.

6. The effectiveness of voluntary outpatient care vs. involuntary outpatient care is an open issue

A RAND Corporation study commissioned by the California Senate Committee on Rules regarding involuntary outpatient commitment, *The Effectiveness of Involuntary Outpatient Treatment, Empirical Evidence and the Experience of Eight States*, 2001, found:

- The data is inconclusive on whether involuntary outpatient commitment works.
- "There is no evidence that a court order is necessary to achieve compliance and good outcomes..."
- The literature provides clear evidence that "alternative community based mental health treatments can produce good outcomes for people with severe mental illness."

Other advocates and studies contend that involuntary outpatient care can be effective. They assert that absent the AOT order, the person subject to the order would not have engaged in treatment. This assertion may in fact be valid, and thus places the matter in doubt.

Options

1. Implement AB 1421.

The Board could elect to implement AB 1421. Adoption of AB 1421 would obligate the County to provide the required services and staffing. HCA would need 6 to 12 months to complete the design and implementation of an AOT program.

2. Do not implement.

The high cost, lack of funding, complex requirements and limited ability to enforce a court order are seen as major disadvantages to implementing AB 1421. Also, at the time AB 1421 was enacted in 2002, County Mental Health Programs had very few intensive outpatient programs/services. With the passage of Proposition 63 in November 2004, a broad range of voluntary services has been funded and implemented in Orange County. These programs, as described in the Attachment, have demonstrated decreases in hospitalization, incarceration and homelessness as well as increases in vocational and employment activities. Many of these new treatment services are geared specifically to persons resistant to seeking help or who have historically been underserved.

3. Develop a pilot program with some AB 1421 features.

AB 1421 does not provide authorization for implementation of a pilot program or anything less than total implementation. However, HCA could design a voluntary pilot program that incorporates some features of AB 1421 and implement the program on a provisional or short-term basis, without the Board adopting an AB 1421 resolution. It could be a new program or modification of an existing program. Such a program would not include any court enforcement provisions or oversight; however, it would provide a dedicated resource to work with individuals to engage their loved ones in needed treatment

A period of at least 6 months would be needed to design such a program and obtain the necessary review and approval. The pilot could potentially be funded by MHSA, provide access for families and treatment providers to request an evaluation, and provide outreach and engagement services, assessment/evaluation and a comprehensive array of treatment services. Such a program would require approval of the MHSA Steering Committee, Mental Health Board and the Board of Supervisors.

A pilot program may not be considered adequate by AB 1421 proponents because they are seeking court oversight and court intervention in the care of their loved ones. However, in lieu of court oversight, the HCA Patient's Rights Program could potentially fill a mediation role, providing oversight and intervention as necessary.

Attachment

Orange County Mental Health Services Similar to Those Described in AB 1421

Following is a list of current funded mental health services, totaling more than \$45 million, similar those described in AB 1421, that are designed to reach and assist persons historically resistant to treatment:

Full Service Partnerships

The Mental Health Services Act (MHSA) funds several Full Service Partnerships that are intensive programs emphasizing recovery and resilience. They include individualized mental health services and offer integrated services for clients and families. These programs link to extensive services, including mental health, medical, education, employment, and housing. They have a pool of flexible funding that may be used to provide “whatever it takes” for a client to attain recovery. There is 24/7 access to a team member. Caseload ratio is 1:15. The target population for these programs is the chronic mentally ill who are homeless or at risk of homelessness and may also be diagnosed with substance abuse or dependence disorders.

One of the newer Full Service Partnership programs serves persons admitted to the Assisted Intervention Treatment Court. This court program is for low level offenders who are chronically mentally ill and have historically been difficult to serve. This program is similar to AB 1421, except that the client must have been involved in minor criminal offenses before a Court referral can be made. In contrast, Laura’s Law is a non-criminal proceeding.

