INVOLUNTARY OUTPATIENT TREATMENT (IOT)

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THE LAW

Constitutional and Civil Rights Concerns

WHAT IS IOT?

- The Assisted Outpatient Treatment Demonstration Project Act of 2002, AB 1421, is an addition to the LPS Act which creates a legal mechanism through which mental health consumers can be court-ordered to comply with outpatient treatment plans.

- AOT is not automatically statewide, it must be approved by each county's board of supervisors. As of today, only Nevada and Yolo counties have implemented it fully: Orange, Contra Costa, San Diego, Placer, Los Angeles, and San Francisco have approved it.

WHAT IS IOT?

- IOT requires that the county have available the same array of services as described in IOT. Also, the individual who is to be subject to the IOT order must first be offered these services on a voluntary basis and fail to engage.

- Unlike the other involuntary treatment mechanisms in the LPS Act, IOT allows petitioning of the court by a family members and persons living with mental health consumers.

WHAT IS IOT (CONT…)

- In order to be eligible for IOT, the petitioning party must allege that the mental health consumer has a history of non-compliance with treatment.
- Non-compliance is specifically defined as either:
  - within 3 years, 2 hospitalizations substantially related to mental health or
  - within 4 years 1 or more serious acts of violence towards themselves or others or threats or attempts to cause serious bodily harm

WHAT IS IOT (CONT…)

In addition, several other criteria are required:

- The person has been offered voluntary treatment by the county mental health department
- The person is substantially deteriorating
- The person is unlikely to survive safely in the community without supervision
- IOT is the least restrictive placement
- The person will benefit from IOT
- The person is in need of IOT in order to prevent the person from deteriorating to the point of meeting the LPS inpatient commitment standards (danger to self/others or Gravely Disabled)
- The person has a mental illness as defined in the LPS Act

HOW DOES IOT WORK?

- The individual who is the subject of the petition has the right to counsel and due process, the right to adequate notice of the petition, to be present at the hearing, to present evidence and call witnesses, and to a writ of habeus corpus.
- A mental health practitioner from the county must examine the person, verify that they meet the criteria, recommend IOT for the person, and be willing to testify.
- If the individual refuses to be examined, the individual may be taken into custody for a 72 hour hold for evaluation.
- If the court grants the petition, the court specifies which treatment modalities are ordered according to the recommendations of the evaluating mental health practitioner.

HOW DOES IOT WORK? (CONT…)

- The initial order is for a period of 6 months which may be extended for additional 6 month increments provided the individual continues to meet the criteria.
- If the person is non-compliant with the order, a hospital hold may be initiated for up to 72 hours.
- The treatment team must report to the court every 60 days on the individual's continued need for IOT.
- The statute allows for the individual subject to a petition to negotiate a settlement agreement on the plan for treatment. The settlement agreement also results in a court order.

IOT IS A VIOLATION OF DUE PROCESS

The criteria for eligibility for IOT are overbroad and vague and would subject even people who are surviving safely in the community to outpatient commitment

For example:

- "unlikely to survive safely without supervision"
- "substantially deteriorating"

IOT IS PREDICTIVE

- IOT is based on predictions of what might happen in the future.
- LPS inpatient commitment standards for all types of holds, conservatorships, and medication orders require a determination of presentness.
- IOT turns back the clock 40 years.

INDIVIDUAL LIBERTY
IOT IS AN UNLAWFUL INFRINGEMENT ON INDIVIDUAL LIBERTY

- IOT's legal consequence for a person refusing to submit to an evaluation and for non-compliance with the IOT order restricts the liberty of mental health consumers.
- The 72 hour hold provisions of IOT allow for a person to be detained without a finding of dangerousness or grave disability.
- The constitution requires a finding that a person is a danger to themselves or others in order to restrict their liberty.

IOT VIOLATES PRIVACY LAWS

- HIPAA prohibits the disclosure of confidential medical records without the patient's consent.
- California law prohibits healthcare providers from disclosing medical records without consent.
  - IOT requires that the medical records of an individual subject to a petition be disclosed in the investigation process.
  - IOT requires that the person being investigated submit to an evaluation by a mental health professional which will be disclosed to the court.
- The California constitution has an explicit right to privacy which courts have interpreted to include the right to refuse mental health treatment.

