

A Guide to AB 1424

By

Carla Jacobs, CTAC Coordinator

Randall Hagar, NAMI-California Legislative Chair

Chuck Sosebee, NAMI-California Consumer Council Chair

On October 4, 2001 Assembly Bill 1424 (Thomson-Yolo D) was signed by the Governor and chaptered into law. The law became effective Jan. 1, 2002. AB 1424 modifies the LPS Act (Lanterman, Petris, Short Act), which governs involuntary treatment for people with mental illness in California.

Quoting the legislative intent of the bill, “The Legislature finds and declares all of the following: Many families of persons with serious mental illness find the Lanterman-Petris-Short Act system difficult to access and not supportive of family information regarding history and symptoms. Persons with mental illness are best served in a system of care that supports and acknowledges the role of the family, including parents, children, spouses, significant others, and consumer-identified natural resource system. It is the intent of the Legislature that the Lanterman-Petris-Short Act system procedures be clarified to ensure that families are a part of the system response, subject to the rules of evidence and court procedures.”

Discussion: Mental illness does not exist in a vacuum of time. The severity of an individual’s symptoms wax and wane, sometimes hour by hour or day by day. It is not uncommon for a person with mental illness to “present well” -- with minimally

displayed psychiatric symptoms and seemingly rational plans for self care --when in the presence of an evaluator or law enforcement officer who is considering a "5150", i. e., an involuntary hold for treatment and evaluation involuntarily. Or, the person may have had a few days of medication in the hospital prior to a court hearing and been coached as to how to present "well" prior to a court hearing. Yet, upon release, the person historically has gone off medication, remained unable to care for his or her own psychiatric medical needs and drifted into homelessness or repeated hospitalizations. This is especially true of the individual who is paranoid and cautious in disclosing information to strangers.

While nothing in the LPS Act previously precluded a law enforcement officer, hearing officer or judge from considering the past history of an individual's illness, common interpretation was that they could only consider the person's presentation "at that moment in time", i. e., was the person "imminently" dangerous or gravely disabled? Without reasonable consideration of psychiatric history, a person may be inappropriately and prematurely released without treatment and attaining sufficient stabilization.

While some county mental health departments, law enforcement agencies and court systems may previously have considered psychiatric history to greater or lesser extents, *******AB 1424 mandates that the historical course SHALL be considered at all steps of the process.** Formerly, consideration of psychiatric history was generally considered an option -- a "may" in the process. What counties and courts did previously is of little importance. **What is important is what they shall do now and in the future.**

Acknowledging that medical history is critical in making effective treatment and legal decisions concerning mental illness will assist law enforcement and judicial officers make better informed determinations as to whether court-ordered treatment is necessary.

Does the consideration of historical course of a person' s illness have any bearing on the initial (5150) detention of the person?

AB 1424 requires that any person who is authorized to take a person into custody for involuntary treatment consider available relevant information about the historical course of the person' s mental disorder if the information has a reasonable bearing on the determination as to whether the person is a danger to others, or a danger to self, or is gravely disabled as a result of the mental illness. Therefore, this provision would apply to law enforcement officers as well as professionals so authorized by local mental health directors.

What information should be considered by the law enforcement officer or person designated to effect a 5150 hold in determining historical course?

The historical course shall include, but is not limited to, evidence presented by persons who have provided, or are providing, mental health or related support services to the patient and/or information presented by one or more members of the family of the person or the person subject to detention.

Is there any penalty for providing false information to the court or detaining officer?

The law requires that if probable cause for detention is based on a statement other than that of someone authorized to take the person into custody for a 72-hour hold, or a member of the attending staff, or a professional person, the person making the statement shall be liable in a civil action for intentionally giving a false statement. Thus families may not give false information knowingly without being potentially liable to the patient in a civil action.

Who else must consider historical course of a persons illness?

