DRC Will Challenge California's Outpatient Committal Laws in Court

Disability Rights California will challenge Los Angeles County's Assisted Outpatient Treatment program in court as early as this fall, DRC staff attorney Pamela Cohen has announced. DRC, the federally mandated Protection and Advocacy agency in California, has notified the government of its intentions, and plans to follow up with legal challenges to similar ordinances in Orange County and San Francisco next.

Cohen was speaking at the National Association for Rights Protection and Advocacy conference in Seattle on September 5th. She said the agency has been studying the legislation in collaboration with experts from the Bazelon Center for Mental Health Law and the American Civil Liberties Union. She described the Assisted Outpatient Treatment (AOT) program as "a bad investment in a broken promise." AOT diverts desperately needed dollars away from community mental health services and towards police, administrators and courts, doesn't reach the people it purports to be trying to help, and violates people's civil rights, she said.

Also known as "Laura's Law," California's *AB-1421* allows the government to force people who've been diagnosed with mental illnesses into treatment programs even though they are living in the community and do not require hospitalization. Though the law doesn't specifically mandate involuntary drugging, said Cohen, it allows people to be forced into capacity hearings where drugging could be mandated, and non-compliance with treatment is a central criterion for being put in the program in the first place. Furthermore, medication regimes can be written into a person's AOT plan, and then non-compliance with the plan may be considered a breach of the law. She also said there would likely be a "black robe" effect, where at AOT hearings people would be persuaded by judges to take medications for fear of potentially facing more serious legal consequences later. The overarching state law *AB-1421* authorizes AOT, and so far 6 of California's 58 counties have begun AOT initiatives. With expanded funding now available Cohen said she expects more AOT programs to be "popping up" in other

counties. But many people have been deeply misled about whom the AOT programs target and how well they work, she said.

Pamela Cohen

"At [County] Board of Supervisor hearings people are always testifying that these laws are for people who don't know they have a mental illness and have no insight and can't make their own decisions," said Cohen. "[They testify that] this law provides services for people who would otherwise slip through the cracks, who can't get services because they're dangerous and lack capacity to make their own decisions."

Cohen said those assertions are mere myth, and that in fact *AB-1421* expands the criteria for forced treatment to a much broader segment of the population. "The standard [for being forced into the AOT program] is that someone thinks you might be dangerous," said Cohen. "Not that you are dangerous." Meanwhile, California already has laws addressing circumstances where people may be losing their decision-making capacity, so the AOT laws do not even mention questions of capacity. "People are very misled about

that."

Cohen outlined DRC's three main legal arguments against California's AOT programs in her presentation.

First, she noted that AOT is designed to provide people with a diverse range of individualized services, such as housing assistance, employment training, family support, medication co-ordination, mobile multi-disciplinary mental health teams using high staff-to-client ratios, and culturally sensitive psychosocial and psychotherapeutic options. However, *AB-1421* also stipulates that people cannot be forced to participate in an AOT program unless they've already been offered this same range of services on a voluntary basis. "We don't believe that any county is actually offering that range of services" to the many people who want them, said Cohen. And the fact that no county is actually following the law by providing these services to everyone to access on a voluntary basis is extremely relevant, she said, because it's these services that truly help people, not the use of force.

"The Treatment Advocacy Center and [National Alliance on Mental Illness] have all kinds of studies that they talk about that they say show benefits from these [court ordered outpatient forced treatment] programs," said Cohen. "But there are only three studies in the whole world that have controls, where they actually offered the same services to people on a voluntary basis. Any other study is meaningless… These three studies all show that there's no benefit to the court order."

"These are very broad criteria," said Cohen. "It's unconstitutionally vague and overbroad."

The second major problem with the legislation, said Cohen, is that people can become subject to an AOT order if they've threatened to commit suicide even once in the past four years, or if they are "substantially deteriorating" or are "unlikely to survive safely in the community without supervision."

"These are very broad criteria," said Cohen. "It's unconstitutionally vague and overbroad."

A third problem, said Cohen, is that *AB-1421* violates the federal *Health Information Protection Act* (HIPA), because anyone merely coming under consideration for the program is forced to divulge their mental health records. "Starting from this investigation stage going forward there are all kinds of disclosures happening without consent," she said.

Meanwhile, people only get five days to prepare their defense against an AOT order, said Cohen. "We know that the Los Angeles public defenders are concerned about this. They don't think they can adequately represent their clients when they're only given five days notice."

In an interview with *Mad In America*, Cohen said that DRC's court challenge may involve representing someone who has been put under an AOT order, or representing a taxpayer and arguing that AOTs are an illegal use of state funding. "Our view is that this is an illegal program," said Cohen.

