

DATE: February 24, 2021

TO: Honorable Members of the Board of Supervisors

Jeffrey V. Smith, M.D., J.D., County Executive

FROM: René G. Santiago, Deputy County Executive/Director, SCVHHS
Sherri Terao, Director of Behavioral Health Services

SUBJECT: Assembly Bill (AB) 1976: Mental Health Services Assisted Outpatient Treatment

During the Health and Hospital Committee Meeting on February 17, 2021, Supervisor Simitian and Supervisor Lee requested that the Behavioral Health Services Department (BHSD) provide an off-agenda report addressing – 1) the requirements, prohibitions, and areas of discretion under the assisted outpatient treatment (AOT) program for counties that elect to opt in and 2) a draft AOT implementation plan (**Attachment A**). Under AB 1976, all California counties will be required to offer AOT or opt out by a Board of Supervisors resolution outlining the reasons for opting out and any facts or circumstances relied on in making that decision no later than May 2, 2021.

For counties that elect to implement an AOT program, a client may be placed in AOT only if, after a hearing, a court finds that all of the following have been met. The client must:

- 1) Be eighteen years of age or older;
- 2) Be suffering from a mental illness;
- 3) Be unlikely to survive safely in the community without supervision, based on a clinical determination;
- 4) Have a history of non-compliance with treatment that has either:
 - A. Been a significant factor in his or her being in a hospital, prison or jail at least twice within the last thirty-six months; or
 - B. Resulted in one or more acts, attempts or threats of serious violent behavior toward self or others within the last forty-eight months;
- 5) Have been offered an opportunity to voluntarily participate in a treatment plan by the local mental health department but continue to fail to engage in treatment;
- 6) Be substantially deteriorating;
- 7) Be, in view of treatment history and current behavior, in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would likely result in the client meeting California's inpatient commitment standard, which is being:
 - A. A serious risk of harm to himself or herself or others; or
 - B. Gravely disabled (in immediate physical danger because unable to meet basic needs for food, clothing, or shelter);
- 8) Be likely to benefit from assisted outpatient treatment; and
- 9) Have their participation in the assisted outpatient program be in the least restrictive placement necessary to ensure the client's recovery and stability.

- By May 2, 2021, the County (or if implementing AOT with neighboring counties, a Collaborative County) must submit to the California Department of Health Care Services (DHCS) a Plan to Develop a Training and Education Program (Plan) that describes the county's Plan in consultation with DHCS, client and family advocacy organizations, and other stakeholders. The Plan must describe how training will be provided to (1) mental health treatment providers contracting with the County, (2) mental health professionals, law enforcement officials, and (3) certification hearing officers involved in making treatment and involuntary commitment decisions.

The table below describes the requirements, prohibitions, and areas of discretion for counties who elect to implement an AOT program under AB 1976.