The Assisted Intervention Treatment Court offers full service partnership services for up to twenty five clients. Those services are funded by MHSA and the client voluntarily agrees to the treatment plan and court supervision. Referrals for the program generally come from the Public Defender’s Office representing clients in their criminal proceedings.

HCA’s current budget includes approximately \$31 million for Full Service Partnership programs.

Program for Assertive Community Treatment

Orange County has programs for Assertive Community Treatment teams for Transitional Age Youth, Adults, and Older Adults. These teams provide (1) medication services; (2) individual, group, substance abuse, and family therapy; and (3) supportive services such as money management training, physical health care, and linkage to benefits.

The target population is persons with severe and persistent mental illness who typically have high needs that include substance use, but do not meet all the criteria to enroll in a Full Service Partnership program. Clients served in the program have frequently cycled through the inpatient system and but have not been effectively linked to outpatient services.

These programs provide an intensive level of services similar to Full Service Partnership programs. The main difference between the two programs is that there is not pool of flexible funding and housing resources for Program for Assertive Community Treatment programs.

HCA's current budget includes about \$5 million for Program for Assertive Community Treatment programs.

Outreach and Engagement

Outreach and Engagement programs focus on identifying and engaging people with Severe Mental Illness who are not receiving treatment. This program employs local outreach workers trained in recovery and resiliency; they are highly visible and knowledgeable about resources. Major points of contact for the outreach staff are parks, homeless shelters, bridges, and other places where the County's homeless population may be found.

In August 2011, additional Outreach and Engagement programs were added aimed at intervening with individuals and families prior to onset of serious mental illness. These programs serve people of all ages who are at risk of developing a mental illness or who are displaying early signs of emotional, behavioral or mental instability or related disorders. Services include outreach and education, screening/assessment, wellness plan development, case management including crisis management, linkage to appropriate services, short-term interventions, educational and life skills classes, support groups, and transportation support.

HCA's current budget includes approximately \$5 million for Outreach and Engagement services.

Orange County Center for Resiliency Education and Wellness

HCA recently implemented a new Orange County Center for Resiliency Education and Wellness. It serves persons age 14-25 experiencing the first onset of psychotic illness with a duration of untreated psychosis of less than one year. Services include assessment, individual/family counseling, psychiatric services, educational family groups, health and wellness activities and educational and vocational support. Educational opportunities are also available to the greater community to learn more about psychosis, and how to improve the outcomes of young people who are affected by it.

HCA's current budget includes about \$3 million for the Orange County Center for Resiliency Education and Wellness.



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Background

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from New York State's 1999 Mental Hygiene Law known as "Kendra's Law," under which about 1,000 New York residents are served each year.

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Throughout California, there has been disagreement regarding whether AB 1421 should be implemented. While many family members and other advocates have sought to have the program implemented, it has met with opposition from clients, service providers, advocates and disability rights attorneys.

A number of counties, including San Diego, Sacramento, San Francisco, Marin, Nevada and Santa Barbara, have considered implementing AB 1421. However, only Nevada County a small county in Northern California and the home of Laura Wilcox, the young woman after whom the bill was named, has implemented Laura's Law. Nevada County has one person in the program currently.

In 2004, the Los Angeles County Board of Supervisors passed a board resolution to implement an AB 1421 pilot program. However, opponents of the program filed a lawsuit against the pilot program, claiming that it did not meet several statutory requirements. The Los Angeles County program is a pilot program that serves only a limited number of clients and is available only to those that are involved in the "criminal" justice system. Conversely, AB 1421 requires total implementation and involves "civil" court proceedings that do not involve crimes or the threat of punishment. In response to the lawsuit, Los Angeles County subsequently entered into a settlement agreement whereby it removed all references to AB 1421 and implemented a program similar to AB 1421 that focuses on low level criminal defendants.

Provisions of AB 1421

AB 1421 is a complex law that contains much detail for some of its provisions while remaining vague about others. It is very specific about notice, due process, right to counsel, and which services must be offered and how they must be provided. All specified services must be made available because the law does not provide for partial implementation.