"We'd like to see the AOT programs dismantled. We'd like to see the range of services that are offered by AOT provided to people on a voluntary basis," Cohen told *Mad In America*. "We should not be using coercion to provide services that should be provided on a voluntary basis."

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Rob Wipond is *Mad In America's* News Editor. This week he has been reporting on the National Association for Rights Protection and Advocacy conference in Seattle.

For more information:

AB-1421 Mental health: involuntary treatment (California Legislative

Information)

Disability Rights California

National Association for Rights Protection and Advocacy

UPDATE: Los Angeles Postpones Implementation of Outpatient Committal (Mad In America, October 13, 2014)

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BOARD OF SUPERVISORS

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BOARD OF SUPERVISORS

May 12, 2005

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Dan Souza, LCSW, Director
Stanislaus County Behavioral Health Recovery Services
800 Scenic Drive
Modesto, CA 95350

Larry Poaster, Mental Health Services County Coordinator
Karen Hurley, Mental Health Services County Coordinator
Stanislaus County Mental Health
800 Scenic Drive
Modesto, CA 95330

Re: Proposition 63 / AB 1421

Dear Supervisors, Messrs. Souza and Poasterm, and Ms. Hurley:

Protection & Advocacy, Inc. (PAI) is the agency in California designated to advocate for the rights of individuals with a diagnosis of mental illness pursuant to the Protection and Advocacy for Individuals With Mental Illness Act. 42 U.S.C. § 10801, *et. seq*. PAI is concerned that a few counties have expressed an interest in using Proposition 63 funds for establishing AB 1421 involuntary treatment programs. PAI is writing this letter to each county in order to insure that all counties are aware that Proposition 63 funds cannot be used to fund AB 1421

cc: BOS
Clerk
CEO

services. (See attached memorandum dated November 18, 2004.) Proposition 63 funds must be used to fund voluntary services.

AB 1421 provides for establishment of assisted outpatient treatment programs on a pilot basis at county option. Welfare and Institutions Code § 5349. An AB 1421 program cannot be established unless the county board of supervisors "makes a finding that no voluntary mental health program serving adults, and no children's mental health program, may be reduced as a result of the implementation of [AB 1421]." Welfare and Institutions Code § 5349. Any attempt to divert Proposition 63 funds to AB 1421 programs would represent a reduction in a voluntary mental health program in violation of this statute.

> In addition, counties may not force individuals into AB 1421 programs by refusing to make the same services available on a voluntary basis. AB 1421 services can only be provided on an involuntary basis if the individual fails to make use of the same array of services on a voluntary basis. Welfare and Institutions Code section 5348(b). Therefore, AB 1421 programs cannot be established if voluntary service programs are not in place, or are inadequate to provide the same array of services as is required under AB 1421.

The purpose of Proposition 63 is to reduce the need for involuntary services, not to expand involuntary services. County plans for Proposition 63 services should describe how the Proposition 63 services will reduce the need for involuntary services. Proposition 63 was designed to do such things as expand crisis services so that the need for inpatient hospitalization would be reduced, and provide community supports and services so that unnecessary and inappropriate institutionalization (including incarceration) can be avoided or reduced. This includes services to reduce homelessness. Counties should create innovative programs that engage people who might not otherwise seek help when needed. Counties should focus on these things rather than minimizing or ignoring them in an effort to expand involuntary treatment.

PAI therefore requests that all counties refrain from attempting to use Proposition 63 funds to establish AB 1421 programs. PAI also requests that counties fully implement Proposition 63 programs before considering the establishment of AB 1421 programs. Finally, PAI requests that counties structure their Proposition 63

programs in such a way that the need for involuntary services will be reduced. It would be a grave injustice to force people into treatment by withholding services that people would be willing to accept voluntarily if the services were offered. AB 1421 pilot programs do not comply with the law if people have no choice but to participate due to the unavailability of voluntary services. Proposition 63 was enacted to address the need for additional mental health services that are not being met currently. Counties should focus on meeting the need for services identified in Proposition 63. Counties should not rush to divert Proposition 63 funds into involuntary treatment programs. That was not the intent of Proposition 63.

Sincerely,

Daniel Brzovic,
Associate Managing Attorney
Oakland Regional Office

Enclosure

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MEMORANDUM

TO: Interested Persons

FROM: Daniel Brzovic
Associate Managing Attorney
RE: Proposition 63 and involuntary services

DATE: May 3, 2005

I have been asked whether Proposition 63 contains language prohibiting the use of Proposition 63 funds for involuntary services.

There is no language in Proposition 63, itself, that either prohibits or authorizes the use of any funds for involuntary services. This is because involuntary treatment is governed entirely by the provisions of the Lanterman-Petris-Short (LPS) Act. Welfare and Institutions Code section 5000, *et seq.* Proposition 63 does not amend the LPS Act. Proposition 63 expands existing service programs, creates new service programs, and provides funding for those programs.

