



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 1233

PRINTERS NO. 4252

PRIME SPONSOR: Murt

COST / (SAVINGS)

FUND	FY 2018/19	FY 2019/20
General Fund	\$0	See Fiscal Impact

SUMMARY: House Bill 1233, Printer's Number 4252, establishes a new standard for assisted outpatient treatment (AOT) for seriously mentally ill individuals. This legislation is effective in 180 days.

ANALYSIS: This legislation amends the Mental Health Procedures Act (MHPA) to establish a new standard for assisted outpatient treatment (AOT) for seriously mentally ill individuals. HB 1233 will help create a strictly civil, non-punitive process and a continuum of services for seriously mentally ill individuals who are unwilling or unable to voluntarily seek treatment.

"Assisted Outpatient Treatment" is defined as community-based outpatient social, medical and behavioral health treatment services ordered by a court for a severely mentally disabled person, which may include one or more of the following:

- Community psychiatric supportive treatment
- Assertive community treatment
- Medications
- Individual or group therapy
- Peer support services
- Financial services
- Housing or supervised living services
- Alcohol or substance abuse treatment when the treatment is co-occurring for a person with a primary diagnosis of mental illness
- Any other service prescribed to treat a person's mental illness that either assists the person in living and functioning in the community or helps prevent a relapse or a deterioration of a person's condition that would be likely to result in a substantial risk of serious harm to the person or others.

The bill defines "qualified professional" as a mental health professional who has a graduate degree, or an international equivalent, from an institution accredited or evaluated by an organization recognized by the Department of Human Services (DHS) in a generally recognized clinical discipline that includes mental health clinical experience; has mental health clinical experience; and is licensed or certified by the Commonwealth.

AOT Plan

House Bill 1233 describes an AOT plan as an individualized treatment plan developed by a qualified professional or the treatment team that is ordered by a court for involuntary outpatient civil commitment of a person. The legislation requires the plan to be reviewed by a psychiatrist or a licensed clinical psychologist prior to submission to the court.

The bill stipulates that the provisions regarding the AOT plan shall not be construed to require a county to provide a service that is not available in the county or for which there is no funding source or available provider.

AOT Implementation by Counties

The county administrator may determine annually that the county mental health and intellectual disabilities program will not provide AOT if the administrator complies with all of the following:

- Provides notice to the Secretary that the county program will not provide AOT; and
- Notifies the county local authority of the decision not to offer AOT.

The bill requires the Secretary to grant an annual waiver to any county that has provided notice.

Nothing in this section shall be construed to permit a county or the Secretary to waive existing obligations of a county to serve seriously mentally ill residents.

AOT Implementation by Department

DHS shall modify the standard involuntary commitment petition forms and process to describe, define and incorporate AOT, including development of a separate involuntary assisted outpatient treatment commitment petition form which contains:

- The eligibility criteria for AOT; and
- After consultation with the Pennsylvania College of Emergency Physicians, appropriate guidance and instructions to the petitioner on use of emergency departments in conjunction with the petition process for involuntary inpatient commitment or assisted outpatient treatment.

Determination of Need for AOT:

The need for AOT shall be shown by establishing clear and convincing evidence that the person would benefit from AOT as manifested by evidence of behavior that indicates all of the following:

- The person is unlikely to survive safely in the community without supervision, based on a clinical determination;
- The person has a history of lack of voluntary adherence to treatment for mental illness and one of the following applies:
 - At least twice within the 12 months prior to the filing of a petition seeking AOT, the person's failure to adhere to treatment has been a significant factor in necessitating involuntary inpatient hospitalization or receipt of services in a forensic or other mental health unit of a correctional facility, provided that the 12-month period shall be extended by the length of any hospitalization or incarceration of the person in a correctional institution that occurred within the 12-month period.
 - Within the 48 months prior to the filing of a petition seeking court-ordered AOT, the person's failure to adhere to treatment resulted in one or more acts of serious violent behavior toward others or himself or threats of, or attempts at, serious

physical harm to others or himself, provided that the 48-month period shall be extended by the length of any hospitalization or incarceration of the person in a correctional institution that occurred within the 48-month period;

- The person, because of the person's mental illness, is unlikely to voluntarily participate in necessary treatment, and the person has been offered voluntary treatment but has not accepted it or has refused to participate on a sustained basis in voluntary treatment;
- Based on the person's treatment history and current behavior, the person is in need of treatment in order to prevent a relapse or deterioration that would be likely to result in substantial risk of serious harm to themselves or others.

A person who meets only the AOT criteria as outlined above shall not be subject to involuntary inpatient hospitalization. There is no change to the existing law criteria requiring a “clear and present danger” to determine need for involuntary inpatient commitment.

