Florida's Outpatient Commitment Law: A Lesson in Failed Reform?

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An involuntary outpatient commitment law became effective in Florida in January 2005. However, only 71 orders for outpatient commitment have been issued in three years, even though during that period 41,997 adults had two or more 72-hour involuntary emergency examinations under Florida's civil commitment law. This column describes the criteria for outpatient commitment in the Florida statute and discusses possible reasons for its low rate of use, including additional statutory criteria that make filing a petition for outpatient commitment difficult, lack of community treatment resources, and lack of enforcement mechanisms. (*Psychiatric Services* 59:21–23, 2008)

In 1998 a 13-hour standoff in Seminole County, Florida, between a man with a mental illness and law enforcement officials resulted in the death of a sheriff's deputy and of the man himself. Soon after, the county sheriff began a campaign to enact an outpatient commitment statute (1). In 2004, after several years of consideration, the Florida legislature amended the state's civil commitment law to permit involuntary outpatient commitment (2). Proponents hailed the legislation as "the first important step in halting the relentless revolving door of repeated arrests, short-term hospitalizations, and homelessness for thousands of people in Florida with severe untreated mental illnesses, like schizophrenia and bipolar disorder" (3). This optimism was based at least in part on research that suggests that outpatient commitment may provide community stability for some people with mental illnesses (4).

Have these outcomes been achieved since Florida's outpatient commitment law became effective on January 1, 2005? The results are striking and unambiguous. In a state with a population that is approaching 19 million people, there have been a total of 71 orders for outpatient commitment in nearly three years. In contrast, in the first five years after adoption of an outpatient commitment law in New York State, more than 10,000 people were referred for assessment of their eligibility for commitment, with petitions filed in 4,041 cases and granted in 93% of those cases (5). Given continuing widespread interest in outpatient commitment nationally, it is worth considering the possible reasons for the chasm between enactment and use of the Florida statute.

The Florida outpatient commitment statute

The Florida statutory criteria are similar to those in most recently adopted outpatient commitment statutes, drawing primarily from New York's statute, also known as "Kendra's Law" for the woman whose killing stimulated legislative action in New York (6). In Florida a person must meet these criteria to be eligible for outpatient commitment:

- is at least 18 years of age and has a mental illness
- is unlikely to survive safely in the community without supervision and has a history of noncompliance with mental health treatment
- at least twice in the preceding 36 months has been involuntarily admitted for a 72-hour evaluation under the civil commitment law, has received mental health services in a forensic or correctional facility, or has engaged in one or more acts of serious violent behavior toward self or others
- is unlikely to participate voluntarily in treatment and has refused or is incapable of consenting to treatment and is in need of treatment to prevent relapse or deterioration likely to result in harm to self or others
- is likely to benefit from involuntary treatment
- no available or appropriate less restrictive alternatives exist.

From July 2004 through June 2007 a total of 41,997 adults had two or more 72-hour involuntary examinations (referred to as emergency commitments in many states) under Florida's civil commitment law (7). Because of these two or more examinations, many of which resulted in involuntary admissions, these individuals constitute a pool potentially eligible for outpatient commitment. Why, then, has the law been used so sparingly?

One reason may be additional statutory criteria that make filing a petition for outpatient commitment difficult. A petition may be filed only by a state hospital or one of Florida's 103 receiving facilities, the inpatient units designated by the state as locations for the 72-hour involuntary ex-

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amination that is the first step in Florida's civil commitment process for many individuals. A petition may not be filed by an outpatient treatment provider.

The statute also requires that a receiving facility perform a number of potentially difficult tasks within 72 hours from the time of the person's admission to the receiving facility for involuntary examination. For example, the facility administrator must identify the service provider that will have primary responsibility for providing outpatient treatment. The service provider in turn must prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, and this plan must be provided to the patient and the petitioning facility. The statute specifies that the plan must address the reduction of symptoms necessitating outpatient commitment and the service provider must specify to the court that sufficient services are available. The recommendation for outpatient commitment must also be supported by the opinion of a psychiatrist as well as by another psychiatrist or clinical psychologist who has personally examined the patient within the preceding 72 hours.

The 72-hour period available to perform these tasks may present a significant barrier to petitioning for outpatient commitment, particularly given that the petitioning facility and the service provider that will provide treatment may not even be in the same county. These practical difficulties may be exacerbated by a statutory requirement that the person subject to the petition must be discharged during the 72 hours if he or she has stabilized and no longer meets the criteria for involuntary examination. A potential petitioner may be reluctant to prepare a petition for outpatient commitment if the person indeed has been stabilized during the initial assessment period and is about to be discharged.

The three Florida state hospitals may petition for outpatient commitment in cases in which the person has been hospitalized under involuntary inpatient criteria. This theoretically provides more time for the facility to prepare the petition than the 72 hours usually available to a receiving facility. However, the state hospital must petition in the county where the person will reside after discharge. Filing a petition presents practical barriers in these situations as well, given the large geographic catchment areas served by each state hospital and the distance from the hospitals to many of the counties they serve.

Providers may also ignore the Florida statute because of a lack of community treatment resources. Studies of outpatient commitment in North Carolina illustrate that an outpatient commitment order can be effective only if accompanied by treatment (8). In contrast to New York, where significant new treatment funds were made available on enactment of Kendra's Law, no new funding was made available to implement Florida's outpatient commitment law. In fact, Florida ranks 48th in per capita spending on mental health (9). In an impoverished service system, providers may be reluctant to assume additional responsibilities for clients, who by statutory definition have been unresponsive to treatment, may pose a future risk, and may involve the provider with the judicial system.

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A lack of enforcement mechanisms may also present a barrier (10). In Florida if a physician determines that the patient has failed or refused to comply with court-ordered outpatient treatment and may meet the criteria for involuntary examination, the person may be brought to a receiving facility for a 72-hour assessment. However, if on examination the person does not meet the criteria for inpatient commitment, the person must be released from the receiving facility. The outpatient commitment order remains in place, but the service provider must then determine whether the existing treatment plan should be modified and must continue to engage the person in treatment. Appelbaum (11) has noted that the lack of practical alternatives to inpatient care as an enforcement mechanism can be a significant obstacle to the use of an outpatient commitment statute. Florida's law is similar to other state laws in its reliance on the inpatient commitment law as the primary means of enforcing nonadherence with outpatient treatment orders.

Conclusions

This is the third report in recent years showing that there are major procedural, philosophical, and practical obstacles to the use of outpatient civil commitment laws (10,11). In two of the most populated states (Florida and California) outpatient commitment statutes appear to be virtually ignored, despite the fanfare accompanying their enactment. Appelbaum has suggested that outpatient commitment laws are simply ill equipped to address this population—potentially violent persons with a mental illness. In a recent analysis of inpatient civil commitment in Oregon, Bloom (12) has suggested that multiple factors, including a dramatic reduction in the length of inpatient hospitalizations, have made civil commitment an in-

creasingly impractical tool in general (12). It is also possible that the series of compromises often necessary to enact outpatient commitment legislation may result in a statute that in practice is difficult to use. These practical difficulties may be compounded in underfunded service systems that in the best of circumstances can meet the treatment needs of only a small percentage of the population.

This is not to suggest that the Florida outpatient commitment statute has had no effect in the lives of some individuals. However, the fact that outpatient commitment orders have been issued in only 71 cases in nearly three years in a state in which nearly 125,000 involuntary examinations were initiated in 2006 (13) suggests that Florida's outpatient commitment law has had little effect on practice.

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