State Legislative Options to Facilitate Emergency Involuntary Psychiatric Evaluation

As a result of Council Resolution 49(05) entitled "Emergency Psychiatric Transfers," the Board of Directors instructed the State Legislative/Regulatory Committee to assist chapters with legislative efforts in their states that grant emergency physicians authority to involuntarily hold and/or transfer psychiatric patients to an appropriate facility when medically indicated. In fulfilling this objective, the committee reviewed current state laws related to emergency involuntary psychiatric evaluation and surveyed state chapters on the effectiveness of their laws and the difficulties they face in involuntarily holding and transferring psychiatric patients.

The committee recognizes the significant challenges associated with this issue, including problems created by a lack of sufficient psychiatric beds and other vital resources in communities throughout the country. While a critical problem in many areas, addressing the totality of the large and complex issues that inhibit transfers and limit access to timely emergency psychiatric evaluation is a monumental task that exceeds the scope of this objective. However, in many states, statutory barriers exist that exacerbate the problems facing emergency physicians in trying to facilitate proper evaluation of psychiatric patients. Based on its review of statutes and chapter experiences, the committee has identified four legislative approaches that interested chapters can pursue in order to remove existing barriers and help expedite the evaluation of emergency psychiatric patients. These approaches include:

- Defining the criteria for when psychiatric patients can be involuntarily held for emergency treatment.
- Providing emergency physicians with the authority to act unilaterally in issuing an emergency involuntary hold on a psychiatric patient.
- Defining the length of time a psychiatric patient can be involuntarily held for a psychiatric evaluation.
- Providing physicians with immunity from liability for issuing, or not issuing, an emergency involuntary hold on a psychiatric patient.

Criteria for Involuntarily Holding a Psychiatric Patient

The committee believes that state laws should clearly and logically define the conditions in which a patient can be held involuntarily for psychiatric treatment. Those conditions should be narrowly defined to include patients who appear to be an imminent threat to themselves or others. An example of such criteria can be found in the Montana statute, which reads:

"If the professional person agrees that the person detained is a danger to the person or to others because of a mental disorder and that an emergency situation exists, then the person may be detained and treated until the next regular business day." - (Montana Statutes 53-21-129)

The following definitions apply to the statute above:
"Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

"Professional person" means:
(a) a medical doctor;
(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in

psychiatric mental health nursing; or
(c) a person who has been certified, as provided for in 53-21-106, by the department

Many state laws include provisions in which patients defined by terms such as "gravely disabled" may also be held for involuntary psychiatric evaluations. Inclusion of this definition can be problematic as the definition is open to greater interpretation and may lead to a significant increase in the number of involuntary psychiatric holds, especially for physicians who must also concern themselves with potential liability claims if they fail to hold a patient who could be interpreted as meeting the "gravely disabled" standard. An example of this "gravely disabled" definition can be found in the Lousiana statute, which reads:

"Any physician or psychologist may execute an emergency certificate only after an actual examination of a person alleged to be mentally ill or suffering from substance abuse who is determined to be in need of immediate care and treatment in a treatment facility because the examining physician or psychologist determines the person to be dangerous to self or others or to be gravely disabled."- *(Louisiana Statutes 28-1-53)*

The following definitions are also provided in the Louisiana law:

- "Dangerous to others" means the condition of a person whose behavior or significant threats support a reasonable expectation that there is a substantial risk that he will inflict physical harm upon another person in the near future.
- "Dangerous to self" means the condition of a person whose behavior, significant threats or inaction supports a reasonable expectation that there is a substantial risk that he will inflict physical or severe emotional harm upon his own person.
- "Gravely disabled" means the condition of a person who is unable to provide for his own basic physical needs, such as essential food, clothing, medical care, and shelter, as a result of serious mental illness or substance abuse and is unable to survive safely in freedom or protect himself from serious harm; the term also includes incapacitation by alcohol, which means the condition of a person who, as a result of the use of alcohol, is unconscious or whose judgment is otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

Physician Authority to Unilaterally Issue and Involuntary Hold

Many states require physicians to obtain approval from a court, a police official or other entity before a patient can be involuntarily held for emergency psychiatric evaluation. Some states require the concurrence of more than one physician. This is an unnecessary and cumbersome step that delays patient evaluation and places additional demands on the limited time and resources of emergency physicians. Physicians are more qualified than any non-medical personnel to determine whether a patient needs to be held involuntarily for psychiatric evaluation, and while other authorities may also be empowered to order an involuntary hold, a physician should be authorized to make this determination unilaterally. Several states provide this authorization to physicians, including Colorado. That state's statute reads:

