

Mental Health Matters

The newsletter of the Illinois State Bar Association's Section on Mental Health Law

Editor's Note

BY SANDY BLAKE

The Illinois legislature has not been in session for several months, but by the end of 2019, a number of laws were enacted that took effect on January 1, 2020. This newsletter highlights a number of them that are applicable to mental health law practitioners. Thanks to Joseph Monahan of the Monahan Law Group, LLC, for forwarding the compilation prepared by members of his firm.

While many court hearings have been suspended due to the COVID-19 pandemic, mental health hearings are not among them. Nevertheless, on April 10, Governor JB Pritzker suspended all admissions to Illinois Department of Human Services Forensic Treatment Programs from all Illinois county jails, with exceptions at the sole discretion of the Secretary of the Illinois Department

From the chair and editor
1

New Laws
1

Civil Mental Health Hearings
in the Age of COVID-19: Some
Suggestions for Improvement
4

New Laws

BY JOSEPH T. MONAHAN

We are five months into this new decade, and we are all experiencing a new normal. A number of new laws went on the books last year and took effect January 1, 2020. Monahan Law Group, LLC compiled the list below with brief explanations of laws that may affect mental health recipients and their agents or guardians. This list is not exhaustive and does not provide complete information. For more details, visit the Illinois General Assembly website.

Probate and Estate Planning

The federal Setting Every Community Up for Retirement Enhancement (SECURE) Act was signed by the President on December 20, 2019, and is designed to facilitate and enhance retirement savings. As a result, SECURE will vastly

change the way savers think about saving for retirement. Some of the most notable changes are that: (1) individuals over age 70½ who work may continue to make retirement contributions each year; (2) for individuals who turn 70½ after December 31, 2019, the required minimum distribution age for their retirement accounts is increased to age 72 from 70½; (3) for part time workers who work at least 500 hours per year for three years, they will have the opportunity to participate in qualified retirement plans; (4) qualified retirement plans can offer annuity payout options and plan administrators must provide expanded disclosure of future retirement benefits to participants; and (5) after 2019, inherited IRAs for beneficiaries must be paid out more quickly (over a

Continued on next page

Editor's Note

CONTINUED FROM PAGE 1

of Human Services for limited essential admissions. See Executive Order 2020-24, EO2020 24 (003).pdf.

In addition, proceedings on petitions for involuntary admission (commitment) and petitions for involuntary treatment (medication) present unique challenges. Logistics for these hearings in courthouses, private hospitals and State-operated mental health facilities are evolving. As we explore what will become the new normal in mental health court proceedings, attorneys from the Legal Advocacy Service (LAS) of the Illinois Guardianship and Advocacy

Commission offer some suggestions based on their experience thus far. Thanks to LAS Director Veronique Baker for preparing an article discussing those suggestions. As we move forward, we will be limited only by technology and our own creativity in ensuring that recipient rights are protected. Please give these issues your considered thought and post in the comments or on the Mental Health Law Section Community.

Stay safe and healthy!■

New Laws

CONTINUED FROM PAGE 1

maximum term of ten years) with a couple of exceptions for recipients with disabilities, minors, spouses and individuals within 10 years of the age of the IRA owner.

The Illinois Trust Code ("Code") replaces the Trusts and Trustees Act in its entirety. The Code will apply to all trusts governed by Illinois law beginning on January 1, 2020. Most of the new Code is elective, so the creator of a trust can override the provisions of the Code in the trust instrument. However, certain provisions of the Code may not be overridden. Specifically, there are new mandatory notices and information that a trustee must provide to the trust beneficiaries. A trustee must also send an accounting to each current beneficiary at least annually, and to all beneficiaries after a trust terminates. Trusts that are irrevocable before 2020 and trustees of revocable trusts who begin to act before 2020 continue to be subject to current notice and accounting requirements, as provided in the trust document. Public Act 101-0048.

The Disposition of Remains Act is amended to require disputes over the disposition of a decedent's remains to be resolved within 30 days of the dispute being filed with the court. Public Act 101-0381.

