

SENATE BILL NO. 306

BY SENATOR BARROW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

AN ACT

To amend and reenact R.S. 28:66(A)(6) and (B), 67(1) and (2), 68, 69(A)(1) and (2), (C) and (D), 70(A), (C), (D), and (E), 71(B), (C), (D), (E), and (F), 72 , 73, and 75, to enact R.S. 28:67(5), 69(A)(3), 70(F), and 76, relative to assistive outpatient mental health treatment; to provide for the pertinence of advance directives; to provide for who may initiate a petition for involuntary outpatient treatment; to provide for matters relating to a hearing on such a petition; to provide for assessments of the patient and who is to perform assessments; to provide relative to physician affidavits; to provide relative to a treatment plan; to provide for notice to particular persons of any hearing to determine if involuntary outpatient treatment is necessary; to provide relative to additional periods of treatment; to provide for who is to receive notice of any petition to vacate an order for involuntary commitment; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 28:66(A)(6) and (B), 67(1) and (2), 68, 69(A)(1) and (2), (C) and (D), 70(A), (C), (D), and (E), 71(B), (C), (D), (E), and (F), 72, 73, and 75 are hereby amended and reenacted and R.S. 28:67(5), 69(A)(3), 70(F), and 76 are hereby enacted to read as follows:

§66. Criteria for civil involuntary outpatient treatment

A. A patient may be ordered to obtain civil involuntary outpatient treatment if the court finds that all of the following conditions apply:

* * *

1 (6) In view of the treatment history and current behavior of the patient, the
 2 patient is in need of involuntary outpatient treatment to prevent a relapse or
 3 deterioration which would be likely to result in the patient becoming dangerous to
 4 self or others or gravely disabled as defined in R.S. 28:2.

5 * * *

6 B. Advance directives. (1) If the patient has executed an advance directive
 7 as defined in R.S. 28:221, any directions included in the directive shall be taken into
 8 account by the court in determining the written treatment plan.

9 (2) Nothing herein shall preclude a person with an advance directive from
 10 being subject to a petition pursuant to this Part.

11 §67. Petition to the court

12 A petition for an order authorizing involuntary outpatient treatment may be
 13 filed in the judicial district in the parish in which the patient is present or reasonably
 14 believed to be present. A petition to obtain an order authorizing involuntary
 15 outpatient treatment may be initiated by one of the following persons:

16 (1) The director, ~~or~~ administrator, or treating physician of a hospital in
 17 which the patient is hospitalized.

18 (2) The director, administrator, or treating physician of an emergency
 19 receiving center in which the patient is receiving services.

20 * * *

21 (5) The Louisiana Department of Health.

22 §68. Petition

23 A. The petition shall contain the facts which are the basis of the assertion
 24 that the patient meets each of the criteria in R.S. 28:66; that he is present or
 25 reasonably believed to be present in the parish where filed, and provide the
 26 respondent with adequate notice and knowledge relative to the nature of the
 27 proceeding.

28 B. The petition shall be accompanied by a Physician's Report to Court or
 29 an affidavit of a physician, psychiatric mental health nurse practitioner or
 30 psychologist, ~~who shall not be the petitioner~~, and shall state either of the following:

1 (1) Such physician, psychiatric mental health nurse practitioner or
2 psychologist has examined the patient no more than ten days prior to the ~~submission~~
3 filing of the petition, he recommended involuntary outpatient treatment for the
4 patient, and he is willing and able to testify at the hearing on the petition.

5 (2) No more than ten days prior to the filing of the petition, such physician,
6 psychiatric mental health nurse practitioner or psychologist or his designee has made
7 appropriate attempts to elicit the cooperation of the patient but has not been
8 successful in persuading him to submit to an examination, that such physician,
9 psychiatric mental health nurse practitioner or psychologist has reason to suspect that
10 the patient meets the criteria for involuntary outpatient treatment, and he is willing
11 and able to examine the patient and testify at the hearing on the petition.

12 §69. Procedure

13 A. **Hearing notice.** (1) Upon the filing of the petition authorized by R.S.
14 28:67, the court shall assign a time and place for a hearing **as promptly as is**
15 **practical, but in no case later than eighteen days after the filing of the petition,**
16 which may be conducted before any judge in the judicial district, ~~within five days,~~
17 and shall cause reasonable notice thereof and a copy of the petition to be served upon
18 the respondent, respondent's attorney, the petitioner, and the director of the local
19 governing entity in the parish where the petition has been filed. The notice shall
20 inform the respondent that he has a right to be present, a right to **retain** counsel,
21 ~~which may be appointed, if he is indigent or otherwise qualified,~~ has the right to
22 counsel appointed to represent him by the Mental Health Advocacy Service, and a
23 right to cross examine witnesses. Continuances shall be granted only for good cause
24 shown.

25 (2) In addition to those persons entitled to notice pursuant to Paragraph (1)
26 of this Subsection, if the respondent is interdicted, notice of the hearing and a copy
27 of the petition shall **also** be served upon the curator for the interdict and the attorney
28 who represented the interdict in the interdict proceedings.

