



OFFICE OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES BULLETIN

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EFFECTIVE DATE:

May 11, 2023

NUMBER:

OMHSAS-23-04

SUBJECT:

Mental Health Emergency Services: Applying
the 120-hour timeframe for Emergency
Involuntary Commitments- Revised

BY:

A handwritten signature in black ink that reads "Jennifer D. Smith".

Jennifer Smith, Deputy Secretary
Office of Mental Health and Substance Abuse Services

SCOPE:

This bulletin applies to Mental Health/Intellectual Disabilities (MH/ID) Administrators, Base Services Units, Mental Health Review Officers, County Crisis Intervention Programs, Hospital Emergency Departments (EDs), Law Enforcement Officers, and Physicians.

PURPOSE:

The purpose of this bulletin is to provide guidelines for any party involved in the 302 Involuntary Commitment Process as outlined in the Mental Health Procedures Act (MHPA) of 1976.

BACKGROUND:

The MHPA places authority with County MH/ID Administrators or their delegates for initiating the involuntary commitment of individuals at risk of harming themselves or others due to behaviors associated with acute mental illness. There are two clear standards to cause an involuntary examination to occur. The 302 "Warrant for Emergency Examination" provision allows a member of the public to provide the information to the local County Mental Administrator necessary to justify that said individual's actions meet the standard outlined in the statute. The second provision, "Emergency Examination without a Warrant," creates a professional judgment standard that enables Police Officers, Physicians, and Individuals authorized by the County Mental Health Administrator to cause an involuntary evaluation without a warrant.

Regardless of which standard is utilized to cause an evaluation to occur, authorizing language limits the amount of time an individual can be held for an involuntary commitment utilizing either process to 120 hours without further court process.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

Office of Mental Health and Substance Abuse Services, Bureau of Policy, Planning and Program Development, P.O. Box 2675, Harrisburg, PA 17105. General Office Number 717-772-7900. Email RA-PWOMHSASBULLETINS@pa.gov

DISCUSSION:

The Department of Human Services (Department) has become aware that there is confusion regarding timeframes specific to the “Warrant for Emergency Examination” under Section 302 of the Act. The field requires guidance on the length of time a warrant is considered active before the subject of the warrant has been located and the individual has been presented at an evaluation location.

When an individual displays an urgent need for evaluation and treatment due to concerns for the safety of that individual or others, authorization for an Involuntary Evaluation is outlined in the MHPA. The legislature designated a specific timeframe for an individual to be held at an evaluation location to avoid deprivation of liberty without further due process (see *In Re Chiumento*, 688 A. 2d 217, 221 (Pa Super, 1997)). The mandated time limit reflects the expectation to honor the constitutional due process requirement of balancing individual liberty interests with the government’s interests in ensuring individual and societal safety.

The 302 petition is the instrument through which the county MH/ID Administrator is afforded the authority to suspend an individual’s right to liberty temporarily. The MHPA outlines two separate processes that permit an involuntary examination to occur. The standard for the issuance of a 302 warrant is outlined in 50 P.S. §§ 7301 and 7302: a warrant can only be issued where an individual is severely mentally disabled and, as a result, “poses a clear and present danger to himself, which shall be shown by establishing that within the past 30 days one of the three following criteria have been met: (i) the person has acted in such manner as to evidence that he would be unable, without care, supervision and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety, **and** that there is a reasonable probability that death, serious bodily injury or serious physical debilitation would ensue within 30 days unless adequate treatment were afforded under this act; or (ii) the person has attempted suicide and that there is the reasonable probability of suicide unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present danger may be demonstrated by proof that the person has made threats to commit suicide **and** has committed acts that are in furtherance of the threat to commit suicide; or (iii) the person has substantially mutilated himself or attempted to mutilate himself substantially and that there is the reasonable probability of mutilation unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear **and** present danger shall be established by proof that the person has made threats to commit mutilation and has committed acts which are in furtherance of the threat to commit mutilation.”

The MHPA assumes imminency and does not articulate a timeframe by which a warrant remains viable outside of the 120 hours an individual can be held. While there are three specific 30-day periods mentioned in the MHPA, none of those timeframes are specific to the life of the warrant. The law clearly outlines the need for imminent risk to self or others or reasonable probability of death to be present to issue a warrant. As such, the Department’s

interpretation is that a 302 warrant for mental health evaluation lives for hours, not days. Should a warrant be executed more than several hours after it was issued, the professional serving the warrant should render a new assessment to ensure that criteria for an involuntary evaluation continue to exist before causing an individual to be involuntarily taken to an evaluation location. In such situations, every effort should be made to have an individual voluntarily agree to an evaluation.

