

June 20, 2024

Disclaimer: The information provided is for informational purposes only and represents the Departments internal understanding of the subject matter contained herein. This is not legal advice. Please consult with your own legal counsel should you need legal advice.

Recent Revisions to Laws Affecting Title 33

As you may be aware, Public Chapters No. 725, 784 and 785 amended Title 33, which have either gone into effect upon becoming law or will go into effect on July 1, 2024. Accordingly, the department provides the below summary of the changes. The department has also updated certain hospital and legal forms in order to conform with the changes in law. Specifically, and as a result of these changes, revisions were made to the Certificates of Need (CONs) used to admit an individual on an involuntary basis pursuant to Title 33, Chapter 6, Part 4 and Part 5 (new CONs attached), the Certificate of Need (CON) used for Probable Cause hearings (attached), the Ex Parte order (attached) and the Order to Release (attached).

What changed?

The new language in Public Chapter No. 785 amends T.C.A. §§ 33-6-421 and 33-6-503 to allow a qualified advanced practice provider as defined in T.C.A. § 33-6-407(a) to complete one of the two CONs required for the probable cause and judicial commitment hearings when the other CON is completed by a physician who is not in a collaborating agreement with the qualified advanced practice provider. This goes into effect July 1, 2024.

The new language in Public Chapter No. 725 amends T.C.A. §§ 33-6-401 and 33-6-403 to provide that the person poses an “imminent” substantial likelihood of serious harm rather than an “immediate” substantial likelihood of serious harm for emergency involuntary admission criteria. This is a subtle change, where “imminent” means that something is about to happen where as “immediate” means something is occurring right now. That said, the department does not expect this change to significantly impact emergency involuntary hospitalizations. However, should you have specific questions related to the interpretation of this change, the department recommends your agency seek the advice of your agencies legal counsel. These changes went into effect upon becoming law on April 16, 2024.

The new language in Public Chapter No. 784 amends several sections in Titles 16, 39 and 33 and is otherwise known as “Jillian’s Law.” Specific to Title 33, the Public Chapter amends T.C.A. §§ 33-6-403 and 33-6-502 by adding a new subsection that states there is a rebuttable presumption that a person meets the standard for emergency admission and/or judicial commitment to a hospital or treatment resource if the person was charged with a felony or Class A misdemeanor and found by the court to be incompetent to stand trial for the offense due to mental illness. This presumption may only be rebutted by clear and convincing evidence that the person does NOT pose an imminent substantial likelihood of serious harm under 33-6-403 for emergency admissions or substantial likelihood of serious harm under 33-6-502 for commitment proceedings. This Public Chapter also amends T.C.A. § 33-6-708 to require that defendants who cannot be restored or trained to competence to stand trial only be released when the court with criminal jurisdiction approves a mandatory outpatient treatment plan that “accounts for the safety of the community.” This takes effect July 1, 2024.

What does this mean?

For probable cause or judicial commitment hearings, one of the two required CONs can be completed by a licensed advanced practice nurse with a current certification from a national certifying organizations as a psychiatric-mental health advanced practice nurse or a physician assistant with current certification from a national certifying organization as having additional qualifications in psychiatry when the other CON is completed by a physician who is not in a collaborative agreement with the qualified advanced practice provider who is providing one of the two required CONs.

For individuals meeting emergency admission criteria, the changes from “immediate” to “imminent” will not likely significantly impact the emergency admission process. However, clinicians and their agencies should consult legal counsel on how best to interpret these changes for their agency.

For individuals charged with a felony or class A misdemeanor that have been adjudicated as incompetent to stand trial, the court will assume the person is committable unless rebuttable evidence is introduced during the commitment proceedings, establishing clear and convincing evidence that the person does not meet commitment criteria. The changes will require that the inpatient facility place the person on a Mandatory Outpatient Treatment plan and provides the court with the authority to approve discharge for individuals who are not able to be restored to competency due to mental illness.

If you have additional questions about these changes, you may contact Melissa Sparks at Melissa.Sparks@tn.gov.