"When any person appears to be mentally ill and, as a result of such mental illness, appears to be an imminent danger to others or to himself or appears to be gravely disabled, a peace officer, a professional person *(defined as a person licensed to practice medicine in this state or a psychologist certified to practice in this state)*, a registered professional nurse as defined in section 12-38-103 (11), C.R.S., who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing, or

a licensed clinical social worker licensed under the provisions of part 4 of article 43 of title 12, C.R.S., upon probable cause and with such assistance as may be required, may take the person into custody, or cause him to be taken into custody, and place him in a facility designated or approved by the executive director for a seventy-two-hour treatment and evaluation."- *(Colorado Revised Statutes 27-10-105)*

Time Limit for a Psychiatric Patient to be Held Involuntarily for an Emergency Evaluation
State laws vary in the amount of time a psychiatric patient can be involuntarily held for an emergency evaluation. Many states allow these patients to be held for 72 hours before they must be evaluated. Given the significant variation in factors that can impact the timeliness of an evaluation, the committee believes the 72-hour time limit is warranted and reasonable. An example of legislative language requiring a 72-hour time limit once an emergency hold has been made (and providing specific authority to emergency physicians to release patients after an examination) can be found in Florida's statute, which reads:

"A patient shall be examined by a physician or clinical psychologist at a receiving facility without unnecessary delay and may, upon the order of a physician, be given emergency treatment if it is determined that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist, a clinical psychologist, or, if the receiving facility is a hospital, the release may also be approved by an attending emergency department physician with experience in the diagnosis and treatment of mental and nervous disorders and after completion of an involuntary examination pursuant to this subsection. However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours."- *(Florida Statutes 294.463)*

Physician Immunity from Liability
Physician decisions related to involuntarily holding patients for psychiatric patients should not be subject to subsequent civil liability. Many states do not provide liability protection in these cases or only provide protection for the decision to involuntarily hold a patient for psychiatric evaluation. Ideally, state law should provide immunity to physicians in determining whether an involuntary hold is, or is not, justified. The Massachusetts statue provides immunity for physicians who determine than an involuntary hold is necessary. Other states could adopt a similar statute that also provides immunity to physicians who determine that an involuntary hold is not required. The Massachusetts law reads as follows:

"Physicians, qualified psychologists, qualified psychiatric nurse mental health clinical specialists and police officers shall be immune from civil suits for damages for restraining, transporting, applying for the admission of or admitting any person to a facility or the Bridgewater state hospital, if the physician, qualified psychologist, qualified psychiatric nurse mental health clinical specialist or police officer acts pursuant to this chapter." – *(Massachusetts Statutes Title 17- 123-22)*

Examples of Other Favorable State Laws
While no single state may have the full range of ideal statutory provisions related to involuntary psychiatric evaluations, some state laws provide physicians with reasonable authority and guidelines to facilitate this process. Below are larger excerpts from a few such examples that also provide chapters with an overview of the range of pertinent issues typically covered in state "emergency commitment laws".

Massachusetts Law

III. COMMITTAL OR RESTRAINT OF PATIENTS
Chapter 123, Section 12 EMERGENCY RESTRAINT OF DANGEROUS PERSONS; ...
(excerpts)

Any physician who is licensed...after examining a person has reason to believe that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness may restrain or authorize the restraint of such person and apply for the hospitalization of such person for a ten day period at a public facility or at a private facility authorized for such purposes by the department.
...In an emergency situation if a physician or qualified psychologist is not available, a police officer, who believes that failure to hospitalize a person would create a likelihood of serious harm by reason of mental illness may restrain such person and apply for the hospitalization...
...An application for hospitalization shall state the reasons for the restraint of such person and any other relevant information
...Whenever practicable, prior to transporting such person, the applicant shall telephone or otherwise communicate with a facility to describe the circumstances and known clinical history and to determine whether the facility is the proper facility to receive such person and also to give notice of any restraint to be used and to determine whether such restraint is necessary.

c. Chapter 123, Section 22 CIVIL LIABILITY
Physicians, qualified psychologists and police officers shall be immune from civil suits for damages for restraining, transporting, applying for the admission of or admitting any person to a facility or the Bridgewater State Hospital, providing said physician, qualified psychologist or police officer acts pursuant to the provisions of this chapter.