IOT IS DISCRIMINATORY

- IOT may violate non-discrimination laws because it only mandates treatment for people with mental health disabilities for being non-compliant with their doctor's orders.
- No competent person with a physical health condition, even those "non-compliant" with their doctors' orders, would be subjected to court-ordered treatment and forced hospitalization.

IOT IS CONTRARY TO THE LPS ACT

- The LPS Act gives preference to voluntary treatment throughout. IOT does not impose a duty for the treatment team to assess a person for voluntariness throughout the 6 month commitment period.
- The voluntariness provision in IOT still allows a court order even when a person decides to agree to a treatment plan.

The research done by the RAND corporation for the CA Senate in 2001 found that it is the services that are effective, not the court order.

What Is Driving IOT

Negative Outcomes

WHAT'S DRIVING INVOLUNTARY OUTPATIENT TREATMENT

Stigma and Discrimination

- Myth of the violent mental patient
- Myth of incompetence
- Myth that once diagnosed as seriously mentally ill people can't get better

WHAT THE EVIDENCE SAYS…

IOT relies on public fears that people with psychiatric disabilities are violent and a threat to their safety. The myth of the violent mental patient has grown, despite evidence of research and government statistics.

"The prevalence of violence among people who have been discharged from a hospital and who do not have symptoms of substance abuse is about the same as the prevalence of violence among other people living in their communities who do not have symptoms of substance abuse."

WHAT THE EVIDENCE SAYS (CONT…)

"The vast majority of Americans with a mental health condition are not violent. In fact, just 3% to 5% of violent crimes are committed by individuals who suffer from a serious mental illness."

For the small number of mental health clients who are actually dangerous, California law (Lanterman-Petris-Short Act) already allows for involuntary detention and hospitalization, including a 6 month renewable hold for those determined to be a danger to others.

WHAT THE EVIDENCE SAYS (CONT…)

People with mental disabilities are capable of making decisions and of insight into their condition

- "Most patients hospitalized with serious mental illness have abilities similar to persons without mental illness for making treatment decisions. Taken by itself, mental illness does not invariably impair decision making capacities."
- "Typically, people retain their personality and, in most cases their ability to take responsibility for themselves."

WHAT THE EVIDENCE SAYS

- People with mental disabilities get better.
- Pioneer longitudinal study by Courtney Harding (1987) found that recovery is not the exception to the rule but is the rule itself.
- Challenged belief that severe mental illness is chronic and maintenance is the best outcome one could hope for.

MHSA VS. IOT

MHSA is grounded on the premise of the recovery vision that values hope, self-responsibility, empowerment and strength based services.

VS

IOT is grounded on pessimistic prediction based on past behavior and the chronicity model.

IOT CREATES "NON COMPLIANCE"

- Instead of solving the problem of "non compliance", forced treatment drives people away from seeking services and confirms their fear of the mental health system
- Research: The Well Being Project found that 55 % of clients interviewed who had experienced forced treatment reported that fear of forced treatment caused them to avoid all treatment for psychological and emotional problems.

IOT UNDERMINES RELATIONSHIP BETWEEN CLIENT AND THERAPIST

- IOT breaks the bond of trust between clients and their service providers

- Trusting relationships of helper and helped are essential for positive outcomes.

SAME OLD ANSWER OF FORCE

- The advancement of involuntary outpatient treatment throughout the State threatens to only transform *where* people are forced to, the hospital or the community.
- This is not transformation promised by the MHSA.
- Forced treatment in the community is not a new way of providing services and will lead to same negative results.

OUTPATIENT COMMITMENT IS DIVISIVE

- IOT has created a rift between consumers, family members, and professionals, impeding progress on improving mental health services in the areas we can agree upon.

- We are at our best when we work together for change, such as when the mental health community united to support and advocate for MHSA.

WHAT IS THE ANSWER

WHY MHSA?

MHSA was intended to move the mental health system away from "fail first" services and to provide services that are client driven, culturally competent and focused on wellness, recovery and resiliency

Before this we had no funding stream for mental health services outside of realignment.

