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Summaries of Assisted Outpatient Treatment (AOT) Procedures & Services

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Assisted Outpatient Treatment: Standards and Procedures¹

AOT Criteria

Section 5346(a)²

The following are summaries of procedures and services for Assisted Outpatient Treatment (AOT) programs in California

A court may order AOT if it finds, by clear and convincing evidence, that the facts stated in the verified petition are true and establish that all of the requisite criteria set forth in this section are met, including, but not limited to, each of the following:

- The person is 18 years of age or older;
- The person has a mental illness as defined in Section 5600.3(b)(2) and (3);³

¹ See also, *Assisted Outpatient Treatment: Services*

² All references are to the California Welfare and Institutions Code.

³ Sections 5600.3(b)(2) and (3) define “serious mental disorder” as follows:

(2) a mental disorder that is severe in degree and persistent in duration, which may cause behavioral functioning which interferes substantially with the primary activities of daily living, and which may result in an inability to maintain stable adjustment and independent functioning without treatment, support, and rehabilitation for a long or indefinite period of time. Serious mental disorders include, but are not limited to, schizophrenia, bipolar disorder, post-traumatic stress disorder, as well as major affective disorders or other severely disabling mental disorders. This section shall not be construed to exclude persons with a serious mental

- There has been a clinical determination that the person is unlikely to survive safely in the community without supervision; and
- The person has a history of lack of compliance with treatment for his or her mental illness, in that at least one of the following is true:
 - The person's mental illness has, at least twice within the last 36 months, been a substantial factor in necessitating hospitalization, or receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, not including any period during which the

disorder and a diagnosis of substance abuse, developmental disability, or other physical or mental disorder.

(3) Members of this target population shall meet all of the following criteria:

(A) The person has a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, other than a substance use disorder or developmental disorder or acquired traumatic brain injury pursuant to subdivision (a) of Section 4354 unless that person also has a serious mental disorder as defined in paragraph (2).

(B) (i) As a result of the mental disorder, the person has substantial functional impairments or symptoms, or a psychiatric history demonstrating that without treatment there is an imminent risk of decompensation to having substantial impairments or symptoms.

(ii) For the purposes of this part, "functional impairment" means being substantially impaired as the result of a mental disorder in independent living, social relationships, vocational skills, or physical condition.

(C) As a result of a mental functional impairment and circumstances, the person is likely to become so disabled as to require public assistance, services, or entitlements.

person was hospitalized or incarcerated immediately preceding the filing of the petition; or

- The person's mental illness has resulted in one or more acts of serious and violent behavior toward himself or herself or another, or threats, or attempts to cause serious physical harm to himself or herself or another within the last 48 months, not including any period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition.

Voluntary Services Requirements

Sections 5348(b), 5349

- A county that provides AOT services also shall offer the same services on a voluntary basis.
- To implement an AOT program, the county board of supervisors must make a finding that no voluntary mental health program serving adults, and no children's mental health program, may be reduced as a result of the AOT program.

Involuntary Medication Orders

Section 5348(c)

Involuntary medication shall not be allowed under AOT absent a separate order by the court pursuant to Sections 5332 through 5336.⁴

⁴ Section 5332 through 5336 pertain to the right of individuals under civil commitment to refuse antipsychotic medication absent a judicial determination of incapacity.

Contents of AOT Petition

Section 5346(b)(4)

The petition shall state all of the following:

- Each of the AOT criteria listed in Section 5346(a);⁵
- The person has been offered an opportunity to participate in a treatment plan by the director of the local mental health department or his or her designee, provided the treatment plan includes all of the services described in Section 5348,⁶ and the person continues to fail to engage in treatment;
- The person's condition is substantially deteriorating;
- Participation in AOT would be the least restrictive placement necessary to ensure the person's recovery and stability;
- In view of the person's treatment history and current behavior, the person is in need of AOT in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to himself or herself, or to others, as defined in Section 5150;⁷

⁵ See above for AOT criteria under Section 5346(a).