Public Act 101-0163 amends several acts for the purpose of facilitating electronic advance directives, including for electronic creation, signature, and revocation. It includes powers of attorney for health care, living wills, mental health treatment preference declarations, and Physician Orders for Life-Sustaining Treatment (POLST) forms. It also provides for the study of the feasibility of creating a statewide registry of advance directives and POLST forms.

Federal Limits:

The federal annual exclusion gift amount is still at \$15,000 per person for 2020.

The federal estate tax exemption increased to \$11,580,000 for 2020.

Mental Health

The Mental Health and Developmental Disabilities Code is amended to authorize advanced practice psychiatric nurses to complete certificates for inpatient admission, and to authorize restraint and seclusion for patients. An advanced practice psychiatric nurse is defined as a nurse who is licensed to practice as an advanced practice registered nurse under Section 65-5 of the Nurse Practice Act

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This is the newsletter of the ISBA's Section on Mental Health Law. Section newsletters are free to section members and published at least four times per year. Section membership dues are \$30 per year.

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and has been certified by the American Nurses Credentialing Center as a psychiatric mental health clinical nurse specialist or a psychiatric mental health nurse practitioner. Additionally, this law allows a psychiatrist to use an “interactive telecommunication system” - videoconferencing - when examining a patient for the purpose of executing a certificate. This is an important development for hospitals in communities where psychiatrists are scarce. Public Act 101-0587.

The Pharmacy Practice Act is amended to include within the definition of the authorized practice of pharmacy the administration of injections of long-term antipsychotic medications, pursuant to a physician prescription. Public Act 101-0349.

The Children and Youth Adult Mental Health Crisis Act is created, which restructures and significantly overhauls the Individual Care Grant/Family Support Program for children and young adults. The Act is intended to fill in significant gaps in Illinois’ mental health treatment system for children and young adults with significant mental health needs, regardless of type of insurance coverage. Public Act 101-0461.

This law requires public colleges and universities to provide information to students on all mental health and suicide prevention resources available at the university. Public Act 101-0217.

Health Law

The Medical Patient Rights Act is amended to enumerate and codify 21 specific rights for women during pregnancy and childbirth. Public Act 101-0445.

The Consent by Minors to Health Care Services Act is expanded to allow a minor 12 years of age or older to consent to health care services or counseling related to the prevention, as opposed to only the diagnosis and treatment, of sexually transmitted diseases. Public Act 101-0214.

The Public Aid Code is amended to require notice of terminated Medicaid benefits to be sent to any long-term care facility where the resident resides, in addition to being sent to the resident. Public Act 101-0100.

The Public Aid Code is amended to mandate if an individual has transferred

from one long-term care facility to another, the individual’s redetermination of Medicaid eligibility must be sent to both the facility where the individual resides and directly to the individual. Public Act 101-0101.

The Illinois Insurance Code is amended to provide for the creation of a uniform, electronic prior authorization form, for use by private insurers and Medicaid Managed Care Organizations for the processing of prescription drug benefits. Public Act 101-0463.

Disability Law

The Authorized Electronic Monitoring in Community-Integrated Living Arrangements (CILA) and Developmental Disability Facilities Act is created, authorizing the use of video or audio surveillance in a resident’s room at a CILA, at the resident’s own expense, and subject to certain other rules and conditions. Public Act 101-0229.

The Community-Integrated Living Arrangements Licensure and Certification Act is amended to require any licensed CILA to notify the Department of Human Services whenever emergency calls are made from the facility. Public Act 101-0075.

The Mental Health and Developmental Disabilities Code is amended to require that individuals admitted to developmental disability facilities and receiving habilitation shall have access to sex education, related resources, and treatment planning that supports their rights to sexual health and freedom from sexual exploitation and abuse. Public Act 101-0506.

The Customized Employment for Individuals with Disabilities Act creates a five-year pilot program for finding employment for individuals with disabilities, intended to assist in finding jobs and negotiating fair wages. Individuals will be identified and referred to participate in the Pilot Program by community-based agencies serving persons with intellectual or developmental disabilities. Public Act 101-0368.

