



## INTRODUCTION TO THE BAKER ACT: PART 2

## PATRICIA ARES-ROMERO, MD, FASAM

Chief Medical Officer  
Jackson Behavioral Health System



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## ■ THREE PART SERIES: INTRODUCTION TO THE BAKER ACT

- ➔ JUNE 16, 2020
- ➔ **JUNE 18, 2020**
- ➔ JUNE 23, 2020

## PART 2. PROVIDING TREATMENT IN A BAKER ACT RECEIVING FACILITY

### Purpose of Part 2

- Become familiar with available services
- Learn the role of substitute decision-makers
- Identify how to plan for and provide treatment

## Topics

- Express and Informed Consent
- Substitute Decision-Makers
- Treatment
- Individual Treatment Rights

## Introduction

Access to a Baker Act facility allows for an examination and evaluation with the possibility of admission and treatment.

The provision of treatment is dependent on several factors.





### Express Consent

Deliberate agreement to participate in treatment

- Verbal
- Written

### Informed Consent

Explain treatment

- Benefits
- Risks
- Alternatives

If an individual is unable to provide express and informed consent, a substitute decision-maker must be assigned

## Express and Informed Consent

- Express and Informed Consent is required for treatment in all instances except in cases of:

- *A court order*
- *An Emergency Treatment Order*
- *Application of emergency medical treatment*



## Exclusions to Express and Informed Consent

- An individual will not be permitted to provide express and informed consent under any of the following circumstances:

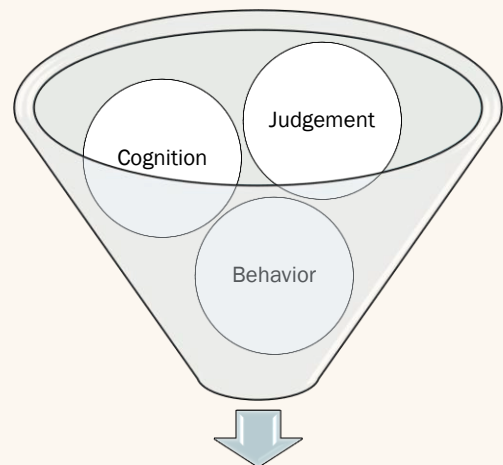
- *Individual is not fully oriented to person, place, time, or situation*
- *Individual has an active substitute decision-maker determining health care decisions*
- *Individual lives in a facility that is designed to assist the individual in completing activities of daily living and has not had an independent expert examination*
- *Individual is a minor who has not been determined competent by a court*

# Substitute Decision-Makers

*Legally authorized to make decisions for another person in specified life areas or circumstances*

## Competence

- Adults are assumed to be competent unless proven otherwise
- Impairment may be short or long-term
- Individuals deemed incompetent have a substitute decision-maker



**(In)Competent**

## Incapacitated

- Individual lacks the capacity to manage at least a portion of their property, health, or safety needs
- Individual is found by the court not to be able to make his or her own decisions
- A guardian is appointed as the individual's substitute decision-maker

## Advance Directive Documents

- **Power of Attorney**
  - *can make decisions for a healthy, competent individual*
- **Durable Power of Attorney**
  - *can additionally make decisions for an incompetent or incapacitated individual*
- **Healthcare Surrogate**
  - *Only allowed to make decisions for an individual who is incapacitated*
- **Living Will**
  - *Document outlining life sustaining and end of life decisions*



## Principles of Substitute Decision-Making

- Person-centered
- Least restrictive
- Informed consent
- Substitute judgment
- Best interest



## Substitute Decision-Maker Role

- Makes all decisions in place of the individual
- Signs all documentation for the individual including consents for treatment and releases of information
- Receives all notifications that are required to be provided to the individual receiving services



## Treatment

*An individual has access to a number of services following admission to a Baker Act facility*

## Examination vs. Treatment



An involuntary examination does not authorize treatment

## Involuntary Inpatient Placement & Outpatient Services

- Two psychiatrists must examine the individual and determine that:
  - *express and informed consent cannot be obtained*
  - *involuntary criteria continues to be met*
  - *individual cannot be safely treated in a lower level of care*



### Involuntary Inpatient Placement

- Imminent risk of significant physical harm
- 24-hour supervision with additional security
- More accessible and frequent treatment

### Involuntary Outpatient Services

- Not currently an imminent risk
- Additional structure and monitoring than traditional outpatient
- Long history of not engaging in recommended outpatient services

## Petition for Involuntary Inpatient Placement

- The individual has additional rights following the filing of a petition for involuntary services
  - *Right to counsel (i.e. public defender)*
  - *Right to a hearing within five court working days*
  - *Right to at least one continuance for up to four weeks*

## Order for Involuntary Inpatient Placement

- Court will perform follow-up hearings
- Individual will receive services at a Baker Act facility or, in some cases, a Veteran's Administration hospital
- Individual may be discharged or transferred to voluntary status without a court hearing

## Involuntary Outpatient Services

- Individual has been unwilling or unable to engage in voluntary services
- Petition filed by the facility administrator
  - *Two supporting professional opinions*
  - *Initial treatment plan*
  - *Identified service provider*