⁶ For AOT services under Section 5348, see Disability Rights California, *Assisted Outpatient Treatment (AOT): Services*

⁷ Section 5150 provides for short-term psychiatric holds on the basis of dangerousness to self or others, or grave disability, as a result of a mental health disorder. Section 5008(h)(1) defines "grave disability" as either of the following:

- It is likely that the person will benefit from AOT;
 - Facts that support the petitioner's belief that the person who is the subject of the petition meets each criterion, provided that the hearing on the petition shall be limited to the stated facts in the verified petition, and the petition contains all the grounds on which the petition is based, in order to ensure adequate notice to the person who is the subject of the petition and his or her counsel;
 - That the person who is the subject of the petition is present, or is reasonably believed to be present, within the county where the petition is filed; and
 - That the person who is the subject of the petition has the right to be represented by counsel in all stages of an AOT proceeding.
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(A) A condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.

(B) A condition in which a person, has been found mentally incompetent under Section 1370 of the Penal Code and all of the following facts exist:

(i) The indictment or information pending against the person at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person.

(ii) The indictment or information has not been dismissed.

(iii) As a result of a mental health disorder, the person is unable to understand the nature and purpose of the proceedings taken against him or her and to assist counsel in the conduct of his or her defense in a rational manner.

Affidavit

Section 5346(b)(5)

The petition shall be accompanied by an affidavit of a licensed mental health treatment provider designated by the local mental health director who shall state, if applicable, either of the following:

- That the provider has personally examined the person who is the subject of the petition no more than 10 days prior to the submission of the petition, the facts and reasons why the person meets the AOT criteria, that the provider recommends AOT, and that the provider is willing and able to testify at the hearing on the petition; or
- That no more than 10 days prior to the filing of the petition, the provider, or his or her designee, has made appropriate attempts to elicit the cooperation of the person who is the subject of the petition, but has not been successful in persuading that person to submit to an examination, that the provider has reason to believe that the person who is the subject of the petition meets the AOT criteria, and that the provider is willing and able to examine the person who is the subject of the petition and testify at the hearing on the petition.

Filing of AOT Petition

Sections 5346 (b)(1), (2)

The county mental health director, or his or her designee, can file an AOT petition in the Superior Court in the county in which the subject of the petition is present or reasonably believed to be present.

Any of the following people can request that a petition be filed:

- Any person 18 years of age or older with whom the person who is the subject of the petition resides;
- Any person who is the parent, spouse, or sibling or child 18 years of age or older of the person who is the subject of the petition;

- The director of any public or private agency, treatment facility, charitable organization, or licensed residential care facility providing mental health services to the person who is the subject of the petition in whose institution the subject of the petition resides;
- The director of a hospital in which the person who is the subject of the petition is hospitalized;
- A licensed mental health treatment provider who is either supervising the treatment of, or treating for a mental illness, the person who is the subject of the petition; or
- A peace officer, parole officer, or probation officer assigned to supervise the person who is the subject of the petition.

Investigation

Section 5346(b)(3)

Upon receiving an AOT petition, the county mental health director shall conduct an investigation into the appropriateness of the filing of the petition.

The director shall file the petition only if he or she determines that there is a reasonable likelihood that all the necessary elements to sustain the petition can be proven in a court of law by clear and convincing evidence.

Right to Counsel

Section 5346 (c)

The person who is the subject of the petition shall have the right to be represented by counsel at all stages of an AOT proceeding.

If the person so elects, the court shall immediately appoint the public defender or other attorney to assist the person in all stages of the proceedings.

The person shall pay the cost of the legal services if he or she is able.

Hearing

Sections 5346(d)(1)-(4)

Scheduling, Notice and Right to Appear:

- Upon receipt of an AOT petition, the court shall fix the date for a hearing at a time not later than five court days from the date the petition was received.
- The petitioner shall promptly cause service of a copy of the petition, together with written notice of the hearing date, to be made personally on the person who is the subject of the petition, and shall send a copy of the petition and notice to the county office of patient rights, and to the current health care provider appointed for the person who is the subject of the petition, if any such provider is known to the petitioner.
- Continuances shall be permitted only for good cause shown. In granting continuances, the court shall consider the need for further examination by a physician or the potential need to expeditiously provide AOT.
- At the hearing, the court shall hear testimony. If it is deemed advisable by the court, and if the person who is the subject of the petition is available and has received notice pursuant to this section, the court may examine in or out of court the person who is the subject of the petition.
- If the person who is the subject of the petition does not appear at the hearing, and appropriate attempts to elicit the attendance of the person have failed, the court may conduct the hearing in the person's absence. If the hearing is conducted without the person present, the court shall set forth the factual basis for conducting the hearing without the person's presence.