Florida Law

INVOLUNTARY EXAMINATION.--

(a) An involuntary examination may be initiated by any one of the following means:

1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination. The order of the court shall be made a part of the patient's clinical record. No fee shall be charged for the filing of an order under this subsection. Any receiving facility accepting the patient based on this order must send a copy of the order to the Agency for Health Care Administration on the next working day. The order shall be valid only until executed or, if not executed, for the period specified in the order itself. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer shall execute a written report

detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this report must send a copy of the report to the Agency for Health Care Administration on the next working day.

3. A physician, clinical psychologist, psychiatric nurse, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the nearest receiving facility for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this certificate must send a copy of the certificate to the Agency for Health Care Administration on the next working day.

(f) A patient shall be examined by a physician or clinical psychologist at a receiving facility without unnecessary delay and may, upon the order of a physician, be given emergency treatment if it is determined that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist, a clinical psychologist, or, if the receiving facility is a hospital, the release may also be approved by an attending emergency department physician with experience in the diagnosis and treatment of mental and nervous disorders and after completion of an involuntary examination pursuant to this subsection. However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours.

(g) A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition specified in s. 395.002 must be examined by a receiving facility within 72 hours. The 72-hour period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary placement, the patient may be offered voluntary placement, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary placement must be entered into the patient's clinical record. Nothing in this paragraph is intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another hospital prior to stabilization, provided the requirements of s. 395.1041(3)(c) have been met.

(h) One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist:

1. The patient must be examined by a designated receiving facility and released; or

2. The patient must be transferred to a designated receiving facility in which appropriate medical treatment is available. However, the receiving facility must be notified of the

transfer within 2 hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist.

(i) Within the 72-hour examination period or, if the 72 hours ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;

2. The patient shall be released, subject to the provisions of subparagraph 1., for outpatient treatment;

3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient, and, if such consent is given, the patient shall be admitted as a voluntary patient; or

4. A petition for involuntary placement shall be filed in the appropriate court by the facility administrator when treatment is deemed necessary; in which case, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available.

Pennsylvania Law

§ 7302. Involuntary emergency examination and treatment authorized by a physician--not to exceed one hundred twenty hours

(a) Application for Examination.--Emergency examination may be undertaken at a treatment facility upon the certification of a physician stating the need for such examination; or upon a warrant issued by the county administrator authorizing such examination; or without a warrant upon application by a physician or other authorized person who has personally observed conduct showing the need for such examination.

(1) Warrant for Emergency Examination.--Upon written application by a physician or other responsible party setting forth facts constituting reasonable grounds to believe a person is severely mentally disabled and in need of immediate treatment, the county administrator may issue a warrant requiring a person authorized by him, or any peace officer, to take such person to the facility specified in the warrant.
(2) Emergency Examination without a Warrant.--Upon personal observation of the conduct of a person constituting reasonable grounds to believe that he is severely mentally disabled and in need of immediate treatment, a physician or peace officer, or anyone authorized by the county administrator may take such person to an approved facility for an emergency examination. Upon arrival, he shall make a written statement setting forth the grounds for believing the person to be in need of such examination.

(b) Examination and Determination of Need for Emergency Treatment.--A person taken to a facility shall be examined by a physician within two hours of arrival in order to determine if the

person is severely mentally disabled within the meaning of section 301 and in need of immediate treatment. If it is determined that the person is severely mentally disabled and in need of emergency treatment, treatment shall be begun immediately. If the physician does not so find, or if at any time it appears there is no longer a need for immediate treatment, the person shall be discharged and returned to such place as he may reasonably direct. The physician shall make a record of the examination and his findings. In no event shall a person be accepted for involuntary emergency treatment if a previous application was granted for such treatment and the new application is not based on behavior occurring after the earlier application.