The “shall” of the new law requires that hearing officers, judges and juries who consider whether the person is to be certified for additional periods of involuntary treatment beyond the initial 72 hours must also consider historical course. The hearing officer, court or jury shall exclude from consideration evidence that it determines to be irrelevant because of remoteness of time or dissimilarity of circumstances, however. The court retains the discretion in what it defines as evidentiary and having a direct bearing on the current case.

When shall the court consider historical course of the person’ s illness?

The historical course of a person’ s mental disorder shall be considered when it has a direct bearing on the determination of whether the person is a danger to others of self, or is gravely disabled, as a result of a mental disorder.

For the purpose of court hearings, what should be considered in determining historical course?

The court should consider (1) evidence presented by persons who have provided or are providing mental health or related support services to the patients, (2) the patient’ s medical records as presented to the court, including psychiatric records, (3) evidence voluntarily presented by family members, (4) the patient. The patient may also designate an additional person to provide information.

Who is obligated to present evidence provided by the family to the court?

Facilities providing treatment shall make every reasonable effort to make information provided by the patient's family available to the court. (*While not required under the law, it is recommended that families present such evidence in writing to the facility so it doesn't get lost or forgotten.*)

Note by Gail—The hospital must make all reasonable attempt to get this information to the court.

Must anyone consider the medication history of the person as part of the historical course?

The law requires that the agency or facility providing the treatment acquire the patient's medication history, if possible. (*While not a requirement of the law, it is highly recommended that the family or patient also provide the facility with a copy of all available treatment and medication records as well as a written summary of past treatment and results in the event the facility is unable to obtain any and all records.*)

Other provisions of AB 1424: Insurance payment

AB 1424 prohibits any health care service plan, private or public insurer (including Medi-Cal) or disability insurer from utilizing the voluntary or involuntary status of a psychiatric inpatient admission for the purpose of determining eligibility for claim reimbursement. This is important to preclude insurance plans from refusing to pay for any hospitalization solely on the basis of the person's legal status.

Caveats on the usefulness of AB 1424

AB 1424 is a new tool to make sure that medical and psychiatric history shall be considered in the legal process. But it is not a panacea.

Why? Although the law says that history that is relevant must be considered, this consideration is not the same as a court actually accepting the information as evidence.

The law states that information that is irrelevant due to the remoteness in time or dissimilarity of circumstance must be excluded. The court retains the discretion as to what it will or will not accept as evidence.

Also, the bill is not intended as a solution to an age-old dilemma for families of people with mental illness. Frequently families have information that directly bears on whether a loved one fits the criteria for treatment, but fear divulging it will threaten their relationship with their relative. Should they divulge and hope the information brings about needed treatment? Or, do they keep quiet in fear of the consequences to their relationship with their loved one?

While the law states that nothing contained within it shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family, there remains the problem of how to present evidence to the court that the family has divulged to the treatment provider in confidence but still wants considered by the court.

Family members who desire anonymity yet want to have the information presented to the court, could instruct the treatment professional to keep the information confidential from the patient until the actual court hearing. The professional could then attempt to present the information as evidence to the historical course of the person's illness.

Some courts, however, under some circumstances, may require that the family member appear in court, possibly confronting the patient, to confirm information given to the treatment provider.

Others may not allow the information given second-hand via the treatment provider as evidence. The discretion is with the court.

Summary

AB 1424 is a new tool that ensures medical and psychiatric history will be considered in the legal process. But it is not a panacea. The LPS Act remains badly out of date. We now know that schizophrenia and manic-depressive illness, the most common forms of severe mental illness, are diseases of the brain—just as are Parkinson’ s and Alzheimer’ s.

We now know that approximately 50% of individuals with these diseases have impaired insight into their own illness. They do not realize they are sick and, therefore, often do not accept treatment voluntarily. Because of this scientific knowledge, we now know that some of the underlying tenets of the LPS Act are incorrect. To subject Californians with severe mental illness to laws not based on scientific fact is preposterous. Passage of AB 1424 is but the first step needed to right this wrong.