

AN ACT relating to court-ordered outpatient mental health treatment.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 202A.081 is amended to read as follows:

- (1) Following the preliminary hearing but prior to the completion of the final hearing, the court may order the person held in a hospital approved by the cabinet for such purpose for the committing judicial district, or released, upon application and agreement of the parties, for the purpose of community-based outpatient treatment **through a patient agreed order. At the time an agreement of the parties for a patient agreed order is reached the attorney for the person to be released shall be present, along with an alternative sentencing social worker, if available. A peer support specialist or other person in a support relationship with the person to be released may also be present.** No person held under this section shall be held in jail unless criminal charges are also pending.
- (2) A hospital shall discharge a patient there held and notify the court and attorneys of record if any authorized staff physician determines that the patient no longer meets the criteria for involuntary hospitalization.
- (3) If a patient is discharged by the hospital pursuant to subsection (2) of this section, then the proceedings against the patient shall be dismissed.
- (4) The release of the person pursuant to subsection (1) of this section for the purpose of **a patient agreed order**~~[community-based outpatient treatment]~~ does not terminate the proceedings against the person, and the court ordering such release may order the immediate holding of the person at any time with or without notice if the court believes from an affidavit filed with the court that it is to the best interest of the person or others that the person be held pending the final hearing, which shall be held within twenty-one (21) days of the person's further holding.
- (5) If the person is released pursuant to subsection (1) of this section for the purpose of **a patient agreed order**~~[community-based outpatient treatment]~~, the final hearing

may be continued for a period not to exceed sixty (60) days if a provider of outpatient care accepts the respondent for specified outpatient treatment. ~~Community-based outpatient treatment may be ordered for an additional period not to exceed sixty (60) days upon application and agreement of the parties.~~

- (6) Before a person is considered for a patient agreed order, the Department of Public Advocacy shall assign an alternative sentencing social worker to the case to conduct evidence-based motivational interviewing with the person in order to initiate a community-based outpatient treatment plan in collaboration with a community mental health center. Upon approval by the person, the treatment plan shall be presented to the court.**
- (7) If the court orders community-based outpatient treatment through a patient agreed order, the court shall appoint a case management service or team employed by a community mental health center established pursuant to KRS 210.370 to 210.460 whose responsibilities are to:**
- (a) Regularly monitor the person's adherence to the conditions of the patient agreed order;**
 - (b) Regularly report to the court that ordered the person's release information descriptive of the person's functioning;**
 - (c) Recommend to the court that ordered the person's release any community support services the person needs; and**
 - (d) Assist the person in applying for any social service assistance for which the person may be eligible to meet the person's social needs.**
- (8) A case management service or team shall be available twenty-four (24) hours a day and shall be composed of professionals who have training and experience in the human services systems.**
- (9) A provider of mental health treatment for the purpose of a patient agreed order shall use evidence-based practices. As used in this section, "evidence-based**

practices" means intervention programs, policies, procedures, and practices that have been rigorously tested, are proven by scientific research, have yielded consistent, replicable results, and have proven safe, beneficial, and effective for most people diagnosed with mental illness when implemented competently. Evidence-based practices may include but are not limited to psychotropic medications, psychosocial rehabilitation, recovery-oriented therapies, modified assertive community treatment, supported employment, supported housing, and peer support services.

(10) (a) Failure to abide by the terms of the treatment plan may result in the initiation of procedures under this chapter that may result in involuntary hospitalization, provided the criteria set forth in KRS 202A.026 are met.

(b) Initiation of these procedures shall begin upon recommendation by the case management service or team and by a sworn affidavit attesting that the person did not comply with the terms of the treatment plan.

(c) Any mental health examination required for these procedures may be performed at a community mental health center, established pursuant to KRS 210.370 to 210.460.

(11) (a) A patient agreed order may be ordered for up to three (3) additional periods, each of which shall not exceed sixty (60) days.

(b) Prior to the issuance of a patient agreed order for an additional period of community-based outpatient treatment, the court shall hold a hearing at which the attorney for the person along with, if available, an alternative sentencing social worker is present. A peer support specialist or other person in a support relationship with the person may also be present. At the hearing, before the issuance of a patient agreed order for an additional period, the court shall find that:

1. The person has failed to adhere to one or more of the conditions of the

prior patient agreed order;

2. Continued outpatient treatment is appropriate and necessary, based on recommendations of the case management service or team appointed under subsection (7) of this section; and
3. The parties continue to be in agreement with the patient agreed order.

(12) Services for a patient agreed order shall be authorized by the Department for Medicaid Services and its contractors as Medicaid-eligible services and shall be subject to the same medical necessity criteria and reimbursement methodology as for all other covered behavioral health services.

(13) A court shall report every patient agreed order for community-based outpatient treatment to the cabinet.