Requirements	<ul style="list-style-type: none"> • Upon receipt of a petition, a county behavioral health director must investigate the appropriateness of the filing (<i>see "Areas of Discretion" for director's discretion</i>). <ul style="list-style-type: none"> ○ A petition may be filed by a county behavioral health director, or designee, or a superior court in the county where the client is present/reasonably believed to be present. ○ A request for a petition to be filed by a county behavioral health department may be made by the following persons (18 years or older): A person with whom the person subject to the petition resides; a parent, spouse, sibling, or child of the subject; directors of public/private agencies, treatment facilities, charitable organizations, or licensed residential care facilities providing mental health services to the subject in whose institution the subject resides; a director of a hospital where the subject resides; a licensed mental health treatment provider supervising the treatment or treating the subject; a peace officer, parole officer, or probation officer assigned to supervise the subject; a judge of a superior court before whom the subject of the petition appears. • The AOT program must have available for those placed in the program a threshold of services including, but not limited to, all of the following: <ul style="list-style-type: none"> ○ Community-based, mobile, multidisciplinary, highly trained mental health teams that have staff-to-client ratios of no more than one team member per ten clients under AOT orders; ○ A service planning and delivery process that includes provisions to: <ul style="list-style-type: none"> ▪ Determine the numbers of clients to be served, and the programs and services that will be provided to meet their needs; ▪ Plan for outreach to families, psychiatric and psychological services, coordination and access to medications, substance abuse services, housing assistance, vocational rehabilitation, and veterans' services; ▪ Provide staff who can remove barriers to services resulting from cultural, linguistic, racial, age, and gender differences; ▪ Offer services to older adults, clients who are physically disabled, and seriously mentally ill young adults (25 years of age or younger) who are at risk of becoming homeless; and ▪ Provide housing that is either immediate, transitional, permanent, or all of these.
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	<ul style="list-style-type: none"> ○ Personal service coordinators, who may be part of the AOT program team, who are responsible for ensuring, to the extent feasible, that people subject to AOT receive services which enable them to: <ul style="list-style-type: none"> ▪ Live in the least restrictive housing feasible in the local community; ▪ Engage in the highest level of productive activities appropriate to their abilities and experience; ▪ Access appropriate education and vocational training; ▪ Obtain an income; ▪ Exert as much control over their lives as possible; ▪ Access physical health care; and ▪ Reduce antisocial or criminal behavior. ● Counties must also offer the same AOT services on a voluntary basis. ● Each client has the right to be represented by counsel at all stages of proceedings, including the right to a court appointed public defender or other attorney. The cost of legal services must be paid by the county, unless the client has the financial means to pay this cost. ● A licensed mental health treatment provider must examine the client 10 days prior to filing the petition and must testify at the hearing (<i>see “Areas of Discretion” for clients who refuse examination</i>). ● Each client shall have a clearly designated mental health personal services coordinator who may be part of a multidisciplinary treatment team responsible for providing needed services. ● A court designates the appropriate county department to monitor the client’s treatment under AOT. If a client fails to comply, the county department must notify the legal counsel designated by the county and the client’s counsel. A hearing on the issue of noncompliance must follow. ● Data Reporting: Counties implementing AOT must provide data to the DHCS on an annual basis. At a minimum, the report must include number of clients served, number able to maintain housing, number maintaining contact with treatment system, number with contacts with local law enforcement (and extent to which local and state incarceration was avoided/reduced), number participating in employment services (including competitive employment), days of hospitalization reduced/avoided, adherence to treatment plans, other indicators of successful engagement by the client, victimization, violent behavior, substance abuse, type, intensity and frequency of treatment, extent to which enforcement mechanisms are used and when applicable, social functioning, skills in independent living, and satisfaction with the AOT program by the client and their families, when relevant.
Prohibitions	<ul style="list-style-type: none"> ● No reductions in existing voluntary mental health programs due to AOT implementation. ● <u>No involuntary medications allowed absent a separate order by the court.</u> ● If a client agrees to a settlement agreement, the settlement agreement <u>may not exceed 180 days in duration</u> and must be agreed to by all parties and the court. Settlement agreements must be developed by a community-based program to provide services, in the least restrictive manner, consistent with the client’s needs (<i>see “Areas of Discretion” for modification of settlement agreements</i>).