Child Welfare

The Abused and Neglected Child Reporting Act is extensively revised, reorganizing the list of individuals who are required to immediately report to the

Department of Children and Family Services when they have reasonable cause to believe that a child may be abused or neglected under the Act. The law closes loopholes and provides additional clarity for mandated reporters. Also, it makes mandated reporter training a requirement for all new professionals, and every three years thereafter. Public Act 101-0564.

The Children’s Advocacy Center Act is amended to establish that consent is not required for the forensic interview of a child suspected of being abused to be electronically recorded. Failure to record does not render a forensic interview inadmissible. Public Act 101-0236.

The Abused and Neglected Child Reporting Act is amended to require the Department of Children and Family Services to notify the Directors of the Department of Public Health (licensing) and the Department of Healthcare and Family Services (funding) of any report of suspected abuse or neglect of a child who was receiving care in a hospital, including freestanding psychiatric hospital. Public Act 101-0043.

The Abused and Neglected Child Reporting Act is amended to require DCFS to immediately refer reports to law enforcement when it receives a report alleging abuse or neglect of a child by a person who is not the child’s parent, a member of the child’s immediate family, a person responsible for the child’s welfare, an individual residing in the same home as the child, or a paramour of the child’s parent. Public Act 101-0583.

Adoption

The Adoption Act is amended to increase public awareness and access to post-placement and post-adoption support services. It also amends the definition of «post-placement and post-adoption support services» to include mental health treatment, including counseling and other support services for emotional, behavioral, or developmental needs, and treatment for substance abuse. Public Act 101-0155.

Elder Law

The Adult Protective Services Act is amended to mandate that Adult Protective Service (APS) providers interview immediate

family members and other individuals who may have knowledge or information when conducting an investigation concerning a report of suspected abuse, neglect, financial exploitation, or self-neglect of an eligible adult. Consent of the eligible adult is required except when the provider agency is acting in the best interest of an eligible adult who is unable to seek assistance for themselves, and where there are allegations against a caregiver who has assumed responsibilities in exchange for compensation. Public Act 101-0496.

The Alzheimer's Disease Research Act is amended to create a full-time position of Dementia Coordinator. Public Act 101-0588.

Professional Licensure and Employment

The Social Work Practice Act is amended to allow LSW applicants in a social work master's program to sit for the LSW examination in the final semester of their program, rather than after they receive their degree. Public Act 101-0568.

The Unified Code of Corrections is amended to provide that Certificates of Good Conduct may relieve eligible offenders of any bar to professional/occupational

licensing or housing. Public Act 101-0154.

The Attorney General Act is amended to create a Worker Protection Unit within the Attorney General's (AG) office. The new unit will have the authority to intervene in, initiate, and enforce all legal proceedings on matters related to the payment of wages, the safety of the workplace, and fair employment practices, including, without limitation, the provisions of the Prevailing Wage Act, the Employee Classification Act, the Minimum Wage Law, the Day and Temporary Labor Services Act, or the Wage Payment and Collection Act. Public Act 101-0527.

An omnibus law amends several existing statutes to address issues relating to sexual harassment, discrimination, and government and professional ethics. It makes numerous changes to employment and civil rights laws to ensure that workers who experience sexual harassment and discrimination have a meaningful remedy. Additionally, it creates the Workplace Transparency Act, which protects the rights of employees who may have experienced unlawful conduct at work. Public Act 101-0221.

Others of Interest

The Equitable Restrooms Act is amended to require all single-occupancy restrooms

in a public location to be identified as all-gender and designated for use by no more than one person at a time. It also requires exterior signage that marks the restroom without indicating any specific gender. Public Act 101-0165.

The Genetic Information Privacy Act is amended to prohibit companies that provide direct-to-consumer commercial genetic testing from sharing any test results or other personally identifiable information with any health or life insurance company without the written consent of the consumer. Public Act 101-0132.

