

# Commentary

We offer this commentary to expand on some of the issues debated in development of the model law, to explain our choices and to highlight matters that are likely to arise as bills derived from it are debated by state or local policymakers. Many of the approaches in the model law and the alternatives listed in this commentary were proposed by consumer, family and advocacy group representatives and we thank them for their helpful suggestions.

The commentary appears on left-hand pages, opposite the section of the model law (on the right-hand pages) to which it relates. Supplementary information in the appendices will be useful to those working on adaptations of this model.

## Commentary on Article 1: Findings and Purpose

**1-A.** Findings are included to document the need for a law providing the right to recovery-oriented mental health services and supports. They could include statistics on various factors, such as the number of people with mental illnesses who lack suitable housing or are homeless, or who are involved in the criminal justice system, needlessly institutionalized, dually diagnosed or unable to access mental health services and supports. (Findings 1-7 are adapted from a bill, AB 1422, pending in the California Legislature.)

There are pros and cons to citing such statistics. The numbers, when available, may be helpful in convincing legislators of the urgency and cost-effectiveness of passing legislation to increase the availability and quality of mental health services and supports. On the other hand, the data, in addition to being difficult to obtain, could unnecessarily stigmatize mental health consumers by emphasizing the negative outcomes they have experienced as a result of an inadequate mental health system.

If some of the data mentioned in these findings are not available for a particular jurisdiction, national findings could substitute. For example:

- ◆ A 1999 report by the Department of Justice found that 16% of those in state prisons and local jails, 7% of federal inmates and 16% of probationers reported either a mental condition or an overnight stay in a mental hospital. Dilton, P.M., *Mental Health and Treatment of Inmates and Probationers* (Bureau of Justice Statistics, NCJ-174463) Washington D.C. U.S. Department of Justice (1999).
- ◆ Between 25% and 30% of homeless individuals have a mental disability, according to the National Law Center on Homelessness and Poverty. See [www.nlchp.org/h&pusa.htm](http://www.nlchp.org/h&pusa.htm). And a 1996 article found that “between 20% and 25% of those homeless people studied have at

# An Act Providing a Right to Mental Health Services and Supports

## Model Law

### Article 1: Findings and Purpose

**A. Findings.** The Legislature finds and declares that:

1. [State]’s mental health system is inadequate in its resources and design to ensure quality mental health care to those who need it.

2. [State] spends \$\_\_\_\_\_ dealing with the consequences of untreated mental illness rather than spending that money wisely on adequate services. State policy is directed at providing services only to the extent that limited resources are available, thus rationing care and creating a crisis-driven system.

3. Mental illness costs the [State] economy up to \$\_\_\_\_\_ billion annually in indirect costs, including lost productivity. A report of the Surgeon General of the United States indicates that mental illness costs the national economy nearly \$79 billion annually.

4. Direct costs for public and private mental health care treatment in [State] are estimated to be \$\_\_\_\_\_ annually.

5. As a result of inadequate mental health resources, the criminal justice system has become a mental health service provider and a safety net in times of crisis for an increasing number of unnecessarily incarcerated adults, who would be more properly served at lower cost by an adequate mental health system.

6. Stigma, discrimination and misunderstanding associated with mental illness constitute a significant barrier to treatment and recovery, denying access to services and impeding the development of appropriate, quality care in mental health systems.

7. The overriding goal of mental health reform is for people who need care to have access to high-quality, tailored mental health services and supports in their communities, in least restrictive settings, designed to foster recovery, community integration and economic self-sufficiency.

some time experienced severe and often extremely disabling mental illnesses such as schizophrenia and the major affective disorders (clinical depression or bipolar disorder).” Koegel, P., *Causes of Homelessness, Homelessness in America* (1996) at 31.