CURRENT CHALLENGES

Even with MHSA there are Not Enough Services to Meet the Need

- Waiting lists remain long for those who voluntarily seek services on daily basis throughout California
- Clients across the state continue to access services through emergency departments
- Not enough affordable and safe housing and essential supports available in the community.
- Most services simply do not meet the needs of clients, nor reflect their culture, language, sexual identity or gender expression.

FSP'S DO WORK

FSP services across California indicate dramatic and positive outcomes in: decreasing in psychiatric emergencies, incarceration, and homelessness.

- Petris Center Evaluation (May 2010) reported a large reduction in homelessness, a rise in the proportion of consumers living independently, less use of mental health related emergency services, less incarcerations, and a rise in employment.

- UCLA study of MHSA Full Service Partnerships (2012) found that every dollar spent on mental health services in California saved roughly $0.88 in costs to the criminal justice and health and housing services by reducing the number of arrests, incarcerations, ER visits, and hospitalizations.

COMPONENTS OF IOT

Involuntary Outpatient Treatment has two components: Services and Court Order

- an intensive Service treatment plan based on what is generally called Assertive Community Treatment and substantially the same as the Full Service Partnership (FSP) model;
- a Court Order process for civil commitment on an outpatient basis requiring an individual to comply with a treatment plan or face enforcement actions.

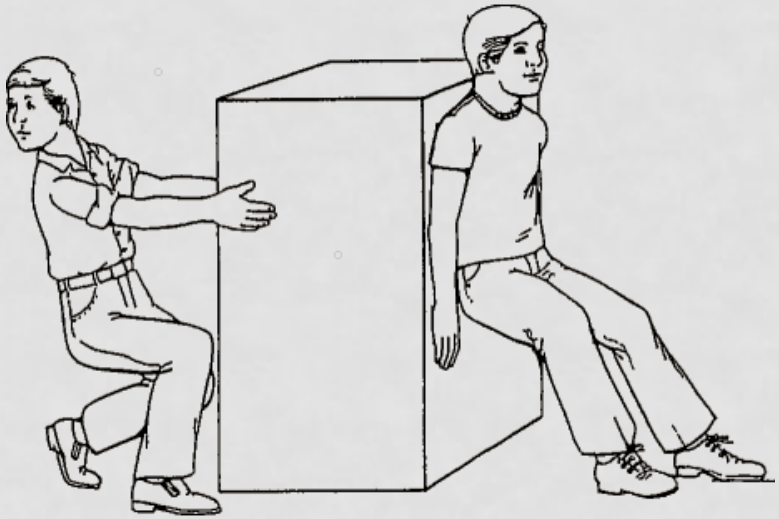
SERVICES MAKE THE DIFFERENCE, NOT THE COURT ORDER

- The only randomized controlled studies in US, in New York and North Carolina, concluded that it is the services, not the court order, that produces the positive results.
- Similarly, a randomized controlled study in the U.K. published in *The Lancet* in 2013, found that forced treatment failed to reduce the rate of re-admission of psychotic patients.

WHY IOT ISN'T THE ANSWER…

- Cannot conflate successful services and force/coercion – these are not the same thing and the arguments cannot be combined

- Moreover, research suggests that forced services have negative effects, and do not support the principles of recovery, empowerment, and self determination