## Criteria for Involuntary Outpatient Services

- 18 years old
- Diagnosed mental health condition
- Meets criteria for intensive outpatient
- History of lack of compliance with outpatient treatment due to mental health symptoms
- Be unable or unwilling to voluntarily participate in the recommended treatment plan
- Be able to benefit from involuntary outpatient services
- Engaged in one of the following in the past 36 months:
  - *Involuntary admission to a Baker Act facility at least twice*
  - *Correctional mental health services*
  - *Serious act of violence towards self or others*

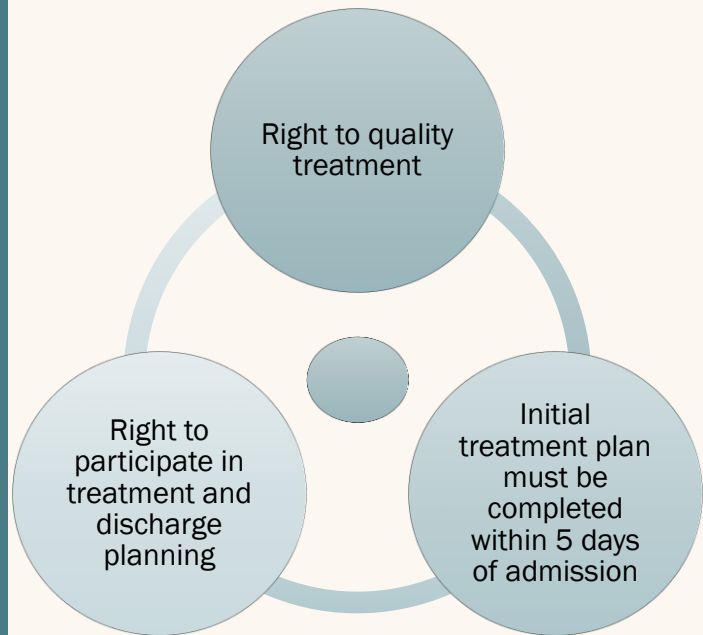
## Involuntary Outpatient Treatment Plan

- Provider prepares in consultation with the individual served or their substitute decision maker
- Must recommend services to address the nature and extent of the behavioral health disorder, including level of care, medication, and anticipated discharge criteria
- The court must be notified of any significant changes on an approved treatment plan
- The court must be notified of any provider changes since it would modify the court order
- If the individual and the provider disagree on proposed changes, the court will make the final determination

## Involuntary Examination During Involuntary Outpatient Services

- Hospitalization may occur due to noncompliance or a resurgence of symptoms that meets criteria for an involuntary examination
- Court order remains in effect
- Individual returns to involuntary outpatient services unless criteria is no longer met or court order has expired

## Rights of Individuals



## Right to Quality Treatment

- Quality
- Accuracy
- Completeness
- Timeliness



## Right to Quality Treatment

- Access to examination and treatment in the least restrictive environment
- Physical examination within 24 hours
- Psychiatric examination
  - *Without unnecessary delay for adults*
  - *Within 12 hours for minors*



### Treatment Planning

addresses problems and goals

- Individualized
- Identify measurable goals and objectives
- Complete within five (5) days of admission

### Discharge Planning

addresses future treatment & support

- Sufficient follow-up and support
- Continue services for further stabilization or maintenance

Planning begins on the day of admission and continues through discharge



## The treatment plan must address specific strengths and needs including:

- Advance Directives
- Living arrangements
- Social supports
- Finances
- Physical health
- Behavioral health



## Treatment Plan Documentation

- Identify how goals and objectives are being addressed in treatment
- Identify any progress, or lack thereof
- Updated at least once every 30 days



## Discharge Planning

- Transition from one provider or level of care to another
- Focuses on continuing to provide stabilization and maintenance services
- May improve outcomes and reduce the probability of readmission
- Must begin on the day of admission
- Individuals encouraged to participate



## Special Considerations

- Necessary component of quality treatment
  - *Identify individual's history of abuse and trauma, and*
  - *How that history impacts his or her behavioral health*
- Information to be used in treatment objectives and interventions
- Behavioral management interventions must be the least restrictive to maintain safety and security

## conclusion

### Summary – Individual Treatment Rights

- *Individuals can be held for examination and protection only*
- *Individuals have a right to be involved in determining their own treatment*
- *Individuals cannot be forced to participate in treatment*

- **Remember to join us for *Introduction to the Baker Act – Part 3* on June 23<sup>rd</sup>!**

## Resources

- Florida Department of Children and Families Baker Act forms
  - <http://www.myflfamilies.com/service-programs/mental-health/baker-act-forms> (WEB)
- Chapter 394, Part I Florida Statutes
  - [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0300-0399/0394/0394PARTIContentsIndex.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0394/0394PARTIContentsIndex.html) (WEB) & (DOC)
- Your Rights While Receiving Mental Health Services
  - <http://www.dcf.state.fl.us/programs/samh/publications/i155-en.pdf> (PDF)

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