→Section 2. KRS 202A.261 is amended to read as follows:

No public or private hospital, other than a state-operated or contracted mental hospital or institution, shall be required to provide services under KRS 202A.008, 202A.011, 202A.028, 202A.041, 202A.051, 202A.071, Sections 4 to 12 of this Act, 202A.081, 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200, 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280 unless the hospital agrees to provide the services. Any hospital shall make every reasonable attempt to cooperate with the implementation of KRS 202A.008, 202A.011, 202A.028, 202A.041, 202A.051, 202A.071, 202A.081, 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200, 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280.

→Section 3. KRS 202A.271 is amended to read as follows:

Each public or private hospital, other than a state-operated or contracted mental hospital or institution, which provides services under KRS 202A.008, 202A.011, 202A.028, 202A.041, 202A.051, 202A.071, Sections 4 to 12 of this Act, 202A.081, 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200, 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280 shall be paid for the services at the

same rates the hospital negotiates with the Department for Behavioral Health, Developmental and Intellectual Disabilities or the regional community program for mental health and for individuals with an intellectual disability.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

- (1) Proceedings for court-ordered assisted outpatient treatment of a person shall be initiated by the filing of a verified petition for that purpose in District Court.
- (2) The petition and all subsequent court documents shall be entitled: "In the interest of (name of respondent)."
- (3) The petition shall be filed by a qualified mental health professional, peace officer, county attorney, Commonwealth's attorney, spouse, relative, friend, or guardian of the person concerning whom the petition is filed, or any other interested person.
- (4) The petition shall set forth:

 - (a) Petitioner's relationship to the respondent;
 - (b) Respondent's name, residence, and current location, if known;
 - (c) Petitioner's belief, including the factual basis therefor, that the respondent meets the criteria for court-ordered assisted outpatient treatment as set forth in Section 6 of this Act; and
 - (d) Whether, within five (5) days prior to the filing of the petition, the respondent has been examined by a qualified mental health professional to determine whether the respondent meets the criteria for court-ordered assisted outpatient treatment pursuant to Section 6 of this Act.
- (5) Upon receipt of the petition, the court shall examine the petitioner under oath as to the contents of the petition. If the petitioner is a qualified mental health professional, the court may dispense with the examination.
- (6) If, after reviewing the allegations contained in the petition and examining the

petitioner under oath, it appears to the court that there is probable cause to believe the respondent should be court-ordered to assisted outpatient treatment, the court shall:

(a) Order the respondent to be examined without unnecessary delay by a qualified mental health professional to determine whether the respondent meets the criteria for court-ordered assisted outpatient treatment set forth in Section 6 of this Act, unless the court has already received the certified findings of such an examination conducted no earlier than five (5) days prior to the filing of the petition. The qualified mental health professional shall certify his or her findings within seventy-two (72) hours, excluding weekends and holidays; and

(b) Set a date for a hearing within six (6) days from the date of the examination under the provisions of this section, excluding weekends and holidays, to determine if the respondent should be court-ordered to assisted outpatient treatment.

(7) If the court finds there is no probable cause to believe the respondent should be court-ordered to assisted outpatient treatment, the proceedings against the respondent shall be dismissed.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

(1) The court may order that the sheriff of the county or a peace officer transport the respondent to a hospital or facility designated by the cabinet so that the respondent shall be examined without unnecessary delay by a qualified mental health professional. The sheriff or peace officer may authorize, upon agreement of a person authorized by the peace officer, the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to a hospital or facility designated by the cabinet.

(2) When the court is authorized to issue an order that the respondent be transported to a hospital or facility designated by the cabinet for examination, the court may issue a summons.

(a) A summons so issued shall be directed to the respondent and shall command the respondent to appear at a time and place specified in the summons, where the respondent shall be examined by a qualified mental health professional.

(b) If a respondent who has been summoned fails to appear for the examination, the court may order that the sheriff of the county or a peace officer transport the respondent to a hospital or facility designated by the cabinet for the purpose of an examination.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

No person shall be court-ordered to assisted outpatient mental health treatment unless the person is:

(1) Diagnosed with a severe and persistent mental illness which if not treated will:

(a) Cause the person to present a danger or threat of danger to self or others;

(b) Cause the person severe mental, emotional, or physical harm;

(c) Significantly impair the person's judgment, reasoning, functioning, or capacity to recognize reality; and

(d) Substantially diminish the person's ability to make informed decisions regarding his or her need for sustained medical treatment;

(2) Unlikely to adequately adhere to outpatient treatment on a voluntary basis based on a qualified mental health professional's:

(a) Clinical observation;

(b) Review of treatment history including the person's prior history of repeated treatment nonadherence; and

(c) Identification of specific characteristics of the person's clinical condition described as anosognosia, or failure to recognize his or her diagnosis of severe and persistent mental illness; and

(3) In need of court-ordered assisted outpatient treatment as the least restrictive alternative mode of treatment presently available and appropriate.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