- ◆ Documenting the link between homelessness, criminalization and serious mental illness, 20% of mentally ill inmates in federal or state prison were homeless in the 12 months prior to arrest. *Id.*
- ◆ The unemployment rate for people with mental illnesses is approximately 90%, exceeding any other group of people with disabilities, although at least 70% of mental health consumers have indicated a desire to work. *Id.* at 413, citing National Institute on Disability and Rehabilitation Research (1992) for the percentage unemployed and Rogers, Danley, & Anthony (1992) on consumers’ aspirations.
- ◆ Nationally, state mental health appropriations have fallen dramatically over the past two decades, when adjusted for inflation and population growth. (Examine your state’s appropriation levels by using adjusters for inflation and population growth.)

8. With advances in knowledge, mental health professionals and users of mental health services have identified an array of community-based services and supports that promote recovery, community integration and economic self-sufficiency.

9. Mental health services and supports are most effective when people with mental illnesses are involved in service planning and are expected to be full partners in their own recovery, community integration and economic self-sufficiency.

10. Access to comprehensive and timely mental health services and supports is critical to the well-being of all citizens and to the health of all communities in [State].

11. It is in the interest of people with mental illnesses and the taxpayers of [State] that a legally enforceable right to mental health services and supports be recognized for all people with serious mental illnesses who seek such services and supports

**B. Purpose.**

The purpose of this Law is to make services and supports available on a voluntary basis and to empower and authorize individuals diagnosed with serious mental illnesses to obtain needed services and supports through individualized planning.

## Commentary on Article 2: Definitions

### A-2. Eligible person.

Because of its centrality to the individual's exercise of rights under the model law, the definition of "eligible person" is one of the most important and difficult issues. Several decisions merit careful consideration.

First, which individuals should be protected by the law:

- ◆ Should the eligible population include children?
- ◆ Should the definition include individuals with any DSM diagnosis?
- ◆ Should it be limited to those with serious mental illnesses and, if so, what definition of serious mental illness should be used? Alternatives include the definition set forth by the federal Substance Abuse and Mental Health Services Administration (SAMHSA): a DSM illness which results in a functional impairment that substantially interferes with or limits one of more major life activities or the definition in state law.

The model law limits the eligible population to adults. Although children in almost every United States jurisdiction lack access to quality mental health services, some entitlements do exist for them. These include special education and Early Periodic Screening Diagnosis and Treatment (EPSDT), which requires states to provide all medically necessary treatment to Medicaid-eligible children. Although these programs are not properly enforced and leave many gaps, they are a starting point. Adults, by contrast, lack similar rights. The model law is designed to create a meaningful right to services and supports.

The model law also limits the eligible population to individuals with serious mental illnesses, in order to apply resources available for implementation to address the needs of people who are typically assigned priority by public mental health systems.

A second set of questions relates to financial issues:

- ◆ Should eligibility be conditioned on low income, such as below 200% or 300% of poverty?
- ◆ If not, should there be a payment structure, entitling an individual to free services until income reaches a specified level? Above that level, the person could be required to contribute to the cost of coverage, based on ability to pay. Such a scheme could use various payment mechanisms, such as a buy-in approach (the individual pays a monthly or annual premium) or a sliding-scale co-payment for services.
- ◆ If a payment structure is used, should individuals over age 65 be exempted, retaining coverage under the law?

The model law sets no income limits, leaving to states or localities the decision whether to require people with incomes over a specified amount to contribute to the cost of the services they receive.

## Article 2: Definitions

A. As used in this Law:

1. “Advocate” means an individual who is available to advise an eligible person concerning that person’s right to mental health services and supports and to assist an eligible person in obtaining services and supports.

2. “Eligible person” means an adult who has or is diagnosed with a serious mental illness.

3. “Mental health services” (see “service matrix”).

4. “Petition” means a written request for mental health services or supports, or for an expansion of or change in currently provided services or supports, filed by an eligible or potentially eligible person.

5. “Potentially eligible person” means an individual who may have a serious mental illness but has not yet been determined to have such an illness.

6. “Presumptively eligible person” means an individual who is potentially eligible and who is at imminent risk of hospitalization, incarceration or homelessness.

7. “Public mental health authority” means the public agency responsible for ensuring the delivery of mental health services and supports, either directly or through contractual relationship, in [the jurisdiction adopting this Law].