29 **(3) The court may order the service of all pleadings, notices, and written**
30 **treatment plans required in this Part pursuant to Code of Civil Procedure**

1 Article 1313(A), without regard to Article 1313(B).

2 * * *

3 C. The court shall not order involuntary outpatient treatment unless an
 4 examining physician, psychiatric mental health nurse practitioner or psychologist
 5 who has personally examined the patient within the time period commencing ten
 6 days before the filing of the petition, testifies at the hearing, **in person or via**
 7 **electronic means, with consent of all the parties, regarding the categories of**
 8 **involuntary outpatient treatment recommended, the rationale for each category,**
 9 **facts which establish that such treatment is the least restrictive alternative, and**
 10 **if recommended, the beneficial and detrimental physical and mental effects of**
 11 **medication, and whether such medication should be self-administered or**
 12 **administered by an authorized professional.**

13 D. If the patient has refused to be examined by a physician, psychiatric
 14 mental health nurse practitioner or psychologist, the court may ~~request~~ **order** the
 15 subject to ~~consent to~~ **undergo** an examination by a physician, psychiatric mental
 16 health nurse practitioner or psychologist appointed by the court. If the patient ~~does~~
 17 ~~not consent~~ **refuses to undergo the court-ordered examination** and the court finds
 18 reasonable cause to believe that the allegations in the petition are true, the court may
 19 order ~~peace officers, police officers or the sheriff's department~~ to take the patient into
 20 custody and transport him to a hospital or emergency receiving center for
 21 examination. Retention of the patient in accordance with the court order shall not
 22 exceed twenty-four hours. The examination of the patient may be performed by the
 23 physician, psychiatric mental health nurse practitioner or psychologist whose
 24 affidavit **or Physician's Report to Court** accompanied the petition pursuant to R.S.
 25 28:68(B), if he is privileged or otherwise authorized by the hospital or emergency
 26 receiving center. If such examination is performed by another physician, psychiatric
 27 mental health nurse practitioner or psychologist, he shall be authorized to consult
 28 with the physician, psychiatric mental health nurse practitioner or psychologist
 29 whose affidavit **or Physician's Report to Court** accompanied the petition regarding
 30 the issues of whether the allegations in the petition are true and whether the patient

1 meets the criteria for involuntary outpatient treatment.

2 * * *

3 §70. Written treatment plan for involuntary outpatient treatment

4 A. The court shall not order involuntary outpatient treatment unless an
5 examining physician, psychiatric mental health nurse practitioner, or psychologist
6 ~~appointed by the appropriate director of the local governing entity~~ develops and
7 provides to the court a proposed written treatment plan. The written treatment plan
8 shall be ~~developed by a treatment team which shall include a case manager, clinical~~
9 ~~social worker, and licensed physician, psychiatrist, psychiatric mental health nurse~~
10 ~~practitioner, or psychologist and other specialized service providers as deemed~~
11 appropriate by the director as well as the patient and upon his request, an individual
12 significant to him and concerned with his welfare. The written treatment plan shall
13 include appropriate services to provide care coordination. ~~Such services shall include~~
14 ~~case management services or assertive community treatment teams.~~ The written
15 treatment plan shall also include appropriate categories of services, as set forth in
16 Subsection E of this Section, which ~~such team recommends the patient should~~ **is**
17 **recommended to receive and are available to the patient. The written treatment**
18 **plan shall specify a provider that has agreed to provide each of the specified**
19 **services.** If the written treatment plan includes medication, it shall state whether the
20 medication should be self-administered or administered by authorized personnel, and
21 shall specify type and dosage range of medication most likely to provide maximum
22 benefit for the patient.

23 * * *

24 C. The plan shall be provided to the court **and all persons required to**
25 **receive notice within R.S. 28:69(A) at least three days before** ~~no later than the~~
26 date of the hearing on the petition.

27 ~~D. The court shall not order involuntary outpatient treatment unless a~~
28 ~~physician, psychiatric mental health nurse practitioner or psychologist testifies~~
29 ~~regarding the categories of involuntary outpatient treatment recommended, the~~
30 ~~rationale for each category, facts which establish that such treatment is the least~~

1 restrictive alternative, and, if recommended, the beneficial and detrimental physical
 2 and mental effects of medication, and whether such medication should be self-
 3 administered or administered by an authorized professional.

4 ~~E.~~ **Services.** (1) Services shall include but are not limited to ~~the following:~~

5 ~~(a)~~ Assertive community treatment.

6 ~~(b)~~ **Case case management, provided by the local governing entity** which
 7 is defined as the assignment of the ~~administration~~ **coordination** of care for an
 8 outpatient individual with a serious mental illness to a single person or team,
 9 including all necessary medical and mental health care and associated supportive
 10 services.

11 (2) Services may include; but are not limited to; the following **categories**
 12 **and will depend upon the availability in the patient's area:**

13 ~~(a)~~ **Assertive community treatment.**

14 ~~(b)~~ Medication.

15 ~~(b)(c)~~ Laboratory testing to include periodic blood testing for therapeutic
 16 metabolic effects, toxicology testing and breath analysis.

