

Chapter 1: Overview of Manual

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1.1 Purpose of Manual

This manual reviews the provisions of the North Carolina mental health and substance abuse laws as they pertain to commitments and admissions to 24-hour facilities and to outpatient commitments. Relevant statutes are found in Chapter 122C of the North Carolina General Statutes, entitled “Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985.” Collateral consequences that may ensue as a result of commitment will be explored. Special provisions applicable to respondents committed through involvement with the criminal justice system are also discussed.

The manual is designed to assist the attorney representing a respondent or minor facing a commitment or admission. Although the focus of the manual is on admissions and commitments requiring judicial review, and thus on proceedings requiring the appointment of counsel, other types of inpatient admissions are also discussed. This chapter presents a brief overview of the major topics presented.

1.2 Terminology Used in this Chapter

“Admission,” although not defined in the statutes, is used to denote the entrance of a person into a 24-hour facility through the voluntary action of the affected individual or of that individual’s legally responsible person.

“Commitment” is also not defined by statute but is employed to describe the court-ordered treatment of a person for mental illness or substance abuse either as an inpatient in a 24-hour facility or on an outpatient basis.

“Legally responsible person” means “(i) when applied to an adult, who has been adjudicated incompetent, a guardian; (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who is incapable . . . and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of attorney. . . .” G.S. 122C-3(20)(ii).

“Respondent” is the person who is the subject of an involuntary commitment proceeding or who is voluntary admitted to 24-hour facility by a legally responsible person.

“24-hour facility” is a facility providing around-the-clock treatment in a structured environment. G.S. 122C-3(14)g.

1.3 Involuntary Commitment

Three Types. There are three types of involuntary commitments for both adults and minors:

- involuntary commitment for mental health treatment;
- involuntary commitment for substance abuse treatment; and
- outpatient commitment.

As these commitments are by definition not the result of the client’s own application for admission, judicial review is required and there is statutory provision for Special Counsel or an appointed attorney to represent all indigent respondents. Minors are defined as indigent by statute.

Inpatient commitment. On the initial petition, a respondent may be committed to a 24-hour facility for inpatient mental health treatment for up to 90 days. The court may order up to 180 days of inpatient treatment at a first rehearing, and up to a year at a second rehearing. The court may also order outpatient commitment or a combination of inpatient/outpatient commitment, within the same time limits.

Outpatient commitment. Outpatient commitment allows the individual to be treated in the community by a local treatment provider. A crucial component of the treatment is that the respondent is *ordered* to attend appointments during the term of outpatient commitment. The appointment of counsel for an indigent respondent is in the discretion of the court.

The process can begin with a request from a physician or eligible psychologist specifically for outpatient commitment. The appearance of the respondent may not be waived at a hearing initiated as an outpatient commitment request. An

examining physician or eligible psychologist may also recommend outpatient treatment at any step in the involuntary commitment process. Outpatient commitment may be the dispositional order resulting from an involuntary commitment petition, even if inpatient treatment was initially recommended. As the state continues to shift patients from an inpatient setting to outpatient treatment, there may be an increase in the number of commitments that begin as outpatient commitment requests alone.

Substance abuse commitment. A substance abuse commitment provides for treatment on either an inpatient or outpatient basis throughout the term of commitment. The appearance of the respondent is not waivable at a substance abuse commitment hearing. Initially the term of commitment may be up to 180 days, with subsequent terms of up to 365 days. The respondent is committed to the treatment of an area authority or physician, rather than to a 24-hour facility. The area authority or physician then determines during the term of commitment when the individual will be treated on an inpatient basis, which may not exceed 45 consecutive days without court review, and what portion will be on an outpatient basis.