Testimony of Provider:

- The court shall not order AOT unless an examining licensed mental health treatment provider, who has personally examined, and has reviewed the available treatment history of, the person who is the subject of the petition within the time period commencing 10 days before the filing of the petition, testifies in person at the hearing.

Refusal to Comply with Examination:

- If the person who is the subject of the petition has refused to be examined by a licensed mental health treatment provider, the court may request that the person consent to an examination by a licensed mental health treatment provider appointed by the court.
- If the person who is the subject of the petition does not consent and the court finds reasonable cause to believe that the allegations in the petition are true, the court may order any person designated under Section 5150⁸ to take into custody the person who is the subject of the petition and transport him or her, or cause him or her to be transported, to a hospital for examination by a licensed mental health treatment provider as soon as is practicable.
- Detention of the person who is the subject of the petition under the order may not exceed 72 hours.
- If the examination is performed by another licensed mental health treatment provider, the examining licensed mental health treatment provider may consult with the licensed mental health treatment provider whose affirmation or affidavit accompanied the petition regarding the issues of whether the allegations in the

⁸ See note 7, above.

petition are true and whether the person meets the criteria for AOT.

Rights of Subjects of AOT Petitions:

- The person who is the subject of the petition shall have all of the following rights:
 - To adequate notice of the hearings to the person who is the subject of the petition, as well as to parties designated by the person who is the subject of the petition;
 - To receive a copy of the court-ordered evaluation;
 - To counsel. If the person has not retained counsel, the court shall appoint a public defender;
 - To be informed of his or her right to judicial review by habeas corpus;
 - To be present at the hearing unless he or she waives the right to be present;
 - To present evidence;
 - To call witnesses on his or her behalf;
 - To cross-examine witnesses; and
 - To appeal decisions, and to be informed of his or her right to appeal.

Court Order

Sections 5346(d)(5), 5346(e)

If after hearing all relevant evidence, the court finds that the person who is the subject of the petition does not meet the criteria for AOT, the court shall dismiss the petition.

If after hearing all relevant evidence, the court finds that the person who is the subject of the petition meets the criteria for AOT, and there is no appropriate and feasible less restrictive alternative, the court may order the person who is the subject of the petition to receive AOT for an initial period not to exceed six months.⁹

- In fashioning the order, the court shall specify that the proposed treatment is the least restrictive treatment appropriate and feasible for the person who is the subject of the petition.
- The order shall state the categories of AOT that the person is to receive.
- The court may not order treatment that has not been recommended by the examining licensed mental health treatment provider and included in the written AOT treatment plan.
- If the person has executed an advance health care directive, any directions included in the advance health care directive shall be considered in formulating the written treatment plan.

AOT shall not be ordered unless the licensed mental health treatment provider recommending AOT has submitted to the court a written treatment plan that includes services as set forth in Section 5348,¹⁰ and the court finds, in consultation with the county mental health director, or his or her designee, all of the following:

- That the services are available from the county, or a provider approved by the county, for the duration of the court order.

⁹ Under Section 4346(a), the court must find that the person meets AOT criteria by clear and convincing evidence.

¹⁰ See note 6, above.

- That the services have been offered to the person by the local director of mental health, or his or her designee, and the person has been given an opportunity to participate on a voluntary basis, and the person has failed to engage in, or has refused, treatment.
- That all of the elements of the petition required by this article have been met.
- That the treatment plan will be delivered to the county director of mental health, or to his or her appropriate designee.

Failure to Comply with AOT Treatment

Sections 5346 (d)(6), (f)

If the person who is the subject of an AOT petition refuses to participate in the AOT program, the court may order the person to meet with the AOT team designated by the director of the AOT program. The treatment team shall attempt to gain the person's cooperation with treatment ordered by the court.

If, in the clinical judgment of a licensed mental health treatment provider: the person who is the subject of the petition has failed or has refused to comply with the treatment ordered by the court, efforts were made to solicit compliance, and the person may be in need of involuntary admission to a hospital for evaluation, the provider may request that persons designated under Section 5150 take the person into custody and transport him or her, or cause him or her to be transported, to a hospital, to be held up to 72 hours for examination by a licensed mental health treatment provider to determine if the person is in need of treatment pursuant to Section 5150.