However, this does not mean that Proposition 63 funds can be used to pay for assisted outpatient treatment pilot projects (AB 1421). Proposition 63 provides that Proposition 63 funds can only be used to pay for specific, listed programs. AB 1421 assisted outpatient treatment programs are not on the list of programs that Proposition 63 funds can be used to pay for. Therefore, counties cannot use Proposition 63 funds to set up AB 1421 pilot projects.

Proposition 63, among other things, amends the Adult and Older Adult Systems of Care Act (AB 34/2034), Welfare & Institutions Code section 5800, *et seq.,* by expanding the categories of persons eligible for services, and by providing additional funding for the services. Welfare and Institutions Code section 5813.5. Under the AB 34/2034 program, as it existed before the

enactment of Proposition 63, and as it exists after the enactment of Proposition 63, services should be

"Advancing the human and legal rights of people with disabilities"

provided on a voluntary basis unless danger to self or others or grave disability requires temporary involuntary treatment. Welfare and Institutions Code section 5801(b)(5). AB 34/2034 funds have never been available to fund AB 1421 programs. Proposition 63 does not change this.

AB 34/2034 services are designed to be voluntary.

The current Adult and Older Adult Mental Health System of Care Act was added to the Welfare and Institutions Code by the Statutes of 1996, chapter 153 (S8 659). 1:\8 34/2034 amended the Adult and Older Adult Mental Health System of Care Act effective in 2000 and 2001. Proposition 63 also amends the Act.

Since its enactment, Adult and Older Adult Mental Health System of Care Act has provided that services should be provided on a voluntary basis. None of the amendments to the Act made by AB 34, AB 2034, or Proposition 63 have changed this.

Welfare and Institutions Code section 580l(b)(5), as added by SB 659 in 1996, provides:

(b) The underlying philosophy for these systems of care includes the following:

(5) The client should be fully informed and volunteer for all treatment provided, unless danger to self or others or grave disability requires temporary involuntary treatment.

Any county applying for an adult system of care grant has to agree to this philosophy. A grant application that is inconsistent with this philosophy would be contrary to the intent of the Legislature in establishing this program, and contrary to the intent of the people of California in expanding the program through Proposition 63. Proposition 63 specifically requires that Proposition 63 funds be distributed for the provision of services under this section (5301) of the law. Welfare and Institutions Code section 5813.5.

The service standards for adult system of care also require the provision of voluntary services. Welfare and Institutions Code section 5806 requires, among other things, the following client-centered service standards:

The State Department of Mental Health shall establish service standards that ensure that members of the target population are identified, and services provided to assist them to live independently, work, and reach their potential as productive citizens. ..These standards shall include, but are not limited to, all of the following:

(a) A service planning and delivery process that is target population based and includes the following:

> (6) Provision for services to be client-directed and that employ psychosocial rehabilitation and recovery principles.

(b) Each client shall have a clearly designated mental health personal services coordinator who may be part of a multidisciplinary treatment team who is responsible for providing or assuring needed services. ...Each client shall participate in the development of his or her personal services plan, and responsible staff shall consult with the designated conservator, if one has been appointed, and, with the consent of the client, consult with the family and other significant persons as appropriate.

(c) The individual personal services plan shall ensure that members of the target population involved in the system of care receive age, gender, and culturally appropriate services, to the extent feasible, that are designed to enable recipients to:

> (6) Self-manage their illness and exert as much control as possible over both the day-to-day and long-term decisions' which affect their lives.

It is important to note that there is nothing in the Adult Systems of Care Act that authorizes any type of involuntary treatment. The focus of the Act is on providing services to clients on a voluntary basis. Provision of involuntary services is not prohibited, but involuntary services can be provided only in narrow circumstances under LPS, namely, only to individuals who are determined to be a danger to self or others or gravely disabled, and even then only when the involuntary services are temporary.

Proposition 63 does not provide funding for AB 1421 services

Proposition 63 added section 5891 to the Welfare and Institutions Code. That section provides as follows:

The funding established pursuant to this Act shall be utilized to expand mental health services. These funds shall not be used to supplant existing state or county funds utilized to provide mental health services. The state shall continue to provide financial support for mental health programs with not less than the same entitlements, amounts of allocations from the General Fund and formula distributions of dedicated funds as provided in the last fiscal year which ended prior to the effective date of this Act. The state shall not make any change to the structure of financing mental health services, which increases a county's share of costs or financial risk for mental health services unless the state includes adequate funding to fully compensate for such increased costs or financial risk. These funds shall only be used to pay for the programs authorized in Section 5892. These funds may not be used to pay for any other program.. These funds may not be loaned to the state General Fund or any other fund of the state, or a county general fund or any other county fund for any purpose other than those authorized by Section 5892.

