Involuntary treatment petition by service provider

Number: INFORMAL

Date: December 12, 2007

The Honorable Donald R. Moran, Jr.
Chief Judge
Fourth Judicial Circuit of Florida
Duval County Courthouse
Jacksonville, Florida 32202

Dear Judge Moran:

You ask whether non-lawyer employees of corporate service providers may file petitions for involuntary treatment on behalf of their corporate employer pursuant to section 397.695, Florida Statutes, and, if not, whether petitions filed by such non-lawyers should be stricken with leave to amend through counsel. You also question whether petitions for treatment must include findings and recommendations of the assessment performed.

Your questions involve an interpretation of the Marchman Act, Chapter 397, Florida Statutes, relating to the requirements for a petition for involuntary treatment. The act establishes procedures for the involuntary assessment and stabilization of individuals who are substance abuse impaired and the involuntary post-assessment substance abuse treatment of such individuals. You state that in your circuit, petitions for involuntary treatment, filed pursuant to Part G of the Act, are frequently filed by non-lawyer employees of corporate service providers that assess and provide substance abuse treatment. Often, the petitions do not contain the appropriate information, and the judges in your circuit have differing views as to whether the inadequate petitions should be dismissed.

Section 397.695(1), Florida Statutes, provides:

"If the respondent is an adult, a petition for involuntary treatment may be filed by the respondent's spouse or guardian, any relative, *a service provider*, or any three adults who have personal knowledge of the respondent's substance abuse impairment and his or her prior course of assessment and treatment." (e.s.)

Subsection (2) of the act provides that if the respondent is a minor, "a petition for involuntary treatment may be filed by a parent, legal guardian, or *service provider*." (e.s.)

The plain language of the act states that a service provider may file a petition for involuntary treatment. Section 397.311(28), Florida Statues, defines "[s]ervice provider" or "provider" to mean "a public agency, a private for-profit or not-for-profit agency, a person who is a private practitioner, or a hospital licensed under this chapter or exempt from licensure under this chapter."[1]

It is well settled in Florida that corporations are not allowed to represent themselves in a judicial proceeding without legal counsel acting on their behalf.[2] The Legislature, however, has

designated that a service provider may file a petition for involuntary treatment pursuant to section 397.695, Florida Statutes, without making it clear as to whether a service provider which is a for-profit or not-for-profit corporation must be represented by legal counsel in the proceeding. This confusion is compounded by the Legislature's provision in section 397.6811, Florida Statutes, for petitioning for the involuntary assessment and stabilization of a respondent. The section states:

"(1) If the person *upon whose behalf the petition is being filed* is an adult, a petition for involuntary assessment and stabilization may be filed by the respondent's spouse or guardian, any relative, a private practitioner, the *director of a licensed service provider or the director's designee*, or any three adults who have personal knowledge of the respondent's substance abuse impairment.
(2) If the person *upon whose behalf the petition is being filed* is a minor, a petition for involuntary assessment and stabilization may be filed by a parent, legal guardian, legal custodian, or licensed service provider." (e.s.)

Given the statutory recognition that the petition is being filed on behalf of the respondent and the ability of individuals and entities other than the director of a licensed service provider or the director's designee to file the petition, it would appear that the judicial proceedings at issue here are not a forum in which the interests of the service provider corporation are involved in the traditional sense.

The stated purpose of the act is:

"[T]o provide for a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and treatment services in the least restrictive environment of optimum care that protects and respects the rights of clients, especially for involuntary admissions, primarily through community-based private not-for-profit providers working with local governmental programs involving a wide range of agencies from both the public and private sectors."[3]

This would not be a case in which the service provider's legal rights or liabilities are at issue. Rather, the service provider is statutorily placed in the position of being responsible for ensuring individuals receive needed treatment and filing the petition for such treatment on the respondent's behalf. The service provider is one of several specified parties who may petition the court for involuntary treatment of a respondent and, as noted above, is not necessarily a corporate entity.

It is not within the authority of this office to make a determination whether such a statutorily prescribed procedure violates Florida Bar Rules, nor may this office direct a judicial officer to ignore the direction of the Legislature. While it is not clear that section 397.695(1), Florida Statutes, requires a service provider to be represented by an attorney in order to file a petition for involuntary treatment, such a requirement would appear to place a burden upon corporate service providers that is not placed upon others with the authority to file petitions for involuntary treatment.

Should you, in your capacity as a judicial officer reviewing the petition for involuntary treatment,

determine that the petition has been filed by an individual who is not statutorily authorized to do so, then it would be within your authority to dismiss the petition. Whether such petition is dismissed with prejudice or with leave to amend would be a decision you must make in exercising your judicial powers.

Section 397.6951, Florida Statutes, prescribes the contents of a petition for involuntary treatment as follows:

"A petition for involuntary treatment must contain the name of the respondent to be admitted; the name of the petitioner or petitioners; the relationship between the respondent and the petitioner; the name of the respondent's attorney, if known, and a statement of the petitioner's knowledge of the respondent's ability to afford an attorney; *the findings and recommendations of the assessment performed by the qualified professional*; and the factual allegations presented by the petitioner establishing the need for involuntary treatment, including:

(1) The reason for the petitioner's belief that the respondent is substance abuse impaired; and
(2) The reason for the petitioner's belief that because of such impairment the respondent has lost the power of self-control with respect to the substance abuse; and either
(3)(a) The reason the petitioner believes that the respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or
(b) The reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care." (e.s.)

Thus, the Legislature has given direction as to what must be contained within a petition for involuntary treatment and specifically requires that the findings and recommendations of the assessment performed by the qualified professional be included. Whether a particular petition conforms to these statutory requirements is a determination that must be made by the judicial officer reviewing the petition. I have not found, nor have you directed my attention to any judicial rule or statute that would require that petitions for involuntary treatment that are insufficient be treated in any manner differently than any other judicial pleading.

I trust that these informal comments will be of assistance to you in resolving this matter. It may be advisable to seek Legislative clarification in order to determine whether non-lawyer employees are authorized to file petitions for involuntary treatment under section 397.695, Florida Statutes.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See also* section 397.311(18), Fla. Stat., defining "[l]icensed service provider" to include a public agency under Chapter 397, a private for-profit or not-for-profit agency under Chapter 397, a physician or any other private practitioner licensed under the chapter, or a hospital that offers substance abuse impairment services through one or more enumerated licensable service components. Paragraphs (a) – (i), subsection (18) set forth service components which may be used by a hospital to offer substance abuse impairment services, including addiction receiving facilities, detoxification (using medical and psychological procedures and a supportive counseling regimen), intensive inpatient treatment, residential treatment, day and night treatment, outpatient treatment, medication and methadone maintenance treatment, prevention, and intervention.

[2] *See Quinn v. Housing Authority of Orlando*, 385 So. 2d 1167 (Fla. 5th DCA 1980); *Nicholson Supply Co. v. First Federal Savings & Loan Association*, 184 So. 2d 438 (Fla. 2d DCA 1966) (a corporation must be represented by an attorney when it appears in the courts of the State of Florida).

[3] Section 397.305(2), Fla. Stat.