8. “Recovery-oriented” means directed toward achieving and maintaining an eligible person’s full or partial recovery from the symptoms of mental illness, and the attainment of economic self-sufficiency and community integration.

9. “Service plan” means a written document detailing the array of appropriate individualized mental health services and supports to be provided to an eligible person.

10. “Service matrix” means a comprehensive list of recovery-oriented mental health services and supports that may be provided to an eligible person. “Mental health services” include [to be completed by proponents according to circumstances in each jurisdiction], and shall include services related to discharge from an institution. “Supports” include appropriate housing, transportation, educational training, vocational training or other benefit needed for recovery, community integration or economic self-sufficiency, and also includes being connected to peers.

11. “Supports” (see “service matrix”).

**A-7. Public mental health authority.**

The definition should refer to the public agency responsible for financing and organizing the public mental health system in the jurisdiction where the law will apply. For a state law, it would be the state department of mental health; for another jurisdiction it would be an agency of a county, city, region or other political/geographic area.

**A-10. Service matrix.**

The model law does not include a list of the services and supports to which an eligible individual is entitled because both the types of services offered and the names given to these services vary greatly among states. Sources of information for such a list include:

- ◆ the law currently defining public mental health services in the state or other jurisdiction;
- ◆ the list of all covered mental health services in the state Medicaid plan;
- ◆ the mental health set of common procedure codes developed in accordance with the federal Health Insurance Portability and Accountability Act (HIPAA);
- ◆ the core elements of a model system of services set forth in NAMI's Omnibus Mental Illness Recovery Act (OMIRA), see [www.nami.org/update/reportsnarticles.html](http://www.nami.org/update/reportsnarticles.html);
- ◆ the services described in the Report on Mental Health Services issued in 1999 by the Surgeon General of the United States, see [www.surgeongeneral.gov/library/mentalhealth/](http://www.surgeongeneral.gov/library/mentalhealth/)

Materials in Appendix 4 may also be helpful in creating such a matrix.

**PAGE INTENTIONALLY BLANK**

## Commentary on Article 3: Right to Recovery-Oriented Services and Supports

This section spells out the individual's legal entitlement. (Article 5, on the service-planning process, describes how individuals will work in partnership with professionals to identify their goals and design a service package to meet them.)

A basic tenet of this law is that the mental health system has the obligation to provide services and supports that will assist an individual in meeting his or her life goals. The model law guarantees the individual a right to each service in his or her plan and holds the mental health authority responsible for ensuring that the service is provided.

Low rates currently paid to providers may be among the reasons for the present inadequacy of the mental health service system. The model law does not explicitly address the issue of provider payments because, by creating an entitlement to services in Article 3 (A-3), it presumes that the state will do what is necessary to ensure that services are available. Nonetheless, a provision could be included to ensure that provider rates are sufficient to achieve the purpose of the services provided under the law.

Given that some consumers have experienced the mental health system as coercive, there is some concern that even a law providing an entitlement to voluntary recovery-oriented services may not overcome this history. The model law strives to afford adequate protection, however, by requiring that all services and supports under the model law be voluntary and recognizing the individual's right to refuse specific services.

Consideration might also be given, in the context of a jurisdiction's mental health system, to ways of further clarifying the relationship between eligible individuals' rights and their responsibilities.

**Article 3:**  
**Right to Recovery-Oriented Services and Supports**

- A.** Each eligible person has an enforceable right to:
1. be informed of the full array of mental health services and supports available under the state matrix;
  2. establish his or her own goals with respect to mental health services and supports, in partnership with appropriate treatment professionals, and to have those goals, services and supports incorporated into a service plan;
  3. receive mental health services and supports in sufficient amount, duration, scope and quality to support recovery, community integration and economic self-sufficiency;
  4. receive mental health services and supports in a timely manner and in the most integrated setting appropriate to his or her needs;
  5. receive mental health services and supports on a voluntary basis. The receipt of one mental health service or support shall not be conditioned upon agreement to accept another service or support;
  6. refuse or discontinue such services or supports as he or she deems advisable, provided, however, that a decision to discontinue one service or support will not affect a person's right to receive other mental health services or supports, and will not affect the right to secure services or supports in the future;
  7. have access to culturally appropriate mental health services and supports; and
  8. have an advocate of his or her choice who will provide advice about the rights established herein and who, at the eligible person's request, will assist the eligible person in securing desired mental health services and supports and will participate in meetings concerning the service plan.
- B.** The provisions of this Law shall not be construed to impair the validity of court orders under [State's involuntary treatment statutes].