(c) Notification of Rights at Emergency Examination.--Upon arrival at the facility, the person shall be informed of the reasons for emergency examination and of his right to communicate immediately with others. He shall be given reasonable use of the telephone. He shall be requested to furnish the names of parties whom he may want notified of his custody and kept informed of his status. The county administrator or the director of the facility shall:

> (1) give notice to such parties of the whereabouts and status of the person, how and when he may be contacted and visited, and how they may obtain information concerning him while he is in inpatient treatment; and
> (2) take reasonable steps to assure that while the person is detained, the health and safety needs of any of his dependents are met, and that his personal property and the premises he occupies are secure.

(d) Duration of Emergency Examination and Treatment.--A person who is in treatment pursuant to this section shall be discharged whenever it is determined that he no longer is in need of treatment and in any event within 120 hours, unless within such period:
(1) he is admitted to voluntary treatment pursuant to section 202 of this act; or
(2) a certification for extended involuntary emergency treatment is filed pursuant to section 303 of this act.

§ 7303. Extended involuntary emergency treatment certified by a judge or mental health review officer--not to exceed twenty days

(a) Persons Subject to Extended Involuntary Emergency Treatment.--Application for extended involuntary emergency treatment may be made for any person who is being treated pursuant to section 302 whenever the facility determines that the need for emergency treatment is likely to extend beyond 120 hours. The application shall be filed forthwith in the court of common pleas, and shall state the grounds on which extended emergency treatment is believed to be necessary. The application shall state the name of any examining physician and the substance of his opinion regarding the mental condition of the person.

Colorado Involuntary Psychiatric Care Statute

27-10-105. Emergency procedure.

(1) Emergency procedure may be invoked under either one of the following two conditions:

(a) When any person appears to be mentally ill and, as a result of such mental illness, appears to be an imminent danger to others or to himself or appears to be gravely disabled, a peace officer, a professional person, a registered professional nurse as defined in section 12-38-103 (11), C.R.S., who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing, or a licensed clinical social worker licensed under the provisions of part 4 of article 43 of title 12, C.R.S., upon

probable cause and with such assistance as may be required, may take the person into custody, or cause him to be taken into custody, and place him in a facility designated or approved by the executive director for a seventy-two-hour treatment and evaluation.

(b) Upon an affidavit sworn to or affirmed before a judge which relates sufficient facts to establish that a person appears to be mentally ill and, as a result of such mental illness, appears to be an imminent danger to others or to himself or appears to be gravely disabled, the court may order the person described in the affidavit to be taken into custody and placed in a facility designated or approved by the executive director for a seventy-two-hour treatment and evaluation. Whenever in this article a facility is to be designated or approved by the executive director, hospitals, if available, shall be approved or designated in each county before other facilities are approved or designated. Whenever in this article a facility is to be designated or approved by the executive director as a facility for a stated purpose and the facility to be designated or approved is a private facility, the consent of the private facility to the enforcement of standards set by the executive director shall be a prerequisite to the designation or approval.

(2) Such facility shall require an application in writing, stating the circumstances under which the person's condition was called to the attention of the officer, professional person, registered professional nurse, or licensed clinical social worker and further stating sufficient facts, obtained from his personal observations or obtained from others which he reasonably believes to be reliable, to establish that the person is mentally ill and, as a result of mental illness, an imminent danger to others or to himself or gravely disabled. The application shall indicate when the person was taken into custody and who brought the person's condition to the attention of the officer, professional person, registered professional nurse, or licensed clinical social worker. The application shall be kept on file by the seventy-two-hour treatment and evaluation facility for at least five years, and a copy shall be furnished to the person being evaluated.
(3) If the seventy-two-hour treatment and evaluation facility admits the person, it may detain him for evaluation and treatment for a period not to exceed seventy-two hours, excluding Saturdays, Sundays, and holidays if evaluation and treatment services are not available on those days. For the purposes of this subsection (3), evaluation and treatment services are not deemed to be available merely because a professional person is on call during weekends or holidays. If, in the opinion of the professional person in charge of the evaluation, the person can be properly cared for without being detained, he shall be provided services on a voluntary basis.

(4) Each person admitted to a seventy-two-hour treatment and evaluation facility under the provisions of this article shall receive an evaluation as soon after he is admitted as possible and shall receive such treatment and care as his condition requires for the full period that he is held. Such person shall be released before seventy-two hours have elapsed if, in the opinion of the professional person in charge of the evaluation, the person no longer requires evaluation or treatment. Persons who have been detained for seventy-two-hour evaluation and treatment shall be released, referred for further care and treatment on a voluntary basis, or certified for treatment pursuant to section 27-10-107.