The Assistance Animal Integrity Act is established to allow a landlord to request and evaluate documentation when determining whether to allow an assistance animal on premises where pets are otherwise generally prohibited. Public Act 101-0518. ■

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Civil Mental Health Hearings in the Age of COVID-19: Some Suggestions for Improvement

BY VERONIQUE BAKER

Mental health hearings can be difficult, even under the best of circumstances. Some counties have hearings in the hospital, so the court staff and attorneys have to travel for these hearings. Other counties have hearings at the courthouse, so the respondent, doctors and other witnesses have to travel to court for hearings.

During the COVID-19 shut down, most civil court matters have been continued—with the exception of domestic violence cases, bond hearings, juvenile matters and civil mental health hearings.

The Legal Advocacy Service (LAS) provides legal representation to respondents in civil mental health involuntary admission (commitment) and involuntary treatment (medication) cases in 13 counties in Illinois, which covers a majority of the cases in this State. It is with this knowledge and experience that these suggestions are being proposed.

COVID-19 has required the courts to conduct the civil mental health hearings via tele-video. The various platforms used by the different courts were not designed

for trials or hearings; they are designed for group meetings. While LAS attorneys neither endorse nor support tele-video hearings for civil mental health cases, the current circumstances leave us with no choice. The following suggestions are made to assist with fair and impartial hearings based on experiences of the LAS attorneys.

- **Video platforms.** The courts should determine the video platform that will be used to conduct the hearings, not the hospitals.
- **The video platform must be**

HIPAA-compliant. Courts should utilize a video platform plan that allows for fluid teleconferencing and is HIPAA compliant. The HIPAA-compliant version is of utmost importance because of the confidential health information being shared during a mental health hearing.

- **Only participants in the hearings should be on the call.** There have been occasions where people who want to observe the hearing have been on these calls. If the hearing is closed to the public, these people should not be allowed to observe.
- **Everyone on the group call should have their video turned on.** It is important for transparency and for the record to reflect that everyone participating is identified and visible to everyone else. Before the hearing begins, the judge should recite who is on the call and ask whether anyone else is on the call.
- **The judge should admonish all witnesses (and confirm) they are not using notes or any other devices to assist with their testimony, before and during their testimony.** This should get put on the record after the witness is sworn in.
- **There must be provisions for confidential attorney-client communication.** The courts should be flexible and ready to utilize these breakout rooms if an attorney asks for it, and all participants should be muted during these breakout sessions so there are no additional communications with the court or with witnesses outside of counsel's presence. Any shared attorney-client communication because of technical issues is not waived.
- **Respondents who object to video trials should be granted continuances until an in-person trial can be safely conducted.** Media platforms for video-

conferencing were designed for meetings – for participants to talk with each other – not for judicial hearings. The Mental Health Code provides for the respondent's and their counsel's agreement if other parties are not located with the respondent and counsel. 405 ILCS 5/3-806 1(a) (2). If a respondent objects to trial by video, the objection must be respected.

- **Inform the facility of their responsibility to provide technology devices, accessories, and means of connecting to conduct these hearing via Zoom or any other teleconference platform.** The respondent's attorney may not be in the hospital with the respondent and in some cases, may not be permitted inside the hospital due to hospital policy. It is the facility's responsibility to provide the necessary and appropriate equipment to ensure the respondent's participation while respecting the current social distancing policies.
- **Breaks should be provided if multiple hearings are scheduled.** If more than one hearing will occur on a single day, the court needs to allow for a reasonable amount of time for a break between hearings. This is especially important because tele-video hearings take longer than in-person hearings.
- **Witnesses should remain on the call until the trial has concluded.** The judge should not excuse witnesses from the call until the trial is concluded. You may need to recall a witness for additional testimony.

These suggestions derive from the experiences of the LAS attorneys and should serve to be the starting point of this conversation, not the end. We are certain other civil mental health community stakeholders have their own experiences and suggestions.

This article was prepared by Veronique Baker, director of the legal advocacy service of the Illinois Guardianship and Advocacy Commission, with input by LAS attorneys.