	<ul style="list-style-type: none"> • If a court finds that the client meets criteria to participate in AOT and there is no appropriate and feasibly less restrictive alternative, the court may order the client to receive AOT for an initial period <u>not to exceed 6 months</u>. • A court may not order treatment that has not been recommended by an examining licensed mental health treatment provider and included in the written treatment plan. • Failure to comply with an AOT order alone may not be grounds for involuntary civil commitment or a finding that the client is in contempt of court.
Areas of Discretion	<ul style="list-style-type: none"> • A county behavioral health director can file a petition only if the director determines there is a reasonable likelihood that all necessary elements to sustain the petition can be proven in court by clear and convincing evidence. • If a client refuses to be examined by a licensed mental health treatment provider, the court may appoint an examination by a licensed mental health treatment provider. If the client does not consent to such an examination and the court finds reasonable cause in the petition to be true, the court may order a 5150 hold for an evaluation (not to exceed 72 hours). • Prior to the conclusion of a hearing, the client or the client's legal counsel with consent may waive the right to an AOT hearing to obtain a settlement agreement, provided the examining licensed mental health treatment provider states that the client can survive safely in the community. Either party may request court modification of the treatment plan during the 180-day period of a settlement agreement. • If, after hearing all relevant evidence, a court finds that a client does not meet the AOT criteria, the court shall dismiss the petition. • A county's AOT program may determine the appropriate treatment services offered. This may include the number of clients to be served, the programs/services provided to meet each of their needs, as determined through consultations between the mental health director, sheriff, police chief, probation office, mental health board, contract agencies, the client's family, the client, and ethnic and citizen constituency groups as determined by the director. <ul style="list-style-type: none"> ○ Plans for services may include outreach to families whose severely mentally ill adult is living with them, design of services, coordination and access to medications, psychiatric/psychological services, substance use services, supportive housing or other housing assistance, vocational rehabilitation, and veteran's services. ○ Evaluation of services must consider cultural, linguistic, gender, age, and special needs of minorities, and provisions must be made to provide staff with cultural background and linguistic skills necessary to remove barriers to services. • If a client subject to an AOT order refuses to adhere to the order, the court may order the client to meet with the AOT team. If the AOT team cannot gain the client's cooperation with the order, the client may be subject to a 5150 evaluation and hold not to exceed 72-hours.

cc: Miguel Marquez, Chief Operating Officer
James R. Williams, County Counsel
Megan Doyle, Clerk of the Board
Chief Board Aides
Debbie Dills-Thompson, OBA
Agenda Review Administrator

ATTACHMENT A- DRAFT AOT IMPLEMENTATION PLAN

- **March 2021- Planning, Preparation, and Stakeholder Feedback**
 - Meet with BHSD staff, Finance, and collaborative departments (e.g., County Counsel, Court, Public Defender, etc.) to develop estimates for the costs and resources needed to implement AOT. Internal deadline to have a draft of estimated costs is March 15, 2021.
 - Schedule, invite, and conduct stakeholder feedback sessions to establish 1) the vision and values for the program and 2) other than the required components, what topics and other items should be included in the education and training plan for providers, law enforcement officials, and certification hearing officers. At minimum, conduct two stakeholder meetings by March 18, 2021.
 - **Special March HHC Meeting Dedicated for AOT Discussion- March 24, 2021**
Provide an updated report on projected AOT implementation resources and costs, confirm that existing voluntary mental health programs will not be reduced as a result of implementation of AOT services, program visions/values, implementation timeline, and public/stakeholder feedback process. Internal deadline for a draft of the report and presentation for the Special HHC Meeting is March 10, 2021.
- **April 2021 - Board of Supervisors Meeting**
 - Conduct additional stakeholder meeting to discuss the report presented to the Special HHC meeting and collect additional public input about the education and training plan and implementation plan. Conduct this stakeholder meeting immediately after the Special HHC meeting.
 - **April 20, 2021** - Provide the Board of Supervisors an updated report on the status of AOT implementation and receive direction from the Board of Supervisors to implement AOT or opt out of AOT.
 - Continue working with staff, stakeholders, and collaborative departments as appropriate on action items based on the Board of Supervisors' decision.
- **May 2021 - DHCS Notification of County Decision (May 2, 2021 deadline)**
 - If the Board of Supervisors approves AOT implementation, notify DHCS and work with DHCS to finalize the draft education and training plan.
 - Begin process to submit requests to the Board of Supervisors for any approved AOT positions and other resources necessary to implement the program.
- **June 2021 - Initiate Hiring and Community Training and Education**
 - Pending DHCS approval of the education and training plan, start scheduling training and educational events with County staff, public stakeholders, partners, and the community (including consumer and family advocacy groups). **Note:** scheduling may be delayed to July depending on the timing of DHCS' response/feedback.
 - Start the hiring process should the Board of Supervisors approve the AOT positions and funding necessary to support AOT implementation and necessary infrastructure.
- **July 1, 2021 - AOT Implementation required pursuant to DHCS Requirements**



- Continue reaching out to County staff, public stakeholders, partners, and the community (including consumer and family advocacy groups) for training and education events on the new AOT program.
- Begin set up of infrastructure system – data infrastructure, new hire training, etc.