The 120-hour limit on deprivation of liberty begins once the individual is presented at the evaluation location for an emergency 302 evaluation. Within the statutorily authorized 120 hours, the individual shall receive an evaluation by a physician within 2 hours of arriving at an evaluation setting. A physician's evaluation aims to determine if further involuntary treatment is necessary for an inpatient setting over the individual's objection. Should an individual be evaluated without a warrant, a 302 warrant is a viable option should it be necessary to begin involuntary treatment; but it is not legally required.

Given the strong preference for voluntary treatment, reasonable efforts should always be made to gain an individual's consent for psychiatric evaluation and treatment. Even when first denied, consent should be sought throughout the 120-hour hold to alleviate the need for further involuntary treatment.

The Department has learned that incorrect information has been shared, including that the 120-hour time limit to hold an individual does not start until after a physician has evaluated the individual or when the process to identify a specific psychiatric inpatient treatment facility has begun. This interpretation ignores the full period of confinement that commenced upon an individual's loss of individual freedom. Therefore, these actions could violate due process by exceeding the maximum 120-hour liberty deprivation period permitted under Section 302 of the MHPA.

If an individual arrives at an ED voluntarily seeking treatment under Section 201 of the MHPA, the 120-hour limit will not apply. If the individual removes consent and a determination is made that a 302 involuntary commitment is necessary and is executed, the 120-hour clock would begin at that time.

A physician must evaluate an individual held pursuant to Section 302 within the first two hours of an individual's arrival at the evaluation site. If an evaluation does not occur within the required two-hour timeframe, the individual must be discharged and returned to a place of their reasonable request. A new 302 warrant would be necessary to continue to detain the individual, and the two-hour physician evaluation requirement would again apply. If the legal requirements of a 302 warrant cannot be met within the permitted timeframe, it is not legally appropriate to execute an additional 302 warrant based on the same information that secured the first 302. A new 302 can be issued if the current behavior meets the statutory requirements, and a new 302 can be issued based on new observations.

When a physician cannot determine an individual's involuntary treatment need because of the individual's inability to participate in the evaluation due to medical or substance use circumstances, the physician should note the initial evaluation in the medical record along with a planned time to complete the required examination. This delay in completing the initial evaluation due to the individual's inability to participate does not extend the 120-hour limit on deprivation of liberty without further due process.

In the event that an individual is experiencing a serious medical event for which immediate critical treatment is necessary, the 302 involuntary examination should only begin when the individual is physically able to participate. The purpose of a 302 warrant is to perform an involuntary psychiatric examination specific to an individual's state of mind. The Department has no authority under 50 P.S. § 7302 to authorize the holding of an individual past 120 hours.

Parties must understand that the presence of a medical condition that requires time to clear or significantly improve before there can be an effective psychiatric reevaluation does not delay the start of the 120-hour 302 detention limit when a warrant has been executed. To that end, parties should evaluate the options afforded in 50 P.S. § 7302 for conducting involuntary emergency evaluation without a warrant, specifically the ability of physicians, peace officers, and anyone designated by the county administrator to take an individual to an approved facility for an emergency evaluation. Regarding the "emergency examination without a warrant" provision, the MHPA states, "upon arrival, he shall make a written statement setting forth the grounds for believing the person to be in need of such examination." Should an individual be under the influence of a substance and/or require medical treatment for an urgent medical condition, a physician may elect to address the physical health condition and make every attempt to secure voluntary consent for an emergency psychiatric evaluation before requesting a warrant or signing a statement to justify an evaluation without a warrant. Treating an emergency medical issue does not require a 302 warrant unless an individual refuses medical treatment. In this case, refusing appropriate necessary care could meet the established standard to support the issuance of a 302 warrant for an emergency evaluation.

Should 120 hours be insufficient to determine an appropriate disposition, and the individual continues to be identified as a danger to self or others, legal steps should be taken to extend the period of involuntary treatment as described in Section 303 of the MHPA. Legal authority to hold an individual past the 120-hour time limit must be secured before the 120-hour limit has expired.

OBSOLETE:

This Bulletin obsoletes Bulletin OMHSAS-22-07, "Mental Health Emergency Services: Applying the 120-hour timeframe for Emergency Involuntary Commitments - Revised."