17 ~~(e)(d)~~ Individual or group therapy.

18 ~~(d)(e)~~ Day or partial day programming activities.

19 ~~(e)(f)~~ Education and vocational rehabilitation training.

20 ~~(f)(g)~~ Substance-related or addictive disorder treatment.

21 ~~(g)(h)~~ Supervised living.

22 ~~(h)(i)~~ Transportation.

23 **(j) Housing assistance.**

24 **E. The director or his designee of the local governing entity shall certify**
 25 **that the services ordered in the plan are available and can be reasonably**
 26 **accessed by the patient.**

27 **F. Treatment plan review. (1) The written treatment plan is subject to**
 28 **reviews before the court with the patient and at least one representative of the**
 29 **treatment team. The initial frequency shall be stipulated in the treatment plan**
 30 **and modified with the court's approval.**

1 involuntary outpatient treatment.

2 E. If the petitioner is ~~the director or administrator of~~ **affiliated with** a
 3 hospital that operates an involuntary outpatient treatment program **that is willing to**
 4 **treat the patient**, the court order shall direct the hospital to provide all **available**
 5 categories of involuntary outpatient treatment services. If the hospital does not have
 6 such a program or if the patient is discharged to a different local governing entity,
 7 or if the director of the local governing entity has filed the petition and certified
 8 services are available, the court order shall require the appropriate director to provide
 9 for all **available** categories of involuntary outpatient treatment services.

10 F. The ~~director~~ **treatment provider** shall apply for court approval prior to
 11 instituting a proposed material change in the involuntary outpatient treatment order
 12 unless such change is contemplated in the order. For purposes of this Subsection, a
 13 material change shall mean an addition or deletion of a category of involuntary
 14 outpatient treatment service, or any deviation without the consent of the patient from
 15 the terms of an existing order relating to the administration of psychotropic drugs,
 16 or a change of residence from one local governing entity to another. **A material**
 17 **change shall not mean a change in the dosage or the specific psychotropic drug**
 18 **within the type ordered by the court.** Any application for court approval shall be
 19 served upon all persons required to be served with notice of a petition for an order
 20 authorizing involuntary outpatient treatment. Either party may move for a hearing
 21 on the application. If a motion is not filed within five days from the date the
 22 application is filed, the court shall grant the application.

23 * * *

24 §72. Application for additional periods of treatment

25 A. The court order for outpatient treatment shall expire at the end of the
 26 specified period unless a petition ~~or motion~~ for an extension has been filed. If ~~the~~
 27 ~~director~~ **any person or entity authorized within R.S. 28:67** determines that a
 28 patient requires further involuntary outpatient treatment, he shall file a petition ~~or~~
 29 ~~motion~~ for continued treatment prior to the expiration of the ~~initial~~ involuntary
 30 outpatient treatment ordered by the court. If a patient has been ordered to receive

1 outpatient treatment for four consecutive six-month to one-year periods, the period
 2 of any subsequent order may exceed one year but shall not exceed two years.

3 B. The procedure for obtaining an extension shall be the same as for
 4 obtaining the original order. However, the time periods provided in R.S. 28:66(A)(4)
 5 shall not be applicable in determining the appropriateness of the extension. ~~The court~~
 6 ~~order requiring blood or laboratory testing shall be subject to review after six months~~
 7 ~~by the physician, psychiatric mental health nurse practitioner or psychologist who~~
 8 ~~developed the written treatment plan or who is designated by the director, and the~~
 9 ~~blood or laboratory testing may be terminated without further action of the court.~~

10 §73. Application to stay, vacate, or modify

11 In addition to any right or remedy available by law, the patient may apply to
 12 the court to stay, vacate, or modify the order and he shall notify the director **of the**
 13 **local governing entity or designee** of his application.

14 * * *

15 §75. Failure to comply with involuntary outpatient treatment

16 A. **If either party alleges noncompliance under the written treatment**
 17 **plan, a judicial review can be scheduled and all persons listed in R.S. 28:69(A)**
 18 **are to receive notice.**

19 **B.** When a physician, psychiatric mental health nurse practitioner, or
 20 psychologist determines the patient has failed to comply with the ordered treatment,
 21 efforts were made to solicit compliance by the ~~district, the region~~ **local governing**
 22 **entity**, case manager or assertive community treatment provider, and the patient may
 23 be in need of involuntary admission to a treatment facility, he may execute an
 24 emergency certificate in accordance with R.S. 28:53, request an order for custody in
 25 accordance with R.S. 28:53.2, or seek a judicial commitment in accordance with R.S.
 26 28:54.

27 ~~B-C.~~ If the patient refuses to take medication or refuses to take or fails blood
 28 or other laboratory tests as required by court order, the physician, psychiatric mental
 29 health nurse practitioner, or psychologist may consider his refusal in determining
 30 whether the patient is in need of inpatient treatment services.

1 §76. Definitions

2 As used in this Part, "Physician's Report to Court" means the reports
3 provided for in R.S. 28:56(A)(2)(b).

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____