## Commentary on Article 4: Petition Procedure for Securing Mental Health Services and Supports

Article 4 spells out how an individual establishes eligibility for the services and supports to which he or she has a right under the model law.

- ◆ The term “petition” is used and a written document is required because the model law relies on a legal process. “Petition” is the legal term connoting a responsibility to respond. The words “request” and “application” for services and supports would not carry the same weight.
- ◆ Because of the variability in states and localities, the model law does not spell out in detail exactly where and how an individual files a petition. However, drafters are urged to consider such details. They may also want to consider alternative language and mechanisms that would facilitate ready access to services.
- ◆ The model law requires that the petition be written for documentation in case an issue arises later.
- ◆ Recognizing that requiring a written petition could create a barrier for individuals who are uncomfortable about signing written documents, the model law specifically charges outreach workers and advocates with assisting individuals in completing petitions.
- ◆ The petition will be more effective if it is a simple form that an individual can complete easily to begin the process.

## **Article 4: Petition Procedure for Securing Mental Health Services and Supports**

A. Any individual with a serious mental illness may petition for recovery-oriented mental health services and supports. Such petition shall be in writing in a form prescribed by the public mental health authority. The public mental health authority shall ensure that an outreach worker or advocate is available to assist an individual who has made an oral request for services or supports in completing and filing a written petition.

B. An individual who resides in an institution or who is under guardianship, conservatorship or an order for involuntary treatment may petition for voluntary mental health services and supports.

C. Within ten (10) days of the filing of a petition, a determination will be made whether the petitioner has a serious mental illness and the petitioner will be notified of that determination. However, a petitioner who has been determined by the Social Security Administration to meet the requirements for Social Security Disability Insurance or Supplemental Security Income benefits on the basis of psychiatric impairment shall be deemed to have a serious mental illness and shall not be subjected to any further threshold assessment concerning mental illness.

C. A potentially eligible person who is at imminent risk of hospitalization, incarceration or homelessness shall be deemed presumptively eligible, and that individual's petition for services or supports shall be provisionally granted. Voluntary mental health services and supports, including crisis intervention services, shall be made available within 24 hours of the receipt of a petition from a presumptively eligible individual. Such service and supports shall continue until a regular eligibility determination can be made.

E. A petitioner who is denied eligibility for services must be informed in writing of the denial and of the right to appeal the denial pursuant to Article 8. Such notice will explain the basis for the decision. Where the petitioner's circumstances make it likely that written notice would be ineffective, the public mental health authority shall provide oral notice as well, in language understandable to the petitioner.

## Commentary on Article 5: Service-Planning Process

Because many state statutes, regulations and policies already include detailed requirements for service planning, the model law merely lists the key concepts.

**5-B.** Although deadlines are not given for service planning, this section requires that services be provided with reasonable promptness. Adding a specific time limit, such as 30 days, was recommended by some commentators to hold the system accountable and avoid wait lists. We chose not to specify a deadline for several reasons.

- ◆ First, many state mental health systems already have timelines for the development of a service plan.
- ◆ Second, the amount of time that is reasonable may vary depending on the particular service and the changes that must be made to tailor the service to an individual's needs.
- ◆ Finally, wait lists are not permissible under the requirement of reasonable promptness—a term and rule in current use under Medicaid law.

