ASSISTIVE OUTPATIENT TREATMENT MEMORANDUM

OVERVIEW

In 2008, the Louisiana legislature enacted R.S. 28:66 et seq. relative to assistive outpatient treatment (“AOT”) for behavioral health services. Otherwise known as “Nicola’s Law”, it was a response to the tragic death of a New Orleans police officer at the hands of a mentally-ill person who had been released from psychiatric hospitalization without any provision for outpatient services. The law is devised to provide a mechanism to order outpatient services for adults who are not presently dangerous or gravely disabled but who have a history of psychiatric hospitalizations and non-compliance with treatment. What follows is a summary of the law.

AOT CRITERIA (28:66)

No person may be placed under an AOT order unless the court finds by clear and convincing evidence that the subject of the petition meets all of the following criteria:

1. 18 years of age or older.
2. Mentally ill.
3. Unlikely to survive safely in community without supervision, based on a clinical determination.
4. History of lack of compliance with treatment resulting in one of the following:
   1. At least twice within the last 36 months, non-compliance with treatment was a significant factor resulting in emergency certificates for hospitalization or receipt of forensic services, or
   2. One or more acts of “serious violent behavior” or attempts or threats of “serious physical harm” within last 36 months.
5. Unlikely to voluntarily participate in recommended treatment pursuant to the treatment plan as a result of mental illness.
6. In view of treatment history and current behavior, AOT is necessary to prevent a relapse or deterioration likely to result in dangerousness to self or others or grave disability.
7. Likely to benefit from AOT.

PETITIONERS (R.S. 28:67)

The process begins with the filing of a petition in the parish in which the person alleged to be mentally ill and in need of treatment is present or reasonably believed to be present. Only certain individuals have standing to file a petition:

1. The director, administrator, or treating physician of a hospital in which the patient is hospitalized.
2. The director, administrator, or treating physician of an emergency receiving center in which the patient is receiving services.
3. The director of the local governing entity in the parish where the person is present or reasonably believed to be present.
4. Any interested person through counsel with the concurrence of the coroner.
5. The Louisiana Department of Hospitals.

PETITION (R.S. 28:68)

The petition must contain those facts which are the basis of the assertion that an individual meets criteria for AOT, as well as assert that he or she is present or reasonably believed to be present in the parish where filed. It must provide the patient with adequate notice and knowledge relative to the nature of the proceedings.

The petition must contain an affidavit or Physician’s Report to Court (PRC) by a doctor, psychiatric mental health nurse practitioner, or psychologist, stating has examined the patient no more than 10 days prior to filing and recommends AOT (or attempted to examine and has reason to suspect that the criteria for AOT is met). The examiner must state that he or she is willing and able to testify at trial.

Reasonable notice and a copy of the petition must be served on the petitioner, the patient, his or her attorney, and the director of the local governing entity in the parish. The patient has the right to be present in court, to retain counsel, to be represented by an attorney from the Mental Health Advocacy Service. If the patient is interdicted, the curator and patient’s attorney in the interdiction must be served.

PROCEDURE (R.S. 28:69)

The matter must be heard “promptly,” but no later than 18 days of filing; continuances may be granted but “only for good cause shown.” The usual rules of evidence apply. The patient may present evidence, call witnesses, etc., but petitioner’s evidence is presented first.

The examiner, who must have examined the patient no more than 10 days prior to filing of the petition, must testify as to the facts which support the allegations, the criteria for AOT, the recommended treatment and its rationale and whether it is the least restrictive alternative, the types or classes of medication which should be authorized, if any, their beneficial and detrimental effects, and whether they should be self-administered or administered “by authorized personnel.” (Testimony must be from the physician, psychiatric mental health nurse practitioner, or psychologist who did the examination.)

A patient who has refused the examination shall be ordered to undergo an examination by the court and, if refused, the court may order the patient to be detained for up to 24 hours in a hospital/emergency receiving center for examination by a court-appointed doctor/psychiatric mental health nurse practitioner/psychologist, if the court finds reasonable cause to believe that the allegations are true. This court-appointed professional may consult with the examiner who executed the affidavit attached to the petition.