Welfare and Institutions Code section 5891 says, in several ways, that Proposition 63 provides new money for new services. Funding is for specific types of services specified in Proposition 63. Maintenance of effort by both the counties and the State is required for all existing services. This means that existing mental health services cannot be reduced.

The programs authorized in Welfare and Institutions Code section 5892 include only the adult and older adult systems of care program (AB 34/2034), children's system of care program, prevention and early intervention programs, education and training programs, capital facilities, and technological needs. AB 1421 is not one of the programs authorized in Welfare and Institutions Code section 5892. Therefore, Proposition 63 funds cannot be used for AB 1421 programs.

The provisions of AB 1421 do not allow funding of AB 1421 programs with money from voluntary programs such as AB 34/2034.

AB 1421 permits counties to set up assisted outpatient treatment pilot projects for individuals who do not meet LPS criteria for danger to self, danger to others, or grave disability. Welfare and Institutions Code section 5346. A county can only set up an AB 1421 program if it provides a certain array of services, if it offers the same array of services on a voluntary basis, and if it does not reduce any voluntary mental health service program serving adults, or any mental health service program (whether or not voluntary) serving children.

A county can set up an AB 1421 pilot project only if the county provides a certain array of services. Welfare and Institutions Code section 5346(a) provides:

(a) In any county in which services are available as provided in Section 5348, a court may order a person who is the subject of a petition filed pursuant to this section to obtain assisted outpatient treatment. ...

One component of the required array of services is intensive case management as defined in Welfare and Institutions Code section 5348(a)(I):

(1) Community-based, mobile, multidisciplinary, highly trained mental health teams that use high staff-to-client ratios of no more than 10 clients per team member for those subject to court-ordered services pursuant to Section 5346.

The remaining services that a county is required to set up in order to implement, AB 1421 are virtually identical to the AB 34/2034 array of services. Welfare m1d Institutions Code sections 5348(a)(2) and (3).

If a county sets up an AB 1421 pilot project, it must offer the full array of AB 1421 involuntary services on a voluntary basis as well. Welfare and Institutions Code section 5348(b) provides:

> (b) Any county that provides assisted outpatient treatment services pursuant to this article also shall offer the same services on a voluntary basis.

At a minimum, this means that in order for the county to set up an AB 1421 pilot project, the county must make the full array of AB 34/2034 services, as well as intensive case management services, available on a voluntary basis. In addition, if the county provides services under AB 34/2034, it cannot make them involuntary under AB 1421. If the county did so, it would be reducing a voluntary service program in order to provide involuntary services under AB 1421. This is specifically prohibited by Welfare and Institutions Code section 5349, which provides:

This article shall be operative in those counties in which the county board of supervisors, by resolution, authorizes its application and makes a finding that no voluntary mental health Program serving adults, and no children's mental health program, may be reduced as a result of the implementation of this article. Compliance with this section shall be monitored by the State Department of Mental Health as part of its review and approval of county Short-Doyle plans.

This means that the county cannot turn voluntary applicants away from its AB 34/2034 program, claiming lack of funds or lack of resources, at the same time that it provides those

same services on an involuntary basis under AB 1421. Also, funding for other voluntary services cannot be diverted into involuntary AB 1421 services. No voluntary services of any kind can be reduced. As discussed above, Proposition 63 provides new money for new services. Welfare and Institutions Code section 5891. Therefore, the Proposition 63 funds will not free up money now going to existing voluntary services. If a county wants to set up an AB 1421 pilot project, it must either reduce current involuntary services (generally inpatient services) or come up with new money from a source other than voluntary mental health programs.

Prior to the enactment of Proposition 63, no county took the position that AB 34/2034 money could be used to fund AB 1421 implementation. This is because Welfare and Institutions Code section 5349, above, prohibits the use of AB 34/2034 money for that purpose. Proposition 63 does not change this. Proposition 63 provides more money for AB 34/2034 services to more people, but it does not change the array of services under AB 34/2034, the voluntary nature of the AB 34/2034 program, or the requirement under AB 1421 that involuntary services under that program not reduce any voluntary program.

Disability Rights California

California's protection and advocacy system

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February 1, 2012

Sacramento County Mental Health Board

Re: AB 1421 (Laura's Law)

Dear Sacramento County Mental Health Board Members:

Disability Rights California, a private non-profit legal firm that works to advance the rights of Californians with disabilities, is writing this letter to urge the Sacramento County Mental Health Board to oppose implementation of AB 1421 (also known as "Laura's Law" or "Assisted Outpatient Treatment") in Sacramento County. AB 1421 is a costly and unproven program that would undermine fundamental civil rights of individuals with mental health disabilities without any clear gain to them or society.