**5-D.** This section requires a process that will allow for the individual to be fully informed of options, to make educated choices and to be a full partner in service planning. Additional phrasing that drafters may want to consider includes:

- ◆ “consumer-directed services;”
- ◆ “active involvement in services;” and
- ◆ “person-centered planning.” Michigan statutes define person-centered planning as “a process for planning and supporting the individual receiving services that builds upon the individual’s capacity to engage in activities that promote community life and that honors the individual’s preferences, choices and abilities. The person-centered planning process involves families, friends, and professionals as the individual desires and requires.” Mich. Comp. Laws Ann. Sec. 330.1700 (g). The Michigan code also clarifies that “people with psychiatric disabilities shall be the central and deciding figure, except where specifically limited by law, in all planning for services and recovery based on their individual needs.” Later code sections require that this planning process be used “to develop a written individual plan of services in partnership with the recipient.” *Id.* at Sec. 330.1712.

**5-E.** The model law requires that every individual be given the opportunity to sign the plan. Several commentators expressed concern that some individuals may not want to sign their service plan even if they sought the services outlined

## **Article 5: Service Planning Process**

**A.** Upon being determined eligible for services and supports, the petitioner shall have his or her urgent mental health needs met immediately, even before a service plan is developed.

**B.** An individualized service plan shall be developed for each petitioner determined eligible for services and supports. The services and supports in the plan must be provided with reasonable promptness.

**C.** Meetings held for the purpose of adopting or changing a service plan must:

1. include the petitioner and other persons designated by the petitioner, such as an advocate, one or more peers and family members;
2. be held in a manner and location that reasonably accommodates the petitioner and permits the petitioner to participate effectively in the service-planning process; and
3. focus on the petitioner's individual strengths and life goals, and on the mental health services and supports the petitioner needs to meet those goals.

**D.** A petitioner shall be fully informed of available options and the consequences of various decisions so that the petitioner can make an informed choice among services, supports and providers. Petitioners are expected to be full partners in the creation and execution of a service plan and in efforts to achieve recovery, community integration and economic self-sufficiency.

**E.** The petitioner will be given an opportunity to sign the service plan and to document his or her involvement in the service-planning process. If the petitioner declines to sign, but evidences a clear assent to receiving the mental health services and supports in the plan, an advocate may document such assent. In all cases, the petitioner shall receive a copy of the service plan.

**F.** As appropriate, services and supports may be provided prior to the formal adoption of a service plan.

therein and agree with the plan. For this reason, the model law specifies that an advocate may document that the individual agreed with the plan but did not wish to sign it.

Having a signature is important because it verifies consent. The provision for an advocate's documentation serves as assurance that the individual does agree to the plan.

**G.** The service plan shall be reviewed and modified periodically to determine whether the petitioner is satisfied with the services and supports provided and is making progress toward the goals listed in the plan.

**H.** The petitioner will be informed about advance directives. Petitioners who choose to execute such a directive will be assisted in doing so. The advance directive shall be enforceable in accordance with federal and state law.

**I.** A petitioner must be given notice of a denial, reduction or termination of requested services or supports at least ten (10) days before the effective date, with an explanation of the right to appeal such action pursuant to Article 8. The notice shall explain the basis for the decision. Where the petitioner's circumstances make it likely that written notice would be ineffective, he or she shall receive oral notice as well, in language understandable to the petitioner.

## Commentary on Article 6: Outreach

The model law provides for two kinds of outreach—broad and targeted—to encourage both a general education campaign and more intensive efforts to reach individuals who are likely to benefit from the right to recovery-oriented services. Drafters of a bill may want to consider using more specific language about targeted outreach efforts, incorporating models that have been successful in various states (see, for example, the 1999 Report on Mental Health by the Surgeon General of the United States, pages 285-295).

**6-D.** Drafters of a bill may want to consider more specific language addressing two competing concerns regarding outreach:

- ◆ that outreach efforts could become harassing; and
- ◆ that advocates conducting outreach should have adequate opportunity to build a relationship with an individual through repeated offers of assistance.

## Article 6: Outreach

**A.** The public mental health authority shall use a combination of written, electronic and oral methods of communication to inform eligible and potentially eligible persons of their right to mental health services and supports and to the assistance of an advocate.

1. The language used in both oral and written communications shall be clear, nontechnical and understandable to the intended audience.

2. Such language and manner of communication shall take into consideration, and accommodate, the functioning level of the intended audience in order to maximize comprehension.