27-10-107. Certification for short-term treatment.
(1) If a person detained for seventy-two hours under the provisions of section 27-10-105 or a respondent under court order for evaluation pursuant to section 27-10-106 has received an evaluation, he may be certified for not more than three months of short-term treatment under the following conditions:

(a) The professional staff of the agency or facility providing seventy-two-hour treatment and evaluation has analyzed the person's condition and has found the person is mentally ill and, as a result of mental illness, a danger to others or to himself or gravely disabled.
(b) The person has been advised of the availability of, but has not accepted, voluntary treatment; but, if reasonable grounds exist to believe that the person will not remain in a voluntary treatment program, his acceptance of voluntary treatment shall not preclude certification.
(c) The facility which will provide short-term treatment has been designated or approved by the executive director to provide such treatment.

(2) The notice of certification must be signed by a professional person on the staff of the evaluation facility who participated in the evaluation and shall state facts sufficient to establish reasonable grounds to believe that the person is mentally ill and, as a result of mental illness, a danger to others or to himself or gravely disabled. The certification shall be filed with the court within forty-eight hours, excluding Saturdays, Sundays, and court holidays, of the date of certification. The certification shall be filed with the court in the county in which the respondent resided or was physically present immediately prior to his being taken into custody.

(3) Within twenty-four hours of certification, copies of the certification shall be personally delivered to the respondent, and a copy shall be kept by the evaluation facility as part of the person's record. The respondent shall also be asked to designate one other person whom he wishes informed regarding certification. If he is incapable of making such a designation at the time the certification is delivered, he shall be asked to designate such person as soon as he is capable. In addition to the copy of the certification, the respondent shall be given a written notice that a hearing upon his certification for short-term treatment may be had before the court or a jury upon written request directed to the court pursuant to subsection (6) of this section.

(4) Upon certification of the respondent, the facility designated for short-term treatment shall have custody of the respondent.
(5) Whenever a certification is filed with the court, the court, if it has not already done so under section 27-10-106 (10), shall forthwith appoint an attorney to represent the respondent. The court shall determine whether the respondent is able to afford an attorney. If the respondent cannot afford counsel, the court shall appoint either counsel from the legal services program operating in that jurisdiction or private counsel to represent the respondent. The attorney representing the respondent shall be provided with a copy of the certification immediately upon his appointment. Waiver of counsel must be knowingly and intelligently made in writing and filed with the court by the respondent. In the event that a respondent who is able to afford an attorney fails to pay the appointed counsel, such counsel, upon application to the court and after appropriate notice and hearing, may obtain a judgment for reasonable attorney fees against the respondent or person making request for such counsel or both the respondent and such person.

(6) The respondent for short-term treatment or his attorney may at any time file a written request that the certification for short-term treatment or the treatment be reviewed by the court or that the treatment be on an outpatient basis. If review is requested, the court shall hear the matter within ten days after the request, and the court shall give notice to the respondent and his attorney and the certifying and treating professional person of the time and place thereof. The hearing shall be held in accordance with section 27-10-111. At the conclusion of the hearing, the court may enter or confirm the certification for short-term treatment, discharge the respondent, or enter any other appropriate order, subject to available appropriations.

(7) Records and papers in proceedings under this section and section 27-10-108 shall be maintained separately by the clerks of the several courts. Upon the release of any respondent in

accordance with the provisions of section 27-10-110, the facility shall notify the clerk of the court within five days of the release, and the clerk shall forthwith seal the record in the case and omit the name of the respondent from the index of cases in such court until and unless the respondent becomes subject to an order of long-term care and treatment pursuant to section 27-10-109 or until and unless the court orders them opened for good cause shown. In the event a petition is filed pursuant to section 27-10-109, such certification record may be opened and become a part of the record in the long-term care and treatment case and the name of the respondent indexed.

(8) Whenever it appears to the court, by reason of a report by the treating professional person or any other report satisfactory to the court, that a respondent detained for evaluation and treatment or certified for treatment should be transferred to another facility for treatment and the safety of the respondent or the public requires that the respondent be transported by a sheriff, the court may issue an order directing the sheriff or his designee to deliver the respondent to the designated facility.