Substance abuse vs. mental health commitment. Commitment for treatment of mental illness has been the traditional mode of involuntary treatment in a 24-hour facility. The person is committed for a period of inpatient treatment with the maximum term being set by statute. The treating physician may discharge the individual at any time during the commitment if the criteria for inpatient treatment are no longer met. With the increasing need for substance abuse treatment, it became clear that traditional mental health commitment did not best meet the needs of some clients. The legislature therefore amended the statutes to provide a discrete procedure for substance abuse commitment. There are two primary differences from a mental health commitment:

- the initial maximum term of a substance abuse commitment can be longer, up to 180 days versus 90 days for mental health treatment; and
- the responsible professional determines within that term how much of the treatment will be on an inpatient basis in a 24-hour facility and what portion will be on an outpatient basis.

Although a petition may initially request treatment for substance abuse, the final court order may be for mental health treatment, or vice versa. This is not a statutory provision, but rather a result of negotiation between the parties with approval by the court. For example, the parties may agree to convert a substance abuse commitment to a mental health commitment because loss of driving privileges may result from a substance abuse commitment. *See infra* §§ 3.6C and 12.4.

1.4 Voluntary Admission

There are three types of voluntary inpatient admissions for either mental health or substance abuse treatment. The first is the admission of a competent adult upon the individual's own application. As this is the only truly voluntary admission, no attorney representation is required and there is no judicial review. Discussion of this type of admission is included in this manual so that the attorney will be aware of it as a possible alternative for an involuntary client, and because a voluntary admission may be part of a client's psychiatric history.

The following two types of admissions are also called "voluntary" in the statutes but are not truly voluntary on the part of the patient:

- voluntary admission of an incompetent adult, in which an adjudicated incompetent adult is admitted upon application of the guardian of the person or general guardian; and
- voluntary admission of a minor, in which the admission application is signed by the legally responsible person for the minor.

Because someone other than the client signs the admission application, the statute provides for judicial review of the admission and for an appointed attorney for the individual.

The dispositional alternatives for voluntary admissions are the same as for involuntary commitments, although the judicial procedures differ.

1.5 Commitments and Admissions through the Criminal Justice System

Special provisions apply to individuals committed or admitted for mental health or substance abuse treatment through the criminal justice system. These include those automatically committed after being found not guilty by reason of insanity and those charged with a crime and found incapable of proceeding. Specific provisions apply as well for the commitment and admission of inmates and parolees.

1.6 Collateral Consequences

Serious consequences may ensue beyond the loss of freedom resulting from commitment for treatment. Counsel should advise clients of these possible consequences so that they can best make decisions throughout the judicial process.

1.7 Admissions Not Requiring Judicial Review

Individuals may also be admitted to a 24-hour facility through advance instruction or a health care power of attorney. Each of these methods was created by legislation as a method to allow inpatient admission without the need for judicial process.

Advance instruction. An advance instruction allows a person “of sound mind” to execute a document consenting to or refusing mental health treatment in advance of the need. The document becomes effective only if and when the person becomes incapable of making these decisions at a later date and is revocable so long as the person is not incapable. There is a limit of 10 days of inpatient treatment pursuant to advance instruction.

Health care power of attorney. A health care power of attorney allows a competent individual to execute a document designating a “legally responsible person” to make decisions relating to mental health treatment in the event of incapacity. As with an advance instruction, the document is revocable so long as the person is competent, and is effective only upon the incapacity of the individual.

Although there is no judicial review, and thus no attorney representation, counsel may occasionally receive telephone calls from patients or staff with questions regarding these admissions. It is important to know that these alternative procedures exist and to be able to determine if a particular admission is in compliance with statutory requirements.

1.8 Administrative Office of the Courts Forms

The Administrative Office of the Courts provides forms that may be used in the commitment and admission process. Copies of these forms are included in Appendix A of this manual. These forms are available online at the Judicial Department website, www.nccourts.org, under “Forms.” As these forms are being constantly reviewed and updated, the website should be checked for the latest version.

1.9 Division of Mental Health Forms

The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, publishes forms that are used in the commitment and admission process. Copies of these forms are included in Appendix A of this manual. These forms are available online at the

Department of Health and Human Services website, www.dhhs.state.nc.us/mhddsas/manuals/index.htm, under “Legal Forms for Hospitals.”