3. The public mental health authority shall reasonably accommodate those who are blind or deaf, or who have vision or hearing impairments or limited English language proficiency, by communicating in the appropriate language or through the use of sign language, Braille or other effective means of communication.

4. The public mental health authority shall establish a toll-free hotline that individuals may call for information about mental health services and supports available under this Law.

**B.** In addition, the public mental health authority shall make special efforts, including personal contact, to engage eligible and potentially eligible persons who have become, or are at risk of becoming, homeless or incarcerated. These individuals will be provided a description of the recovery-oriented mental health services and supports available under the state matrix, including housing, transportation, employment and scheduling assistance, and the process for initiating a request for services, supports or assistance. Outreach staff will assist individuals in completing petitions if assistance is desired.

**C.** Any interested person may call or write the public mental health authority seeking assistance for an eligible or potentially eligible person. Within two business days of receipt of such communication, an advocate shall contact the eligible or potentially eligible person, either by phone or in person, for the sole purpose of providing information about available services and supports.

PAGE INTENTIONALLY BLANK

**D.** Outreach efforts will respect the autonomy of individuals with mental illnesses and their right to refuse or discontinue mental health services and supports available under this Law.

## Commentary on Article 7: Advocates

This article creates the petitioner's right to an independent advocate. Depending on local conditions, drafters of a bill may want to consider additional or alternative language to ensure advocates' independence from the public mental health authority.

**7-D.** The model law requires peer advocacy—that advocates must be individuals who have personally experienced mental illness. This raises some logistical questions:

- ◆ Are enough such individuals currently available and willing to perform this role?
- ◆ How important is it for the individuals conducting outreach to have first-hand experience with mental illness?
- ◆ If the law does not require that all advocates have first-hand experience, will systems have any incentive to recruit and train such individuals?

To accommodate these concerns, the model law delays implementation by two years and requires only that a majority of the advocates have personal experience with mental illness.

For more information, see Appendix 2, a recent Connecticut statute implementing a comprehensive peer advocacy program. Additional information on accreditation of peer organizations can be obtained by contacting Cathy Calori, Director, Peer Accreditation Association, 309 Utica Street, Ithaca, NY 14850 or by e mail, [peerrun@twcny.rr.com](mailto:peerrun@twcny.rr.com).

## **Article 7: Advocates**

- A.** Every eligible or potentially eligible person shall have access to an advocate to assist the individual in securing mental health services and supports. Advocates shall be independent of the public mental health authority and shall be paid for their services.
- B.** When an eligible or potentially eligible person requests an advocate, a list shall be provided, within two (2) days after the request, from which he or she may choose an advocate.
- C.** The public mental health authority shall ensure that all individuals who serve as advocates have access to appropriate and comprehensive training on the services and supports available under the state matrix, on the right to needed services and supports created by this Law and on options available for enforcing this right.
- D.** The public mental health authority shall ensure that, within two years of passage of this Law, a majority of individuals recruited, trained and employed as advocates are people who have personally experienced mental illnesses and have knowledge of recovery-oriented mental health services and supports.

## Commentary on Article 8: Appeals

This article describes how an individual can contest adverse actions by the mental health authority, whether omissions or denials of services.

**8-B.** The model law uses the Medicaid standards for hearings in order to avoid the diversion of resources from services to create a new appeals process. The Medicaid hearing process, albeit flawed and to date relatively ineffective for individuals with mental illnesses, is a comprehensive scheme already well established in law. However, drafters of a bill may want to consider alternatives:

- ◆ other hearing processes;
- ◆ mediation, in addition to a hearing process; or
- ◆ other dispute-resolution processes.

**8-H.** The question whether individuals will be responsible for the cost of services and supports provided during the pendency of an appeal will depend on the payment structure selected (see the commentary on Article 2). Drafters of a bill may wish to specify that individuals will not be charged for services provided pending a decision or, if applicable, will only be charged according to the sliding-fee scale.