While the California Legislature enacted AB 1421 to permit counties to expand involuntary psychiatric commitment, there are serious concerns with AB 1421 that make a decision to implement the law problematic. With the exception of Nevada County, no other county in California has taken the step of implementing AB 1421.

A number of counties, including San Diego, San Francisco and Sonoma, have rejected doing so after due consideration. Below is an overview of statutory requirements Sacramento County would have to meet prior to implementation of AB 1421:

1. **Board of Supervisors Would Need To Enact Resolution Finding That Access To Voluntary Services Would Not Be Reduced**

The County Board of Supervisors must determine that "no voluntary mental health program serving adults, and no children's mental health program, may be reduced as a result of implementation" of outpatient commitment at the local level. Welf. & Inst. Code § 5349. The State Department of Mental Health (DMH) is required to monitor compliance. *Id.*

Therefore, the county mental health director and other county officials should open their books so that the community can be fully informed of program cutbacks in order to ensure that money is not diverted from voluntary services to fund expanded forced treatment. In addition, the mental health director should provide a full accounting of the voluntary programs that are currently available so there is a baseline for evaluating any service reductions. Taking these steps promotes transparent decision-making.

2. Open Discussion of AB 1421 Is Required At The Local Level

The local mental health board has a duty to "review and approve" procedures for ensuring citizen involvement in planning at the local level. Welf. & Inst. Code § 5604.2(a)(4). The mental health board also has a duty to review and evaluate the community's mental health needs and to advise the governing body and mental health director on the needs of the county's mental health system. CA Welf. & Inst. Code §§ 5604.2(a)(1) & (3). The mental health board should also involve consumer advocates[1] and county patients' rights advocates[2] to provide input on this matter since consumer.

Disability Rights California appreciates the Sacramento County Mental Health Board allowing the public, consumer advocates and county patients' rights advocates ample time to provide input on whether the County should implement AB 1421.

3. Housing And Community Support Services Are Required At the Local Level Before AB 1421 Can Be Implemented

A county that moves to implement AB 1421 must show that it has adequate resources to provide housing and the full array of community support services for individuals with psychiatric disabilities who want and need such services. Welf. & Inst. Code § 5348. This includes ensuring the availability of services provided by "[c]ommunity based, mobile, multidisciplinary, highly trained mental health teams that use high staff-to-client ratios of no more than 10 clients per team member..." Welf. & Inst. Code § 5348(a)(1).

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[1] Consumer advocates have a unique role under state law to inform the public about the needs of mental health consumers. CA Welf. & Inst. Code § 5600.2(m).

[2] County patients' rights advocates have a duty under state law to monitor mental health facilities, services and programs and to provide training and education about mental health law and patients' rights. CA Welf. & Inst. Code §§ 5520(b) & (c).

Prior to expanding forced treatment, Sacramento County would be required to show that it can offer and provide "the same [housing and community support] services on a voluntary basis." Welf. & Inst. Code § 5348(b). This includes access to substance abuse services, supportive housing or other housing assistance, vocational rehabilitation, and veterans' services provided by staff with the requisite cultural background and linguistic skills. Welf. & Inst. Code § 5348(a)(2)(B). Housing and community support services should be available to everyone who desires such assistance, including:

(a) County Target Populations- Welf. & Inst. Code § 5600.3;
(b) Medi-Cal beneficiaries who meet medical necessity criteria for covered assistance-Title 9, CA Code of Regs., §§ 1830.205, 1830.210;
(c) Persons who are already subject to involuntary treatment under the Lanterman-Petris-Short (LPS) Act- Welf. & Inst. Code §§ 5150, 5250, 5300, and 5350; and
(d) All persons who qualify for adult and older systems of care- Welf. & Inst. Code § 5801 et seq.

The county mental health department should document the availability of the housing and full scope of comprehensive community support services required under AB 1421. Such processes should include public testimony, both oral and written, on the availability of sufficient housing and community support services for mental health consumers, including persons with children, at the local level. This should also include consideration of waiting lists for current mental health programs as well as unmet housing needs (e.g., as documented in local housing elements).

4. Resources Needed to Implement AB 1421

If Sacramento County were to expand forced treatment, the following resources would be required:

-An attorney at all stages of the process and substantial administrative support (e.g., police, court personnel)- Welf. & Inst. Code § 5346(c);
-Staffing to provide personal service of petitions and hearing notices to the person subject to the petition as well as notice to the local patients' rights office- Welf. & Inst. Code § 5346(d)(1);
-Resources to provide for a capacity hearing and a separate court order

of involuntary medication- Welf. & Inst. Code § 5348(c);
-Resources to comply with statutory reporting requirements- Welf. & Inst. Code § 5348(d); and
-Additional resources to develop a training and education program for purposes of delivery of services to individuals who are subjected to, or at risk of being subjected to, forced treatment- Welf. & Inst. Code § 5349.1.