No later than the date of the hearing held pursuant to Section 4 of this Act, the qualified mental health professional who examined the respondent pursuant to Section 4 of this Act shall provide to the court and the respondent a proposed comprehensive written treatment plan for the respondent for court-ordered assisted outpatient treatment. In developing a treatment plan, a qualified mental health professional shall:

(1) Provide reasonable opportunities for the respondent to actively participate in the development of the comprehensive treatment plan and to involve any other persons whom the respondent requests to have participate;

(2) Follow any advanced directive for mental health treatment executed by the respondent; and

(3) Include evidence-based practices. As used in this section, "evidence-based practices" means intervention programs, policies, procedures, and practices that have been rigorously tested, are proven by scientific research, have yielded consistent, replicable results, and have proven safe, beneficial, and effective for most people diagnosed with mental illness when implemented competently. Evidence-based practices may include but are not limited to psychotropic medications, psychosocial rehabilitation, recovery-oriented therapies, modified assertive community treatment, supported employment, supported housing, and peer support services.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO

READ AS FOLLOWS:

- (1) At a hearing and at all stages of a proceeding for court-ordered assisted outpatient treatment, the respondent shall be:

 - (a) Represented by counsel;
 - (b) Accompanied by a peer support specialist or other person in a support relationship, if requested by the respondent; and
 - (c) Afforded an opportunity to present evidence, call witnesses on his or her behalf, and cross-examine adverse witnesses.
- (2) If a respondent does not appear at the hearing, and appropriate attempts to elicit the respondent's appearance have failed, the court may conduct the hearing in the respondent's absence.
- (3) A qualified mental health professional who recommends court-ordered assisted outpatient treatment for the respondent shall:

 - (a) Testify at the hearing;
 - (b) State the facts and clinical determinations which support the allegation that the respondent meets the criteria stated in Section 6 of this Act; and
 - (c) Testify in support of the treatment plan provided pursuant to Section 7 of this Act, and for each category of proposed evidence-based treatment, he or she shall state the specific recommendation and the clinical basis for his or her belief that such treatment is essential to the maintenance of the respondent's health or safety.
- (4) If after hearing all relevant evidence, the court does not find by clear and convincing evidence that the respondent meets the criteria stated in Section 6 of this Act, the court shall deny the petition and the proceedings against the respondent shall be dismissed.
- (5) If after hearing all relevant evidence, the court finds by clear and convincing evidence that the respondent meets the criteria stated in Section 6 of this Act, the

court may order the respondent to receive assisted outpatient treatment for a period of time not to exceed three hundred sixty (360) days. The court's order shall incorporate a comprehensive treatment plan, which shall be limited in scope to the recommendations included in the treatment plan provided by the qualified mental health professional pursuant to Section 7 of this Act.

(6) The court shall report every order for assisted outpatient treatment issued under the provisions of this section to the cabinet.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

(1) If the court orders assisted outpatient mental health treatment pursuant to Section 8 of this Act, the court shall appoint a case management service or team employed by a community mental health center established pursuant to KRS 210.370 to 210.480 or facility designated by the cabinet whose responsibilities are to:

(a) Regularly monitor the person's adherence to the conditions of the court order for mental health treatment; and

(b) Regularly report to the court that ordered the person's release information descriptive of the person's functioning.

(2) A case management service or team shall be available twenty-four (24) hours a day. The case management service or team shall be professionals who have training and experience in the human services systems.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

A person's substantial failure to comply with a court-order for assisted outpatient treatment may constitute presumptive grounds for an authorized staff physician to order a seventy-two (72) hour emergency admission pursuant to KRS 202A.031. Failure to comply with an order for assisted outpatient treatment shall not be grounds

to find the person in contempt of court.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

(1) At any time during the period of an order for court-ordered assisted outpatient treatment, the person subject to the order may move the court to stay, vacate, or modify the order.

(2) (a) As used in this section, "material change" means an addition or deletion of a category of services to or from a treatment plan.

(b) If a treating qualified mental health professional proposes a material change to the court-ordered treatment plan, he or she shall apply to the court for approval of the proposed change. Not later than five (5) days after receiving the application, excluding weekends and holidays, the court shall hold a hearing. If the person under order informs the court that he or she agrees to the proposed material change, the court may approve the change without a hearing.

(3) Within thirty (30) days of the expiration of an order for assisted outpatient treatment, the original petitioner may petition the court for an additional period of court-ordered assisted outpatient treatment. The procedures for the consideration of the petition shall be identical to the procedures provided in Sections 4 to 12 of this Act, except that the parties may mutually agree to waive the requirement of a new hearing. The person under order shall be represented by an attorney in responding to the petition for an additional period of court-ordered assisted outpatient treatment.

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

Assisted outpatient mental health treatment services identified under Sections 4 to 12 of this Act shall be authorized by the Department for Medicaid Services and its

contractors as Medicaid-eligible services and shall be subject to the same medical necessity criteria and reimbursement methodology as for all other covered behavioral health services.