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A non-profit tax-exempt organization representing New York City's community-based mental health sector.

Memorandum of Opposition to A.8477

The Coalition of Voluntary Mental Health Agencies is New York City's advocacy organization representing a network of over 100 nonprofit community-based mental health agencies. Taken together, The Coalition's member agencies serve more than a quarter of a million clients and deliver the entire continuum of mental health care in practically every community and neighborhood of a very diverse New York City.

The Coalition has serious difficulties with some of the concepts underlying the recent push for Involuntary Outpatient Treatment (IOT), including:

- The merging of standards of inpatient commitment and outpatient treatment, including the differentiation between what is appropriate for each.
- The lack of clarity on standards for capacity for decision making, e.g., how can somebody lack capacity to make decisions about his/her treatment but still have adequate competence to stand trial and be held liable for criminal acts.
- Violent acts are extremely difficult to predict, for either the general population or persons with mental illness.

The Coalition opposes A.8477 ("Assisted Outpatient Treatment Act") for the following specific reasons:

- This IOT bill does not include money to pay for the costs associated with the higher level of care provided to clients in the IOT program. Additional responsibility cannot be placed on the mental health system without extra funds to cover the enhanced services.

However, we strongly support the inclusion in this bill of provisions for presumptive Medicaid eligibility. This is appropriate and necessary. It is The Coalition's position that mandating mental health services for a person with mental illness must be accompanied by a concurrent mandate to pay for such services.



- ❑ The eligibility standards are not narrowly focused or clearly defined. For example, the criterion of “unlikely to survive safely in the community without supervision” (proposed §9.60(b)) seems to be a lesser standard than that in the current law authorizing the Bellevue Pilot Project, Mental Hygiene Law §9.61 (“incapable of surviving safely in the community without supervision, based on a clinical determination,” M.H.L. §9.61(c)(iii)).

It is The Coalition’s position that the requirements by which a consumer might be eligible for IOT must be very narrowly focused, targeted only at those consumers who are most likely to benefit from IOT, specifically: Clients with co-occurring psychiatric and addictive disorders, a history of violence and multiple recent involuntary hospitalizations. IOT should only apply to persons 18 or over.

- ❑ This bill does not allow for professional decision making *by mental health professionals*. The Coalition would support IOT legislation only if it provides for court-ordered treatment plans that are flexible enough to allow mental health services providers to use their professional judgment to determine treatment plans and medications. Treatment decisions must be left to treatment providers.
- ❑ This bill requires providers of services to “promptly notify the regional director or his or her designee of any act or omission of the assisted outpatient, during the period of assisted outpatient treatment,... that would reasonably lead to a conclusion that the assisted outpatient is not in compliance with such treatment” (proposed §9.60(j)). The Coalition opposes this provision. The government, not the providers, must be responsible for determining compliance with court orders. The relationship between a provider and a client must be based on trust and a trusting relationship cannot be built if providers are responsible for informing the authorities about non-compliant clients.
- ❑ IOT should not be used as a vehicle for managed care companies to avoid the costs of inpatient services. We are concerned that A.8477 contains no provision ensuring against this eventuality. In addition, the bill does not clarify how IOT and managed care, including this State’s upcoming mandatory Medicaid managed care and eventual mental health Special Needs Plans, will interface with one another.

In addition, while we applaud the bill’s provision for consumer representation by Mental Hygiene Legal Service or retained counsel “at all stages of a proceeding initiated under this section” (proposed §9.60(e)), we are concerned that the bill does not provide additional public funding for such representation.

Conclusion

Mental health providers are in agreement that the real promise of any outpatient treatment, whether voluntary or involuntary, is in ADEQUATE FUNDING FOR A FULL ARRAY OF OUTPATIENT SERVICES, INCLUDING CARE COORDINATION, CASE MANAGEMENT

AND SUPPORTED HOUSING. Unfortunately, A.8477 does not address the fundamental issue of the lack of adequate funding in this State for effective outpatient mental health services, a stark reality which has been highlighted by recent press reports, including Michael Winerip's excellent article in the May 23rd New York Times Magazine. We urge the Legislature to take a hard look at this State's serious under-funding of outpatient services, for this is the real solution to New York's need for an adequate safety net.

We applaud the Legislature's conscientious efforts to deal with this very serious issue, but we caution against a rush to enactment of laws which will inadequately assist and protect the New Yorker with serious mental illness, this State's mental health providers, and the general public.

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