AB 1421 provides for court-ordered outpatient mental health treatment. This treatment is also known as Assisted Outpatient Treatment (AOT). A person subject to AOT must live in the County and have a history of not participating in needed mental health treatment. The person must be unlikely to survive safely in the community without supervision, based on an investigation and resultant clinical determination. All persons placed on AOT must meet threshold criteria: the person's mental illness (1) has twice been a factor leading to psychiatric hospitalizations or incarcerations within the prior 36 months, or (2) has resulted in one or more actual or attempted serious acts of violence toward self or others within the prior 48 months.

If the criteria are satisfied, the County Mental Health Director or designee may file a certified petition with the court indicating that AOT is needed to help prevent relapse or deterioration that would likely result in grave disability or serious harm to self or others. Such a petition must establish that the person has been offered an opportunity to voluntarily participate in a treatment plan but continues not to engage in treatment and is deteriorating.

AB 1421 specifies that certain individuals can request an AOT evaluation. These include (1) immediate family members, (2) adults residing with the individual, (3) a hospital director or licensed mental health professional treating the individual, or (4) a peace officer, parole or probation officer supervising the individual.

Upon receiving a request from an individual noted above, the County Mental Health Director or designee is required to conduct an investigation. The Director or designee is permitted to file a petition only if it is determined likely that all necessary elements for an AOT petition can be proven by clear and convincing evidence. Prior to a petition being granted, an affidavit must be filed by a licensed mental health treatment provider certifying that he or she either personally examined the mentally ill person no more than 10 days prior to the filing of a petition or "made appropriate attempts to elicit the cooperation of the person...."

If the mentally ill person refuses to be examined, the court may request that the person consent to be examined. If the person does not consent and the court finds reasonable cause to believe that the allegations in the petition are true, the court may order the person be transported to a hospital or similar psychiatric evaluation facility for evaluation for a period not to exceed 72 hours. Such an evaluation is to determine if the mentally ill person meets the AB 1421 standard to determine whether it is appropriate to move forward with an AB 1421 hearing. An order for evaluation under this section is not an order for treatment. And, there is no requirement that the person being evaluated be held for the full 72 hours. Arguably, this pre-evaluation hold is the **ONLY** section of Laura's Law that offers a tool that doesn't already exist under the current Lanterman-Petris-Short (LPS) system.

If, after being evaluated, a determination is made that the mentally ill person meets the AB 1421 standard, the court may grant the County's petition if the court finds that "there is no appropriate and feasible less restrictive alternative" and order AOT treatment which can last up to six (6) months. The statute allows for additional court hearings during the term of the AOT order. The granting of the petition is a non-criminal legal process.

Once an AOT order has been issued, a treatment plan for the client is developed. However, there are no civil or criminal penalties for non-compliance with the treatment plan associated with the AOT Order. In light of the fact that the person subject to an AB 1421 petition is entitled to legal counsel, we expect that these mentally ill people will be advised by their attorneys that there are not

civil or criminal penalties for refusing to comply with an AOT order. Therefore, if a mentally ill person fails or refuses to comply with the treatment ordered by the court, AB 1421 provides only that the person may be detained up to 72 hours in an inpatient setting for further evaluation under Section 5150 of the Welfare and Institutions Code. However, if at any time “the person is determined not to meet the criteria of 5150, and does not agree to stay in the hospital as a voluntary patient...” he or she must be released. Thus if a person is not a danger to self, others or gravely disabled he or she must be released. This 5150 evaluation option is already available under current law. Some advocates and family members may believe that AB 1421 will solve the problems associated with homelessness and mentally illness, yet as stated above, failing to comply with treatment may only result in further evaluation under the existing LPS system.