## Article 8: Appeals

**A.** An eligible person shall have the right to contest the following adverse actions by filing an administrative complaint with the public mental health authority or by filing an action in a state court of competent jurisdiction:

1. failure to conduct an eligibility determination, engage appropriately in service planning, or develop an adequate service plan;
2. denial, reduction, irregularity or termination of services, including failure to provide services listed in the service plan;
3. failure to provide mental health services or supports sufficient in amount, duration, scope or quality to support recovery, community integration and economic self-sufficiency;
4. failure to appoint an advocate; or
5. denial of any other right provided by this law.

**B.** The public mental health authority shall provide an impartial, independent hearing process that conforms to the requirements for Medicaid hearings to resolve complaints filed pursuant to subparagraph A of this Article. Decisions made pursuant to the hearing process shall be binding upon both the public mental health authority and providers. A hearing officer may order the public mental health authority or a provider to immediately cure an act or omission and/or to pay compensatory damages for injuries sustained by an eligible person.

**C.** Any eligible person aggrieved by the administrative process or by the public mental health authority's failure to comply with an administrative decision may file a complaint in a court of competent jurisdiction.

**D.** In any action brought under paragraph C of this Article, the court shall conduct a de novo review of the issue.

**E.** In any action brought under paragraphs A or C of this Article, the court shall grant any relief that the court determines to be appropriate, including, but not limited to, money damages. The court may hold periodic status conferences to ensure that its orders are enforced in a timely manner and may enforce its order through contempt sanctions.

PAGE INTENTIONALLY BLANK

**F.** In any action or proceeding brought under this Law, the court or administrative agency may award costs and reasonable attorney fees to an eligible person who is the prevailing party.

**G.** Nothing in this part restricts or limits the rights, procedures and remedies available under the United States Constitution, the Constitution of [State], the Americans with Disabilities Act, Title V of the Rehabilitation Act, the Medicaid program, the Health Insurance Portability Act or other federal or state laws protecting the rights of individuals with mental disabilities.

**H.** During the pendency of any administrative or judicial proceeding the eligible person shall continue to receive all services and supports listed in the service plan that was in effect prior to the dispute.

## **Commentary on Article 9: Emergency Hearings**

This article is designed to address situations where services are denied and a person is at risk of severe harm, such as hospitalization, homelessness and/or incarceration. It creates a process to respond quickly and avoid negative consequences.

Drafters of a bill may wish to expand the circumstances that trigger immediate attention so an individual does not have to deteriorate before getting a quick decision.

## **Article 9: Emergency Hearings**

- A.** When an eligible or potentially eligible person believes that an adverse action appealable under Article 8 places him or her at risk of severe harm, the person may file a motion for an emergency administrative hearing or for a preliminary injunction in a court of competent jurisdiction. Severe harm includes, but is not limited to, imminent risk of hospitalization, incarceration or homelessness.
- B.** An administrative hearing must be held, and a decision on an emergency motion rendered, within 24 hours of filing an emergency motion. At the hearing officer's discretion, the hearing may be held telephonically and a decision may be rendered without a full evidentiary hearing. After a decision is rendered the matter will be set for a full hearing.
- C.** A decision granting relief on an emergency motion will be enforceable until a superceding decision is entered after a full hearing.
- D.** An eligible or potentially eligible person may appeal the administrative denial of relief requested in an emergency motion to a court of competent jurisdiction. The hearing officer's decision will remain in effect during the pendency of the appeal.

## Commentary on Article 10: Quality Improvement and Evaluation

This article mandates the development and use of a system to monitor and improve the quality of services and supports. Because the field of quality improvement is developing so rapidly, the model law does not prescribe a particular instrument for evaluation of services.

Drafters of a bill should consider ongoing developments in the field of quality improvement. Accrediting organizations have recently published standards for the industry; see *Five National Accrediting Organizations Reach Consensus on Performance /Outcome Indicators for Mental Health* at [www.acmha.org/work.htm](http://www.acmha.org/work.htm). In addition, the Mental Health Statistics Improvement Program (MHSIP) Policy Group has been working for 20 years to develop standards for mental health data. The MHSIP website, <http://www.mhsip.org>, offers extensive information, including a consumer report card derived from a survey of consumers. The core consumer survey, at [www.mhsip.org/MHSIP28.htm](http://www.mhsip.org/MHSIP28.htm), has 28 items, including access to services, appropriateness of services, satisfaction and outcomes. There is also a toolkit with comprehensive background material, including a description of other efforts to track information for quality improvement purposes ([www.mhsip.org/toolkit/index.html](http://www.mhsip.org/toolkit/index.html)). We understand that instruments on recovery are in production (see [www.mhsip.org/recovery/index.html](http://www.mhsip.org/recovery/index.html)).