Procedures for Initiating AOT for Persons Already Subject to Involuntary Treatment:

The bill authorizes the county administrator or the director of a facility to petition for AOT for persons who are already subject to involuntary inpatient treatment or who have a mental illness subject to treatment in a hospital, forensic facility or a correctional institution and are ready for release.

The bill requires the petition to be in writing, on a form adopted by the department, and to contain a statement of the facts constituting reasonable grounds to believe that the person is no longer in need of involuntary inpatient treatment and is determined to be in need of AOT. A copy of the petition shall be served on the person, their attorney, and those designated to be kept informed and shall include an explanation of the nature of the proceedings, the person's right to an attorney and to the services of an expert in the field of mental health.

The bill requires a hearing on the petition to be held within 5 days after the filing of the petition. Treatment may be maintained pending the determination of the petition.

Procedures for Initiating AOT for Persons Not in Involuntary Treatment:

Any responsible party may file a petition in the court of common pleas requesting AOT for any person determined to be in need, and who is not already in involuntary treatment or AOT.

The petition shall state the reasonable grounds to believe that the person is in need of AOT and shall be accompanied by a statement from a psychiatrist or a statement signed by a clinical licensed psychologist, stating that the person who issued the statement has examined the person and is of the opinion that the person is in need of AOT, or shall be accompanied by a written statement by the applicant, under oath, that the person has refused to submit to an examination by a psychiatrist, or by a clinical licensed psychologist.

If the petition demonstrates reasonable cause, the person shall be appointed an attorney and a court date set. The person shall be summoned to court or a warrant may be issued if it is believed that the person will not appear voluntarily.

Upon motion by the court, the petitioner or the individual, the court may order an examination by a psychiatrist or other qualified professional if all the following occurs:

- A qualified professional, who is appointed by the court and who is not a psychiatrist or licensed clinical psychologist, is selected from a panel designated by the county administrator based on specified experience and expertise;
- The examination is conducted on an outpatient basis and the person has the right to have counsel present; and
- The written report is given to the court and counsel at least 48 hours prior to the hearing.

AOT Hearing Procedure:

If a person is believed to be in need of AOT, a hearing shall be conducted in accordance with the following:

- A treatment team shall provide a written proposed individualized AOT plan to the court, which shall state all treatment services and the treatment providers who agree to deliver the services.
- In developing a treatment plan, the treatment team shall take into account any existing advance directive for mental health treatment and provide the following persons with an opportunity to participate:
 - The person believed to be in need of court-ordered AOT.
 - All current treating providers.
 - An individual significant to the person believed to be in need of treatment, including any relative, close friend or individual otherwise concerned with the welfare of the person.
 - Any authorized guardian or other surrogate decision maker.
- The written proposed individualized AOT plan shall include case management services or an assertive community treatment team to provide care coordination and AOT services recommended by the treatment team. For any plan that includes medication, the prescribing physician's order shall state whether the medication should be self-administered or administered by a specified provider. Forced administration of medication is expressly prohibited under AOT by HB 1233.
- A qualified professional, who has personally examined the person within 10 days of the filing of the petition, shall provide testimony in support of the finding that the person meets all of the criteria for AOT and in support of a written proposed treatment plan.
- A decision shall be rendered within 48 hours after the presentation of evidence.

If the individual is found to be in need of AOT, the court shall order treatment for a period not to exceed 90 days.

If a person fails to comply with a court-ordered AOT plan, the provider or facility responsible for the treatment shall inform the court. If the court receives information that a patient is not complying with the court's order, the court may take any of the following actions:

- Set a modification hearing to assess the person's failure to adhere to the AOT plan.
- Amend the AOT plan to foster adherence to necessary treatment by the person.
- Issue an order for the individual to be examined in accordance with Section 302 and if appropriate, filing a petition that the person poses a clear and present danger under Section 301(b).

The court may not hold an individual in contempt or otherwise sanction the individual solely based on the failure to comply with the AOT plan.

The person subject to AOT may petition the court for enforcement of a service specifically contained included in their AOT plan.

A copy of the treatment plan shall be made available to the court for purposes of proceedings for failing to adhere to the plan or the person subject to AOT petitioning the court for a specific service included in their AOT.

Subject to a court determination, a person may be ordered to AOT for an additional period of up to 180 days if the person continues to meet the standards for determining the need for AOT.

FISCAL IMPACT: Enactment of this legislation should have no adverse fiscal impact to the Commonwealth or counties. HB 1233 does not mandate a specific set of treatment services and requires that the services to be provided in an AOT plan as well as the specific providers of these services be identified and presented to the court. In addition, there should be savings from a reduction in costs related to involuntary inpatient hospitalization and incarceration that can be used to provide AOT to individuals and expand the continuum of services, if needed.

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House Appropriations Committee (R)

DATE: October 17, 2018

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.