At intervals of not less than 60 days during an AOT order, the director of the outpatient treatment program must file an affidavit with the court affirming that the person continues to meet the criteria for AOT. At these times, the mentally ill person has the right to a hearing to determine whether or not he or she still meets the criteria for AOT. At that hearing, the burden of proof for the continuation of the AOT order is on the director of the AOT program. During each of these 60-day periods the person may also file a petition for a writ of habeas corpus that would require the director of the AOT program to defend the legality of a sustained AOT petition and related treatment order. This could result in the filing of two reports with the court in any given 60 day period.

Contrary to some claims, AOT has no specific provision for involuntary medication. This limitation is significant because proponents of AOT often cite mandatory medication compliance as a critical element for effective treatment. Additionally, AB 1421 does not allow for any specific release from HIPPA privacy rules regarding access to medical records. As a result, family members may be disappointed to learn that, absent a waiver, AB 1421 does not authorize family participation in AOT treatment.

Another AB 1421 requirement is to implement a comprehensive training and education program to improve the delivery of services to AOT recipients. This training must be provided to AOT mental health treatment providers, law enforcement officials and court hearing officers.

Implementation Issues

Funding

No state funding was appropriated to support implementation of AB 1421 or AOT service provision. Furthermore, since AB 1421 is a local discretionary program, the county’s costs cannot be claimed under SB 90.

There is considerable doubt whether MHSA funds could be used for AB 1421 services. Based on County Counsel’s initial review of the issue, they have advised that MHSA funding may only be used for voluntary programs and that funding of involuntary treatment and court personnel is prohibited. There are strong arguments that AB 1421 is an involuntary program. Opponents of the law have previously indicated that they will challenge the use of any portion of existing voluntary treatment programs to carry out an AOT order.

Existing HCA voluntary programs cannot be reduced to fund an AB 1421 program because AB 1421 requires that “...no voluntary mental health program serving adults and no children’s mental health program may be reduced as a result of the implementation.” Consequently, it is very

likely that AOT programs can be financed only by additional local General Fund appropriations or by funding shifts from involuntary mental health programs.

Orange County's current involuntary programs are primarily inpatient and residential treatment programs used for evaluation and treatment of persons already placed on conservatorship. Shifting funds from them would reduce services for the most fragile and vulnerable patient population that has the most severe mental health impairments. This would be extremely detrimental to both the community and those individuals.

An additional consideration is that the County would be required to offer the same AB 1421 services on a voluntary basis to all individuals requesting them, whether or not the County Mental Health Director or designee has filed an AB 1421 petition. Currently various MHSA programs are available; however, there will not be sufficient capacity in these programs to accommodate all new referrals. It is unclear what the legal consequences would be if an individual requested intensive treatment that existing programs were unable to accommodate due to a lack of funding.

Potential Cost

The preliminary assessment of the County cost of an AOT program includes: (1) direct treatment costs, (2) other HCA costs, (3) Public Defender costs, and (4) County Counsel costs.

The total combined costs to develop, implement and operate an AB 1421 program are estimated at between \$5.7 million and \$6.1 million. Those costs are discussed below.

Direct Treatment Costs

Orange County's direct treatment cost for patients similar to those covered by AB 1421 is \$23,648 per client annually. The formula Nevada County used to estimate number of persons to receive services under AB 1421 (based on New York's experience with Kendra's Law) was one person for every 25,000 residents. Applying this formula in Orange County would result in 120 persons. The approximate contracted direct treatment costs for 120 clients would thus be 120 times \$23,648, or \$2,837,760.

Other HCA Costs

HCA costs would be incurred in the following areas:

- Clinical Psychologists to provide evaluations to determine whether the criteria of AB 1421 are met, to prepare the certified petition and to provide court testimony.
- Licensed masters level clinicians to conduct clinical analysis of the history and current status of the person's behavioral disorder and to prepare court documents.
- Bachelor's level and/or paraprofessional staff to provide outreach to targeted persons to engage in voluntary programs and to link those referred for assessment to the AB 1421 program.