Drafters will also want to consider current quality improvement standards used in their state or locality. Title II of the King County code in Washington State offers one model (see Appendix 3), spelling out the mental health system's goal of recovery and requirements for annual reporting of each consumer's progress (also available at [www.metrokc.gov/mkcc/code/TITLE02.pdf](http://www.metrokc.gov/mkcc/code/TITLE02.pdf)).

In our view, quality assurance elements should include:

- ◆ a requirement of meaningful participation by eligible and potentially eligible individuals, their advocates, peers and family members in the design, implementation and oversight of evaluation systems;
- ◆ random review by the public mental health authority of a sample of individual cases, to include in-person interviews with petitioners and focus groups with potentially eligible individuals, advocates and family members; and
- ◆ collection of data on the number of petitions filed, the number of eligible individuals, the nature and amount of mental health services and supports requested by such eligible individuals, and the nature and amount of mental health services and supports actually delivered to eligible individuals.

**Article 10:**  
**Quality Improvement and Evaluation**

**A.** The public mental health authority shall develop and implement a performance measurement system to monitor and improve the quality of services and supports for individuals with mental illnesses provided under this Law.

**B.** The performance measurement system shall employ outcomes measures developed by a commission appointed by the public mental health authority. The outcome measures should address quality of life, employment, stable housing, law-enforcement contacts and incarceration. The commission shall consist of people with serious mental illnesses, advocates, family members, providers and quality assurance professionals.

## An Act Providing a Right to Mental Health Services and Supports

Outcomes to be tracked could include, but not be limited to:

- ◆ the rate at which individuals remain in stable housing in the most integrated appropriate setting;
- ◆ the rate at which individuals participate in employment, as measured by membership in a psychiatric rehabilitation program, participating in a supported employment program, community service volunteer positions or having a job;
- ◆ the rate at which individuals have a community support program, as measured by participation in a peer-support or self-help group, socialization center, community or civic association or other social activity;
- ◆ petitioners' satisfaction with the mental health services and supports they have received, and the extent to which these have contributed to their recovery, community integration and economic self-sufficiency;
- ◆ the rate at which individuals have contact with the criminal justice system;
- ◆ the rate at which individuals spend time in jails;
- ◆ the rate at which individuals use psychiatric hospital bed days;
- ◆ the rate at which individuals use crisis services; and
- ◆ geographic disparities in the quality factors monitored.

Other factors that might be tracked would include the rate at which petitioners are receiving mental health services by age, sex, race/ethnicity and diagnosis, petitioners' satisfaction with the ease and promptness of their access to services and supports, and the rate at which individuals with dual diagnoses of mental illness and addiction disorder reduce their involvement with substance abuse.

**Article 11:  
Administration of Model Law**

- A.** The public mental health authority is authorized to promulgate regulations to facilitate implementation of this Law.
  
- B.** Medical records and other personal information acquired in the course of outreach, the petition or eligibility-determination process or the service-planning or service-delivery process shall be treated as private and confidential, in accordance with applicable federal and state standards.
  
- C.** Privatization shall not affect or impair the rights and obligations created by this Law. The rights created by this Law, and the obligations imposed hereunder, apply regardless of whether the service system has been privatized.
  
- D.** In financing services furnished to implement this Law, the public mental health system in [jurisdiction] shall seek reimbursement from all available sources, including private insurance, Medicaid and Medicare. To the extent that resources of [jurisdiction] are used, [jurisdiction] shall be the payor of last resort.

**Article 12:  
Authorization of Appropriations**

For the period commencing [DATE], there will be appropriated such sums as may be necessary for carrying out the programs described in this law.