- The person may be subject to this initial 72-hour hold only after the treatment team has attempted to gain the person's cooperation with treatment ordered by the court, and has been unable to do so.
- Any continued involuntary retention in a hospital beyond the initial 72-hour period shall be pursuant to Section 5150. If at any time during the initial 72-hour period the person is determined not to meet the criteria of Section 5150, and does not agree to stay in the

hospital as a voluntary patient, he or she shall be released and any subsequent involuntary detention in a hospital shall be pursuant to Section 5150.¹¹

- Failure to comply with an order of AOT alone may not be grounds for involuntary civil commitment or a finding that the person who is the subject of the petition is in contempt of court.

Extension of AOT

Section 5346(g)

If the director of the AOT program determines that the condition of the patient requires further AOT, the director shall apply to the court, prior to the expiration of the period of the AOT order, for an order authorizing continued AOT for a period not to exceed 180 days from the date of the order.

- The procedures for obtaining extensions of AOT orders shall be the same as for obtaining original AOT orders.
- The period for further involuntary outpatient treatment authorized by any subsequent order under this subdivision may not exceed 180 days from the date of the order.

Review of AOT Orders

Sections 5346(h)-(j)

At intervals of not less than 60 days during an AOT order, the director of the outpatient treatment program shall file an affidavit with the court that ordered the outpatient treatment affirming that the person who is the subject of the order continues to meet the criteria for AOT.

¹¹ See note 7, above, for civil commitment criteria under Section 5150.

- At these times, the person who is the subject of the order shall have the right to a hearing on whether or not he or she still meets the criteria for AOT if he or she disagrees with the director's affidavit. The burden of proof shall be on the director.

During each 60-day period, if the person who is the subject of the order believes that he or she is being wrongfully retained in the AOT program against his or her wishes, he or she may file a petition for a writ of habeas corpus, thus requiring the director of the AOT program to prove that the person who is the subject of the order continues to meet the criteria for AOT.

Any person ordered to undergo AOT, who was not present at the hearing at which the order was issued, may immediately petition the court for a writ of habeas corpus. Treatment under the order for AOT may not commence until the resolution of the habeas petition.

Settlement Agreements

Section 5347

In any county in which AOT services are available, any person who is determined by the court to meet AOT criteria may voluntarily enter into an agreement for AOT services.

- After an AOT petition is filed, but before the conclusion of the hearing on the petition, the person who is the subject of the petition, or the person's legal counsel with the person's consent, may waive the right to an AOT hearing for the purpose of obtaining treatment under a settlement agreement, provided that an examining licensed mental health treatment provider states that the person can survive safely in the community.
- The settlement agreement may not exceed 180 days in duration and shall be agreed to by all parties.
- The settlement agreement shall be in writing, shall be approved by the court, and shall include a treatment plan developed by the community-based program that will provide services that provide

treatment in the least restrictive manner consistent with the needs of the person who is the subject of the petition.

- Either party may request that the court modify the treatment plan at any time during the 180-day period.
- The court shall designate the appropriate county department to monitor the person's treatment under, and compliance with, the settlement agreement. If the person fails to comply with the treatment according to the agreement, the designated county department shall notify the counsel designated by the county and the person's counsel of the person's noncompliance.
- A settlement agreement approved by the court pursuant to this section shall have the same force and effect as an original order for AOT.
- At a hearing on the issue of noncompliance with the agreement, the written statement of noncompliance submitted shall be prima facie evidence that a violation of the conditions of the agreement has occurred. If the person who is the subject of the petition denies any of the facts as stated in the statement, he or she has the burden of proving by a preponderance of the evidence that the alleged facts are false.

Assisted Outpatient Treatment (AOT): Services¹²

Types of AOT Services

Section 5348(a)¹³

AOT services must include, but are not limited to, the following:

- (1) Community-based, mobile, multidisciplinary, highly trained **mental health teams** that use high staff-to-client ratios of no more than 10 clients per team member for those subject to AOT orders.
- (2) A service planning and delivery process that includes the following:
 - A) Determination of the numbers of persons to be served and the programs and services that will be provided to meet their needs.
 - B) Plans for services, including outreach to families whose severely mentally ill adult is living with them, design of mental health services, coordination and access to medications, psychiatric and psychological services, substance abuse services, supportive housing or other housing assistance, vocational rehabilitation, and veterans' services.