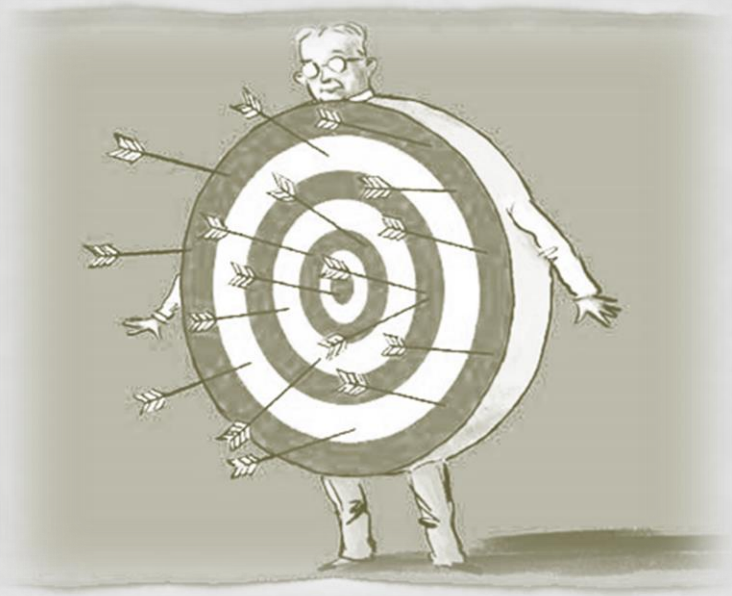


WHY IOT ISN'T THE ANSWER…

IOT disproportionately targets people of color

Black people were almost five times as likely as White people to be subjected to Kendra's Law–and Hispanic people were two and a half times as likely as non-Hispanic White people.

2005 Report, New York Lawyers for the Public Interest



SCARCE RESOURCES

Outpatient Commitment diverts scarce resources from developing a comprehensive continuum of care for all Californians

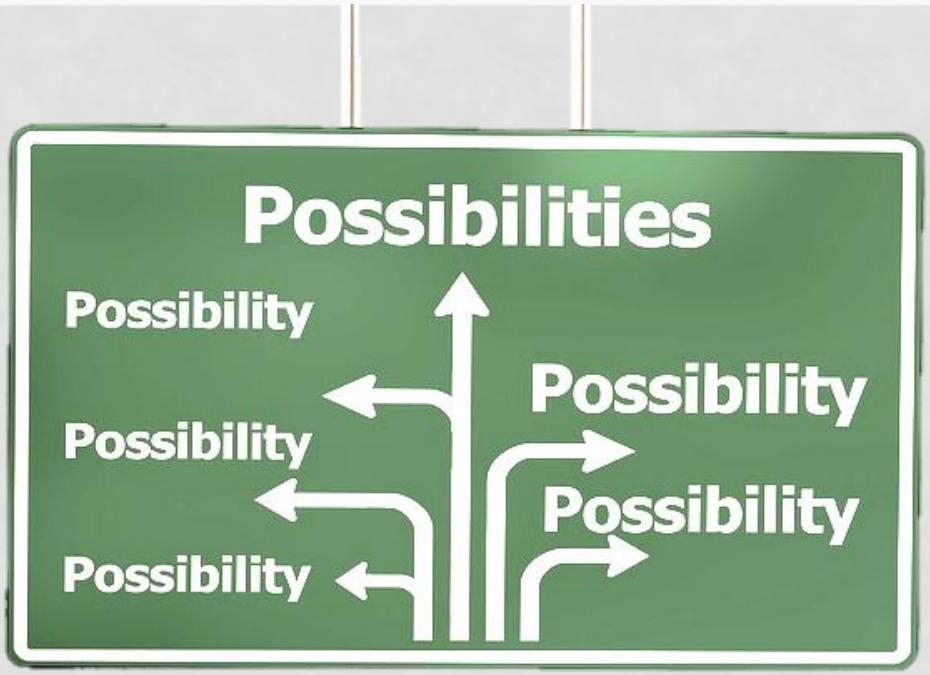
Based on preliminary budgets from several California counties, the Court processes, that cannot be covered by MHSA funds, are almost 25 % of IOT cost.

WHAT WE ACTUALLY NEED

More Services that are holistic and recovery based:

- Robust outreach and engagement activities that meet people where they are at and inform clients about the available services in ways that are meaningful to them
- More prevention and early intervention services
- A community based mental health system that fully meets the needs of our citizens, including their language, culture, gender identity and sexual expression.
- Staff including peers that can serve these communities and build the capacity of our workforce in ways that reflect our diversity.

ALTERNATE APPROACHES



Peer Support

Warmlines

Peer Bridgers

Peer Respite (Sacramento)

Crisis Respite

GOVERNMENT STUDIES AGREE…

"Inadequate access to voluntary care should not warrant the use of involuntary care"

Little Hoover Commission, 2000

"Almost all agree that coercion should not be a substitute for effective care that is sought voluntarily"

Surgeon General Report, 1999

IN CLOSING…

Why waste scarce resources on programs that involve coercion and reflect a “fail first” system and violate individual’s constitutional rights based on predictive behavior?

Let’s give hope –the essential ingredient of the recovery model -a chance!!!!

QUESTIONS

Q&A

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