

Kevin's Law

*by Lisa Langton
Family Division Administrator -
Probate/Juvenile Register*



PA 496, effective March 30, 2005, amends the Mental Health Code, revising the definition of a "person requiring treatment." As set forth in the Senate Bill analysis, the rationale behind this bill in part is based upon the belief that "the current out-patient options for treatment are inadequate to meet the needs of a certain segment of the mentally ill population – those who are so severely and persistently mentally ill that they do not understand their need for treatment. Such patients might not require in-patient hospitalization, but could benefit from intensive out-patient services."

In many cases, a tragic cycle occurs when a persistently mentally ill individual becomes noncompliant with his or her recommended treatment, particularly in failing to take medication. Once a family member or care provider recognized this, they would have had to wait until the person presented an imminent threat to themselves or others before being able to compel treatment. Changes in the law were based upon the premise that the court should be able to order persons into treatment if they become noncompliant with a prescribed treatment plan, including failure to take prescribed psychiatric medication or failure to keep scheduled appointments with counselors. Having to wait until a person becomes violent or becomes a threat to themselves or others seemed to work against the continued well-being of both the patient and society.

Based upon these beliefs, "Kevin's Law" amends the definition of a "person requiring treatment" to include an individual who is not participating in treatment recommended by a mental health professional that is "necessary to prevent relapse or harmful deterioration of a condition" if that person also meets either of the following criteria:

- 1) Within the past 48 months, the individual has been in a psychiatric hospital, prison or jail at least two times, or
- 2) The noncompliance with the recommended treatment

is a factor in an individual committing acts, attempts, or threats of serious violent behavior within the past 48 months.

A person who meets either of the above criteria will be able to receive assisted outpatient treatment (AOT).

A new State Court Administrative Office-approved form – PEMH 242, entitled "Petition for Assisted Outpatient Treatment" – has been developed for these cases. The petitioner must have personal knowledge of the facts, which would include the name and address of the mental health provider currently providing care to the individual who is the subject of the petition; the name and address of the nearest relative or guardian (if none, a friend of the individual who is subject to the petition); the address of where the subject of the petition can currently be found; and the basis for the allegation that the individual is noncompliant with their treatment, including names and locations of any hospitals, jails or prisons in which the subject has been placed or incarcerated. The petitioner must also set forth any acts, attempts or threats of serious violent behavior that have occurred within the last 48 months. The petitioner must state with specificity their personal observations and the basis for their allegations as set forth in the petition.

Upon the filing of the petition, the court is required to provide notice of hearing and personally serve the documents on the subject of the petition. The hearings in these cases are governed by MCLA 330.1454, 1458 and 1456, which include:

- The appointment of legal counsel for the subject of the petition;
- The right to demand a jury trial;
- The right to present documents and witnesses and to cross-examine witnesses;
- The ability for appointed counsel to be allowed adequate

- time to prepare and present necessary evidence;
- The requirement that at least one physician or licensed psychologist who personally examined the subject of the petition must testify at the hearing, either in person or by written deposition;
- The ability for the parties to request continuances for a reasonable time and for good cause in order to prepare for the hearing; and
- The ability for the subject or the petitioner to request an independent clinical evaluation anytime prior to the first witness being sworn.

If the court finds that the individual meets the criteria of this new law and the individual is not scheduled to begin outpatient mental health treatment that includes individual case management services, the court must order Alternative Outpatient Treatment through the local Community Mental Health service provider. The court order must include specific case management services and may include one or more of the following:

- Medication.

- Blood or urine analysis test to determine compliance with or effectiveness of prescribed medications.
- Individual or group therapy.
- Day or partial-day programs.
- Educational and vocational training.
- Supervised living.
- Assertive community living treatment team services.
- Alcohol or substance abuse treatment or both for individuals with a history of alcohol or substance abuse.
- Any other services as prescribed.

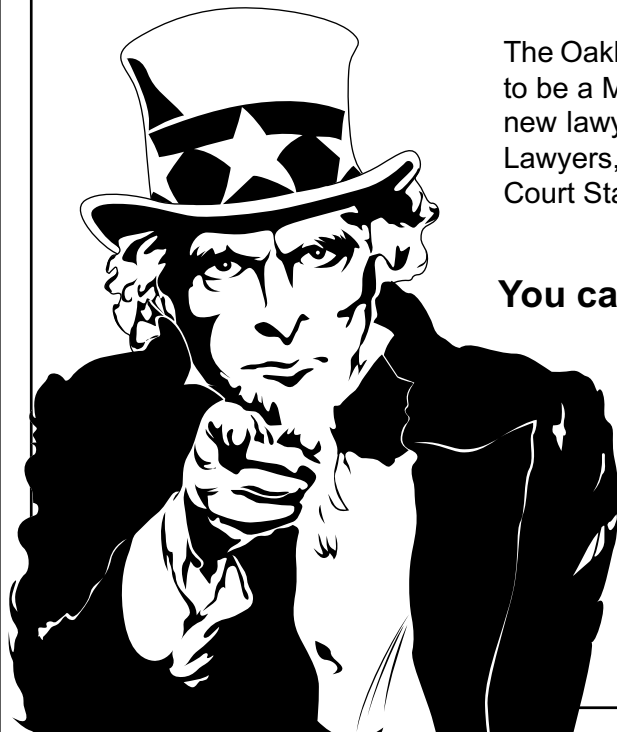
The court is also required to take into consideration the subject of the petition's individual preferences and medication experiences as well as any directive set forth in durable powers of attorneys or advanced directives.

All of the individual's rights to appeal remain the same.

In next month's article I will detail the Oakland County Probate Court's adopted procedures to comply with this new law as well as the steps taken when the party is noncompliant with an assisted outpatient treatment order. Stay tuned.

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