The court also may conduct the hearing in the absence of the patient if the patient does not appear at the hearing, and service of process was proper and appropriate attempts to elicit attendance failed, but the court must state the factual basis for conducting the hearing without the patient.

WRITTEN TREATMENT PLAN (R.S. 28:70)

The examining physician, psychiatric MH nurse practitioner or psychologist must provide to the court and all parties at least three days prior to hearing a written treatment plan, deemed “appropriate” by the director and the patient (and, at the patient’s request, an individual significant to him and concerned with his welfare.) Testimony must be provided at the hearing.

The plan shall include case management services by the local governing entity and appropriate categories of services recommended, available, and accessible to the patient. The provider must be specified and must agree to provide each of the specified services, which may include but are not limited to (depending on availability) assertive community treatment teams, medication, blood or lab work, therapy, day programs, educational or vocational rehab, supervised living, housing assistance, transportation, and alcohol and substance abuse testing or treatment (provided the clinical bases for recommending such plan provides sufficient facts for the court to find a history of the same that is clinically related to mental illness, and that any requested testing is necessary to prevent relapse or deterioration).

The plan is subject to court review, initial frequency as stipulated in the plan.

DISPOSITION (R.S. 28:71)

Orders for involuntary outpatient treatment may not exceed one year. The court must find that the criteria for AOT has been met by clear and convincing evidence and no less restrictive alternative is feasible, and must state reasons why the written treatment plan is the least restrictive treatment appropriate and feasible. The court may not order services which are not recommended and included in the written treatment plan. The court cannot order services unless the director of the local governing entity has certified that it can provide the services. If medications are part of the plan, the order must specify the type and dosage range of psychotropic drugs and how they are to be administered.

If the petitioner is the director of a hospital, and the hospital has an involuntary outpatient treatment program willing to treat the patient, then the court “shall” order the hospital to provide all available services in the plan. In all other circumstances, the director of the local governing entity shall be so ordered.

FAILURE TO COMPLY WITH AOT ORDER

Judicial reviews can be scheduled upon allegations by either party of non-compliance with the treatment plan. As to the patient, non-compliance is not “in and of itself” grounds for involuntary civil commitment or a finding of contempt of court, R.S. 28:71(G).

However, the usual legal procedures for involuntary hospitalization may be followed by the physician, psychiatric mental health nurse practitioner, or psychologist, pursuant to R.S. 28:53 (emergency certificates), R.S. 28:53.2 (protective custody), or R.S. 28:54 (judicial commitment), if the patient is non-compliant and efforts were made to solicit compliance, R.S. 28:75(A).

Also, a refusal to take medications or court-ordered lab tests (or failure of said tests) may be considered by a physician, psychiatric mental health nurse practitioner or psychologist, in determining whether the patient is in need of inpatient treatment services under the applicable statutes, R.S. 28:75(B).

OTHER PROVISIONS

No material change may be made to a court-ordered written treatment plan absent court approval, unless the change is contemplated in the AOT order, R.S. 28:71. A “material change” is defined as an addition or deletion of a service category, or deviation from the plan absent the consent of patient re administration of medications, or change of residence “from one local governing entity to another”. Application for change must be filed with the court and served the same as a petition. Court “shall” grant if no motion for hearing on application filed within 5 days. Any party may move for a hearing on the application.

Extension of an AOT order may be made by filing a petition or motion for continued treatment prior to expiration of the original AOT order; the procedure is the same (except for the showing of lack of compliance with treatment); after four consecutive extensions, subsequent orders may exceed one but not two years, R.S. 28:72.

The patient may appeal or apply to stay, vacate or modify an AOT order, R.S.28:73.

Advanced directives do not preclude a petition for AOT but “shall be taken into account by the court in determining the written treatment plan,” R.S. 28:66B.