- A supervisor and support staff for overall program oversight and supervision, and to respond to client, family and community questions and concerns.
- Costs associated with providing comprehensive education and training to improve the delivery of services to AOT recipients.
- County services and supplies including computers, software, rent, office supplies, mileage reimbursement, administrative costs, etc.

The other HCA costs would be approximately \$1,883,073.

Public Defender and County Counsel Costs

Both the Office of the Public Defender and County Counsel would have a need for additional staffing as well as additional ancillary costs, including the hiring of professional experts and other professional services. The approximate costs for each office would range between \$476,000 and \$676,000 annually.

In summary, the total approximate budget for an estimated 120 clients would be between \$5,672,833 to \$6,072,833, as follows:

Public Defender Costs:	\$476,000 to \$676,000
County Counsel Costs:	\$476,000 to \$676,000
Contracted Treatment Services Costs:	\$2,837,760
<u>HCA County Staff and Services Costs:</u>	<u>\$1,833,073</u>
Total	\$5,672,833 to \$6,072,833

Timeline

HCA would require 6 to 12 months to design and properly implement an AOT program. This would include:

- Designing a new Mental Health Civil Court program in coordination with the Probate Court, Office of the Public Defender and County Counsel.
- Determining whether the program would be funded by reducing involuntary mental health programs or by additional local General Fund appropriations. As part of this determination, an assessment of the impact on existing involuntary programs would be needed.
- Hiring of staff, procuring treatment services and educating the various stakeholders.

AB 1421 is currently set to sunset on January 1, 2013. If your Board chooses to implement AB 1421, given the expected time and expense to establish such a program, it might be prudent to postpone implementation until it is determined whether AB 1421 will be extended or made permanent, especially considering the likelihood of implementation delay due to potential lawsuits challenging implementation of the law.

Advantages and Disadvantages

Advantages

1. Provides an additional treatment resource for the community.

By implementing AB 1421, there would be an additional option available to family members and mental health professionals to assist resistant clients in obtaining treatment. It could result in more of these persons engaging in treatment programs. Correspondingly, some of the potential negative outcomes associated with mental illness, such as self-harm and criminal activity, may be decreased.

2. Allows family members to request service and may help noncompliant persons in obtaining and engaging in treatment.

The ability of non-public safety and non-medical personnel to request (through the County Mental Health Director or designee) court-ordered involuntary treatment in a non-criminal setting is a significant factor for support of AB 1421. Many family members and others strongly support AB 1421, believing that their noncompliant loved ones will, through this program, obtain needed treatment. They believe that AB 1421 is an effective tool to require seriously mentally ill individuals to get help before they become a danger to themselves or others, and that this law will help stop the revolving door of homelessness, hospitalization and incarceration. They also believe that it ultimately will reduce the public costs associated with these individuals when they do not receive treatment.

Disadvantages

1. Lack of funding.

Funding for the services required to be provided under AB 1421 continues to be a major barrier to implementation. The preliminary estimated cost is \$5.7 to \$6.1 million per year, and it is questionable whether MHSA funding could be used. Additional local General Fund appropriations could be needed for implementation.

2. Offers only limited new tools.

Other than the pre-evaluation hold of up to 72 hours and court oversight, AB 1421 does not offer any additional statutory framework for involuntary treatment that is not already in place and available. Specifically, the Lanterman-Petris-Short (LPS) Act provides an array of involuntary commitment procedures including 72 hour holds, 14-day holds, 180-day commitments for imminently dangerous persons, and temporary and permanent conservatorships. These holds can be used in cases where individuals are suspected of being a danger to self or others or gravely disabled as a result of their mental illness. Under AB 1421, there is no enforcement mechanism that does not already exist within the LPS statutory scheme, even if an individual fails to comply with a treatment order.

Moreover, because many persons who are subjects of AOT petitions and orders may not be actual HCA patients, and because AB1421 does not address HIPPA, the Mental Health Director or their designee may not be entitled to access to certain client records due to HIPPA restrictions without a court order or waiver from the patient.