Plans shall also contain:

- Evaluation strategies, which shall consider cultural, linguistic, gender, age, and special needs of minorities

¹² See also, *Assisted Outpatient Treatment: Standards and Procedures*

¹³ All references are to the California Welfare and Institutions Code.

and target populations identified in Section 11135 of the Government Code; and

- Provision for staff with the cultural background and linguistic skills necessary to remove barriers to mental health services as a result of having limited-English-speaking ability and cultural differences.
 - Recipients of outreach services may include families, the public, primary care physicians, and others who are likely to come into contact with individuals who may be suffering from an untreated severe mental illness who would be likely to become homeless if the illness continued to be untreated for a substantial period of time.
 - Outreach to adults may include adults voluntarily or involuntarily hospitalized as a result of a severe mental illness.
- C) Provision for services to meet the needs of individuals with physical disabilities.
- D) Provision for services to meet the special needs of older adults.
- E) Provision for family support and consultation services, parenting support and consultation services, and peer support or self-help group support, where appropriate.
- F) Provision for services to be client-directed and that employ psychosocial rehabilitation and recovery principles.
- G) Provision for psychiatric and psychological services that are integrated with other services and for psychiatric and psychological collaboration in overall service planning.

- H) Provision for services specifically directed to seriously mentally ill young adults 25 years of age or younger who are homeless or at significant risk of becoming homeless. These provisions may include continuation of services that still would be received through other funds had eligibility not been terminated as a result of age.
 - I) Services reflecting special needs of women from diverse cultural backgrounds, including supportive housing that accepts children, personal services coordinator therapeutic treatment, and substance treatment programs that address gender-specific trauma and abuse in the lives of persons with mental illness, and vocational rehabilitation programs that offer job training programs free of gender bias and sensitive to the needs of women.
 - J) Provision for housing for clients that is immediate, transitional, permanent, or all of these.
 - K) Provision for clients who have had an untreated severe mental illness for less than one year, and who do not require the full range of services, but are at risk of becoming homeless unless a comprehensive individual and family support services plan is implemented. These clients shall be served in a manner that is designed to meet their needs.
- (3) Each client shall have a clearly designated **mental health personal services coordinator** who may be part of a multidisciplinary treatment team who is responsible for providing or assuring needed services. Responsibilities include complete assessment of the client's needs, development of the client's personal services plan, linkage with all appropriate community services, monitoring of the quality and follow through of services, and necessary advocacy to ensure each client receives those services that are agreed to in the personal services plan. Each client shall participate in the development

of his or her personal services plan, and responsible staff shall consult with the designated conservator, if one has been appointed, and, with the consent of the client, shall consult with the family and other significant persons as appropriate.

- (4) The individual personal services plan shall ensure that persons subject to AOT programs receive age-appropriate, **gender-appropriate, and culturally appropriate services**, to the extent feasible, that are designed to enable recipients to:
- Live in the most independent, least restrictive housing feasible in the local community, and, for clients with children, to live in a supportive housing environment that strives for reunification with their children or assists clients in maintaining custody of their children as is appropriate.
 - Engage in the highest level of work or productive activity appropriate to their abilities and experience.
 - Create and maintain a support system consisting of friends, family, and participation in community activities.
 - Access an appropriate level of academic education or vocational training.
 - Obtain an adequate income.
 - Self-manage their illnesses and exert as much control as possible over both the day-to-day and long-term decisions that affect their lives.
 - Access necessary physical health care and maintain the best possible physical health.
 - Reduce or eliminate serious antisocial or criminal behavior, and thereby reduce or eliminate their contact with the criminal justice system.

- Reduce or eliminate the distress caused by the symptoms of mental illness.
 - Have freedom from dangerous addictive substances.
- (5) The individual personal services plan shall describe the **service array** that meets the requirements of paragraph (4), and to the extent applicable to the individual, the requirements of paragraph (2).

Involuntary Medication Orders

Section 5348(c)

Involuntary medication shall not be allowed under AOT absent a separate order by the court pursuant to Sections 5332 through 5336.

Voluntary Services Requirements

Sections 5348(b), 5349

A county that provides assisted outpatient treatment services pursuant to this article also shall **offer the same services on a voluntary basis**.

To implement an AOT program, the county board of supervisors must make a finding that **no voluntary mental health program serving adults, and no children's mental health program, may be reduced** as a result of the AOT program.

Funding for AOT Services

Sections 5349,

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.