5. MHSA Funds May Not Be Used to Pay for an AB 1421 Program

MHSA funding cannot be used for involuntary treatment or court personnel under AB 1421. All services under AB 1421, are by nature, involuntary, whether issued pursuant to a voluntary settlement agreement or adjudication of a petition. This is because the court order must be obeyed and there are penalties for failure to do so, including being hospitalized against one's will. Welf. & Inst. Code § 5346(f). DMH is authorized to distribute MHSA funds, to the extent available, for provision of services under the Adult System of Care[3] and for only certain other programs specifically authorized in the statute. Welf. & Inst. Code § 5813.5.

The Adult System of Care statute provides that treatment be voluntary unless the criteria for forced treatment under the LPS Act are met. The client must "be fully informed and volunteer for all treatment provided, unless danger to self or others or grave disability requirement temporary involuntary treatment. CA Welf. & Inst. Code § 5801(b)(5). Forced treatment pursuant to the looser standards of AB 1421 would be prohibited under the Adult System of Care and by extension, under the MHSA as well.

Conclusion

Rather than attempting to implement this controversial and unproven law, Disability Rights California urges the Sacramento County Mental Health Board to oppose any plan to implement AB 1421. Instead, the Sacramento County Mental Health Board should focus attention on expanding voluntary treatment programs.

[3] The provisions of the Adult System of Care program are contained in CA Welf. & Inst. Code §§ 5802, 5805 and 5806.

Thank you for taking the time to review our concerns. If you have any questions please do not hesitate to contact me.

Sincerely,

Sean Rashkis
Attorney

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California's protection and advocacy system

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MEMORANDUM

TO: Interested Persons

FROM: Daniel Brzovic
Associate Managing Attorney

RE: MHSA funds cannot be used to fund AB 1421 programs

DATE: December 2, 2010

I have been asked whether Mental Health Services Act (MHSA) funds can be used to fund services under AB 1421. For the reasons discussed below, MHSA funds cannot be used to fund any services provided under AB 1421.

1. **Are AB 1421 services always provided pursuant to a court order?**

Yes. Outpatient treatment under AB 1421 is provided pursuant to a court order. Welf. & Inst. Code §§ 5346(d)(5)(B), 5347(b). This is true both for outpatient treatment following adjudication of an involuntary petition and outpatient treatment following a "voluntary" settlement agreement. Welf. & Inst. Code § 5347(b)(5).

2. **Can a court order be issued if a petition for involuntary outpatient treatment has not been filed?**

No. In order for the court to issue an order for outpatient treatment, there

must be a petition for assisted outpatient treatment on file with the court. Without a petition on file, the court does not have jurisdiction to issue an order, whether pursuant to an involuntary court hearing or pursuant to a voluntary settlement agreement. This is such a basic tenet of due process that an appellate court has not been called upon to decide the issue in over a century and a half. *See, Ex parte Cohen* (1856) 6 Cal. 318. The court does not have jurisdiction to issue an order prior to the filing of a petition. *Id.* An order issued in excess of jurisdiction is void. *Id.*

Under the terms of AB 1421 itself, both types of court order for outpatient treatment require that a verified petition first be filed, and that the court find by clear and convincing evidence that the facts stated in the petition are true:

> … a court may order a person who is the subject of a petition filed pursuant to this section to obtain assisted outpatient treatment if the court finds, by clear and convincing evidence, that the facts stated in the verified petition filed in accordance with this section are true and establish that all of the requisite criteria set forth in this section are met….

Welf. & Inst. Code § 5346(a).

3. Is a court order pursuant to a voluntary settlement agreement any different from an order following court adjudication of a petition?

No. Welfare and Institutions Code section 5347(a) (relating to voluntary settlement agreements) specifically references section 5346(a) (relating to a petition for involuntary outpatient treatment) and requires that the provisions of that section be followed before an individual may enter into a voluntary settlement agreement:

> In any county in which services are available pursuant to Section 5348, any person who is determined by the court to be

> subject to subdivision (a) of Section 5346 may voluntarily enter into an agreement for services under this section.

Moreover, under AB 1421, a settlement agreement has the same force and effect as an order for outpatient treatment that is not the result of a settlement agreement:

> A settlement agreement approved by the court pursuant to this section shall have the same force and effect as an order for assisted outpatient treatment pursuant to Section 5346.

Welf. & Inst. Code §5347(b)(5).

4. **If there is a court order under AB 1421, does that mean that the county that has petitioned for that court order has implemented an AB 1421 program?**

Yes. There can be no court orders in AB 1421 proceedings unless a petition has been filed. If these petitions are filed under Welfare and Institutions Code section 5346(a), as they must be, the filer of the petition, i.e., the county, has thereby implemented an AB 1421 program. This is the case whether the county proceeds with an involuntary court hearing or proceeds only with voluntary settlement agreements.