3. Limits personal choice.

There are legitimate reasons why a person may want to opt out of treatment, including the fact that side effects of psychiatric medications can be severely uncomfortable and can involve health risks. Many believe that informed choice in regard to treatment is essential to recovery and maintaining one's mental health. Furthermore, negative experiences with involuntary treatment may make people more hesitant to access any form of treatment at a later point in time.

4. Civil liberty concerns.

Many clients are opposed to AB 1421 because of civil liberty concerns, as are some client and patients' rights organizations, citing "choice, not coercion". Involuntary mental health treatment is a sensitive topic that has long been debated in the mental health field. Opponents of AB 1421 argue that current provisions of the Lanterman-Petris-Short (LPS) act rightfully uphold an individual's freedom and preserve an individual's right to manage his or her health care. Under LPS, treatment may not be provided involuntarily unless it is proven that the individual is gravely disabled or is considered a danger to themselves or others.

5. May not provide the type of enhanced treatment, or avoidance of negative impacts of mental illness, that proponents hope for.

The types of treatment services offered under an AB 1421 program are comparable to the new MHSA programs that have been implemented in Orange County. As a result, the desirability of spending substantial public funds on this program, at a time when resources are diminishing, is debatable.

Additionally, based on the fact that AB 1421 does not set aside HIPPA protections, some family members may be disappointed to learn that, absent a waiver, AB 1421 does not provide family members the ability to participate in treatment with their loved ones.

6. The effectiveness of voluntary outpatient care vs. involuntary outpatient care is an open issue

A RAND Corporation study commissioned by the California Senate Committee on Rules regarding involuntary outpatient commitment, *The Effectiveness of Involuntary Outpatient Treatment, Empirical Evidence and the Experience of Eight States*, 2001, found:

- The data is inconclusive on whether involuntary outpatient commitment works.
- "There is no evidence that a court order is necessary to achieve compliance and good outcomes..."
- The literature provides clear evidence that "alternative community based mental health treatments can produce good outcomes for people with severe mental illness."

Other advocates and studies contend that involuntary outpatient care can be effective. They assert that absent the AOT order, the person subject to the order would not have engaged in treatment. This assertion may in fact be valid, and thus places the matter in doubt.

Options

1. Implement AB 1421.

The Board could elect to implement AB 1421. Adoption of AB 1421 would obligate the County to provide the required services and staffing. HCA would need 6 to 12 months to complete the design and implementation of an AOT program.

2. Do not implement.

The high cost, lack of funding, complex requirements and limited ability to enforce a court order are seen as major disadvantages to implementing AB 1421. Also, at the time AB 1421 was enacted in 2002, County Mental Health Programs had very few intensive outpatient programs/services. With the passage of Proposition 63 in November 2004, a broad range of voluntary services has been funded and implemented in Orange County. These programs, as described in the Attachment, have demonstrated decreases in hospitalization, incarceration and homelessness as well as increases in vocational and employment activities. Many of these new treatment services are geared specifically to persons resistant to seeking help or who have historically been underserved.

3. Develop a pilot program with some AB 1421 features.

AB 1421 does not provide authorization for implementation of a pilot program or anything less than total implementation. However, HCA could design a voluntary pilot program that incorporates some features of AB 1421 and implement the program on a provisional or short-term basis, without the Board adopting an AB 1421 resolution. It could be a new program or modification of an existing program. Such a program would not include any court enforcement provisions or oversight; however, it would provide a dedicated resource to work with individuals to engage their loved ones in needed treatment

A period of at least 6 months would be needed to design such a program and obtain the necessary review and approval. The pilot could potentially be funded by MHSA, provide access for families and treatment providers to request an evaluation, and provide outreach and engagement services, assessment/evaluation and a comprehensive array of treatment services. Such a program would require approval of the MHSA Steering Committee, Mental Health Board and the Board of Supervisors.