5. **Can court-ordered treatment be voluntary treatment?**

No. Once a court order has been issued, the court order, by its very nature, must be obeyed. A person subject to the order cannot choose to disobey the order without there being adverse consequences. Therefore, once an order is properly issued, compliance is not voluntary. Compliance is mandatory. This is borne out by the fact that there are mechanisms in AB 1421 for enforcement of the court order. Welf. & Inst. Code §§ 5346(d)(6), 5346(f).

6. **Are there penalties for failing to obey a court order for involuntary outpatient treatment under AB 1421?**

Yes. There are several steps that can be followed if the subject of an outpatient treatment order does not obey the order. First, there must be a meeting with the treatment team to determine if the cooperation of the person who is the subject of the petition can be obtained. If the subject of the petition does not agree to the meeting, the meeting is pursuant to a separate court order requiring that the meeting take place. The meeting pursuant to the order is therefore involuntary. Welfare and Institutions Code section 5346(d)(6) provides as follows:

> If the person who is the subject of a petition for an order for assisted outpatient treatment pursuant to subparagraph (B) of paragraph (5) of subdivision (d) refuses to participate in the assisted outpatient treatment program, the court may order the person to meet with the assisted outpatient treatment team designated by the director of the assisted outpatient treatment program. The treatment team shall attempt to gain the person's cooperation with treatment ordered by the court. The person may be subject to a 72-hour hold pursuant to subdivision (f) only after the treatment team has attempted to gain the person's cooperation with treatment ordered by the court, and has been unable to do so.

Second, if the person has failed or refused to comply with the court order for treatment, a 72-hour hold can be required. This is an involuntary hold for the purpose of determining if a 72-hour hold under Welfare and Institutions Code section 5150 is warranted. The statute does not distinguish between orders for outpatient treatment following a court hearing and orders for outpatient treatment following a settlement agreement:

> If, in the clinical judgment of a licensed mental health treatment provider, the person who is the subject of the petition has failed or has refused to comply with the treatment ordered by the court, and, in the clinical judgment of the licensed mental health treatment provider, efforts were made to solicit compliance, and, in the clinical judgment of the licensed mental health treatment provider, the person may be

> in need of involuntary admission to a hospital for evaluation, the provider may request that persons designated under Section 5150 take into custody the person who is the subject of the petition and transport him or her, or cause him or her to be transported, to a hospital, to be held up to 72 hours for examination by a licensed mental health treatment provider to determine if the person is in need of treatment pursuant to Section 5150. Any continued involuntary retention in a hospital beyond the initial 72-hour period shall be pursuant to Section 5150. If at any time during the 72-hour period the person is determined not to meet the criteria of Section 5150, and does not agree to stay in the hospital as a voluntary patient, he or she shall be released and any subsequent involuntary detention in a hospital shall be pursuant to Section 5150. Failure to comply with an order of assisted outpatient treatment alone may not be grounds for involuntary civil commitment or a finding that the person who is the subject of the petition is in contempt of court.

Welf. & Inst Code § 5346(f).

Third, it should be noted that while the statute prevents a contempt of court finding based on failure to comply with the outpatient treatment order alone, it does not preclude a finding of contempt in all cases. Therefore contempt of court, which may include monetary penalties, and jail time until the individual complies with the outpatient treatment order, are not entirely precluded. This means that courts have at their disposal powerful remedies for enforcing outpatient treatment orders.

7. Can funds for voluntary services programs be used for treatment under AB 1421?

No. As discussed above, all treatment under AB 1421 is pursuant to a court order and is therefore involuntary. AB 1421, itself, specifically prohibits using funds for voluntary services to implement AB 1421. Welfare and Institutions Code section 5349 provides:

> … no voluntary mental health program serving adults, and no children's mental health program, may be reduced as a result of the implementation of [AB 1421].

8. Can Mental Health Services Act (MHSA) funds be used to implement AB 1421?

No. The MHSA regulations require that MHSA funds be used for voluntary programs:

> Programs and/or services provided with MHSA funds shall:
>
> … … … … …
>
> Be designed for voluntary participation. No person shall be denied access based solely on his/her voluntary or involuntary legal status.

Cal. Code Regs., tit. 9, § 3400(b)(2).

This regulation is based on Welfare and Institutions Code section 5801(b)(5), which provides:

> The client should be fully informed and volunteer for all treatment provided, unless danger to self or others or grave disability requires temporary involuntary treatment.

9. Are AB 1421 programs designed for involuntary participation?

Yes. As discussed above, services under AB 1421 can be ordered only after the filing of a petition for involuntary outpatient treatment. An order for outpatient treatment, whether issued pursuant to a voluntary settlement agreement or adjudication of a petition, necessarily requires involuntary treatment. This is because the court order must be obeyed and there are legal sanctions and penalties for failure to obey it. Moreover, outpatient treatment under AB 1421 is not temporary, but lasts for up to 6 months at a time.

10. What does "involuntary legal status" mean?

Involuntary legal status means that an individual is subject to a court order taking away rights to make decisions for him or herself. Conservatorship under the Lanterman-Petris-Short Act (LPS) is an example.

11. Why is "involuntary legal status" mentioned in the MHSA regulations?

Involuntary legal status is mentioned in the regulations to ensure that individuals are not denied MHSA services solely on the basis that they have been subjected to involuntary detention under the LPS Act, or have been placed on conservatorship. As explained by the California Department of Mental Health in the reasons for adopting the regulation:

> This change is necessary to ensure that MHSA funds are used to establish and/or expand the array of voluntary programs/services offered by the county, but that these programs/services are accessible to qualifying individuals, regardless of their voluntary or involuntary legal status.

Section 3400(b) Emergency Statement, Sept. 27, 2006.

12. Can MHSA funds be used to fund any services provided under AB 1421?

No. This includes administrative expenses such as the costs of customary court staff operating a mental health court. Ops. Att'y Gen. (2006) No. 05-1007.

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Here are more arguments from Disability Rights (sic) California as part of their taxpayer funded effort to prevent individuals with mental illness from accessing Laura's Law. (Footnotes are added to answer claims)

These were presented as part of their opposition to renewing Laura's Law (Assembly Bill 1569, 2012)

From http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1551-1600/ab_1569_cfa_20120409_120302_asm_comm.html AB1569 to renew Laura's Law April 10, 2012

Also see
http://www.dmh.ca.gov/News/Reports_and_Data/docs/Legislative/LaurasLawFinalReport.pdf

ARGUMENTS IN OPPOSITION :

Disability Rights California (DRC) objects to this bill, arguing that involuntary treatment is unnecessary because there are good alternatives to ensure access to needed mental health services[1]; assisted outpatient treatment has not been widely implemented[2] and does not work;[3] and the current LPS Act law allows for involuntary mental health treatment under statutorily defined criteria. DRC argues that the voluntary programs supported by Prop. 63 of 2004 have demonstrated success in saving lives and money[4]. Some counties already have in place proven voluntary treatment programs that have comparable results to AOT without the expense and coercion of court-ordered treatment, DRC argues. By comparison, the outcome data on involuntary outpatient treatment shows forced treatment is often counterproductive DRC contends - renewing trauma and steering people away from the mental health system altogether[5]. Scarce public dollars are better spent expanding voluntary treatment programs that provide the surest path to recovery[6]. DRC argues that counties should track people who have applied for services and are not currently receiving them due to funding limitations, and should improve coordination between county personal service coordinators and Lanterman Petris Short Act conservators to ensure that services are provided effectively in the community. DRC concludes based on the DMHC report and a 2009 study of a similar New York law that the AOT approach does not work.[7]

In opposing this bill both Mental Health America of Los Angeles and the California Association of Social Rehabilitation Agencies argue that this bill represents a "massive curtailment of liberty."[8] Additionally, the California Association of Social Rehabilitation Agencies contends that the statutory criteria to be used by judicial officers in determining the order for outpatient assistance cannot be

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[1] Those services only reach those well enough to volunteer. Those who aren't are excluded.
[2] True. This is mainly due to DRC's own efforts at preventing implementation.
[3] This is false. Laura's Law reduces hospitalization, homelessness, crime, etc. AOT saves money, helps patients live better lives and keeps everyone safer. See http://lauras-law.org; http://kendras-law.org; and http://mentalillnesspolicy.org.
[4] Probably true. But they only work for patients who agree to accept the services. Laura's Law would help others access those same services to get the same benefits.
[5] We are unaware of what data supports this claim. We are aware of it frequently being made.
[6] We should not leave those who are too sick to access treatment without treatment. That is cruel to patients, dangerous to the public, and expensive to taxpayers.
[7] Both of these statements are false.
[8] AOT is less restrictive than the alternatives: inpatient commitment, conservatorship, and incarceration.

accurately assessed on an individual basis sufficiently to satisfy constitutional standards established by the United States Supreme Court.[9]

[9] AOT laws have withstood every constitutional challenge and represent an appropriate use of the state's police powers and parens patraie powers. See http://mentalillnesspolicy.org/legal/aot-constitutional.html and http://mentalillnesspolicy.org/kendras-law/kendras-law-constitutional.html. We note that these organizations are large recipients of MHSA funding.