A pilot program may not be considered adequate by AB 1421 proponents because they are seeking court oversight and court intervention in the care of their loved ones. However, in lieu of court oversight, the HCA Patient's Rights Program could potentially fill a mediation role, providing oversight and intervention as necessary.

Attachment

Orange County Mental Health Services Similar to Those Described in AB 1421

Following is a list of current funded mental health services, totaling more than \$45 million, similar those described in AB 1421, that are designed to reach and assist persons historically resistant to treatment:

Full Service Partnerships

The Mental Health Services Act (MHSA) funds several Full Service Partnerships that are intensive programs emphasizing recovery and resilience. They include individualized mental health services and offer integrated services for clients and families. These programs link to extensive services, including mental health, medical, education, employment, and housing. They have a pool of flexible funding that may be used to provide “whatever it takes” for a client to attain recovery. There is 24/7 access to a team member. Caseload ratio is 1:15. The target population for these programs is the chronic mentally ill who are homeless or at risk of homelessness and may also be diagnosed with substance abuse or dependence disorders.

One of the newer Full Service Partnership programs serves persons admitted to the Assisted Intervention Treatment Court. This court program is for low level offenders who are chronically mentally ill and have historically been difficult to serve. This program is similar to AB 1421, except that the client must have been involved in minor criminal offenses before a Court referral can be made. In contrast, Laura’s Law is a non-criminal proceeding.

The Assisted Intervention Treatment Court offers full service partnership services for up to twenty five clients. Those services are funded by MHSA and the client voluntarily agrees to the treatment plan and court supervision. Referrals for the program generally come from the Public Defender’s Office representing clients in their criminal proceedings.

HCA’s current budget includes approximately \$31 million for Full Service Partnership programs.

Program for Assertive Community Treatment

Orange County has programs for Assertive Community Treatment teams for Transitional Age Youth, Adults, and Older Adults. These teams provide (1) medication services; (2) individual, group, substance abuse, and family therapy; and (3) supportive services such as money management training, physical health care, and linkage to benefits.

The target population is persons with severe and persistent mental illness who typically have high needs that include substance use, but do not meet all the criteria to enroll in a Full Service Partnership program. Clients served in the program have frequently cycled through the inpatient system and but have not been effectively linked to outpatient services.

These programs provide an intensive level of services similar to Full Service Partnership programs. The main difference between the two programs is that there is not pool of flexible funding and housing resources for Program for Assertive Community Treatment programs.

HCA's current budget includes about \$5 million for Program for Assertive Community Treatment programs.

Outreach and Engagement

Outreach and Engagement programs focus on identifying and engaging people with Severe Mental Illness who are not receiving treatment. This program employs local outreach workers trained in recovery and resiliency; they are highly visible and knowledgeable about resources. Major points of contact for the outreach staff are parks, homeless shelters, bridges, and other places where the County's homeless population may be found.

In August 2011, additional Outreach and Engagement programs were added aimed at intervening with individuals and families prior to onset of serious mental illness. These programs serve people of all ages who are at risk of developing a mental illness or who are displaying early signs of emotional, behavioral or mental instability or related disorders. Services include outreach and education, screening/assessment, wellness plan development, case management including crisis management, linkage to appropriate services, short-term interventions, educational and life skills classes, support groups, and transportation support.

HCA's current budget includes approximately \$5 million for Outreach and Engagement services.

Orange County Center for Resiliency Education and Wellness

HCA recently implemented a new Orange County Center for Resiliency Education and Wellness. It serves persons age 14-25 experiencing the first onset of psychotic illness with a duration of untreated psychosis of less than one year. Services include assessment, individual/family counseling, psychiatric services, educational family groups, health and wellness activities and educational and vocational support. Educational opportunities are also available to the greater community to learn more about psychosis, and how to improve the outcomes of young people who are affected by it.

HCA's current budget includes about \$3 million for the Orange County Center for Resiliency Education and Wellness.