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Frequently Asked Questions
Maryland Department of Health Assisted Outpatient Treatment Program(AOT)
DRAFT Regulations Informal Comment Period
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AOT Petition Filing Process

MDH Proposed Pre-Petition Referral & Review Process

1. Does the proposed pre-petition process exceed statutory authority, given that the statute does not authorize an alternative process in lieu of filing a petition?

The Department is reconsidering the pre-petition process based on feedback from the community. The process as drafted is optional and individuals would be able to file without going through the pre-petition process. Draft regulation 10.21.XX.08, which describes the pre-petition process, states: *“In lieu of filing a petition for AOT, an individual **may** submit a request for Presentation to the Department on a form approved by the Department.”*

The goal of the pre-petition process is to provide access to the AOT process for laypeople who may lack the resources to hire counsel, lack awareness of what a petition should consist of, or not have the appropriate context to file a petition. The process is designed to protect patient confidentiality and privacy by avoiding the need for a court order to allow a lay petitioner access to a respondent’s medical records.

The process additionally provides a pathway for the Department to assist with a psychiatric evaluation for referred individuals who have not been evaluated by a psychiatrist but are willing to be evaluated. The goal of this is to avoid the use of the emergency petition process to obtain an evaluation. The process also aims to reduce confusion for the courts and alleviate stress on lay petitioners who find civil procedure requirements, like service of process, complicated.

2. On what legal basis do the draft regulations include the Department as a potential AOT filer when the statute does not?

The Department believes that it has the authority to file as a party with a legitimate interest in the welfare of the respondent, given the Department's operation of several state psychiatric hospitals and the length of the waiting list for hospital admission. If an individual has the potential to be committed to a state hospital in the future, the Department has a legitimate interest in supporting the individual in the community to avoid that admission. The Department may also file upon discharge of individuals from the State facilities who would benefit from AOT once they are in the community.

3. What is the role of an attorney during this proposed pre-petition process, given that it occurs outside the court's formal review? Where in the pre-petition process is an individual's statutory right to counsel reflected—particularly for individuals currently in jail who are already represented parties?

The Department is reconsidering the pre-petition process based on feedback from the community. Because the pre-petition process is voluntary, petitioners with counsel will likely not utilize it and will instead file directly with the courts. As in the current emergency petition process, respondents are not entitled to notice that a party is considering filing an action or that a clinician is consulting with other clinical staff to determine whether it is appropriate to file a petition. Once the petition is filed, the legal proceeding commences.

Individuals who are already represented parties in a criminal action are generally not presumed to be represented in a civil matter, but if the Office of the Public Defender would be willing to accept service of AOT petitions on behalf of their clients, the Department will add this information to the guidance being offered to petitioners.

Any individual for whom a petition is filed has the right to counsel once the petition is filed. Once the proceeding has commenced, any individual, including one who is incarcerated, would have the opportunity to request a public defender or hire an attorney of their choice.

4. How can optional requests for psychiatric evaluations made through the proposed pre-petition process function to support accurate petition filing for individuals who have not been previously evaluated?

An AOT petition cannot be filed without an accompanying psychiatrist's affidavit based on an examination within the past 30 days, as this is a statutory requirement

[\[Health-General Article, §10–6A–04\(C\), Annotated Code of Maryland\]](#). The proposed pre-petition process, an optional process as outlined in regulation, provides a pathway for the Department to assist with obtaining a psychiatric evaluation for referred individuals who have not been evaluated by a psychiatrist.

The Department envisions this being a situation in which a potential respondent might voluntarily agree to be evaluated.

5. What is the timeline for Departmental approval referenced in Regulation 10.21.XX.08, and what authority supports this approval process? Moreover, if a request is submitted under 10.21.XX.08?

There is no specific timeline proposed. However, the requirement to file a petition within 30 days of the psychiatrist's evaluation will influence the timeline.

6. Can the Department explain the legal basis for Regulation .08(B), which is mandatory (“shall”) and requires staff to review petitions, request medical records, and contact respondents? How does this comply with privacy protections that prohibit obtaining medical records for the purpose of pursuing legal action, and how does contacting respondents prior to attorney representation comport with the statutory right to counsel at all stages?

MDH's authority to file a petition stem from its role as an operator of a mental health program, as defined in [7.5-101](#), and potentially as an individual with a legitimate interest in the respondent's welfare, given the Secretary's broad authority. MDH has no intention of being the finder of fact, as that role remains with the circuit court; MDH's pre-petition review determines if a petition merits moving forward, similar to their existing role in involuntary admission proceedings.

AOT Petition Filing

1. What is the statutory basis for authorizing a director of a funded mental health program—who may not have direct knowledge of an individual—to file an AOT petition instead of the individual’s direct care provider?

Language in statute directly authorizes the director of a state-funded mental health program to file an AOT petition [\[Health-General Article, §10–6A–04, Annotated Code of Maryland\]](#).

2. Can Psychiatric Emergency Services (PES) staff qualify as “an individual over 18 with a legitimate interest” and therefore serve as petitioners? Can the emergency

psychiatrist serve as the petitioner, or would serving as the evaluator within 30 days preclude them from petitioning under the statute?

Yes, the regulation defines "legitimate interest" to include frequent contact with the individual and a treating relationship, which PES staff could meet. A psychiatrist who evaluated an individual within 30 days prior to filing and is willing to complete an affidavit could potentially also serve as the petitioner if they meet the legitimate interest qualification.

- 3. How will the State AOT Team coordinate with treating or existing psychiatrists, particularly when petitions are filed outside the State's team? What mechanism will ensure the State team is informed when petitions originate from external providers?**

Per statute, upon the filing of an AOT petition, the circuit court is required to notify several parties of the filing, including the Department. The draft regulations specify several mechanisms by which the AOT care coordination team may consider the input of treating/existing providers in development of the AOT treatment plan [10.21.XX.11(M)].

- 4. What statutory provision defines what it means to "file a petition"?**

Statutory provisions on filing a petition, including petition content, individual eligible to file, required notifications, etc. are outlined in [Health-General Article, §10-6A-04, Annotated Code of Maryland](#).

- 5. Under Regulation 10.21.XX.08, what is the required process if the outpatient treating psychiatrist—who has evaluated the individual within the past 30 days—disagrees with the AOT petition? How is that disagreement handled, and what guidance governs the outcome?**

An outpatient treating psychiatrist who disagrees with an AOT petition does not have to sign the affidavit. If the petitioner finds somebody else to sign the affidavit, the respondent could certainly call their own psychiatrist who does not think AOT is appropriate as a witness and later testify in front of a judge who will make the decision.

- 6. Is a jail-based mental health program considered a "community treatment program" for purposes of AOT, and if not, who is responsible for filing petitions for incarcerated individuals—especially in counties without full-time psychiatrists?**

The statute explicitly notes that mental health treatment received in a correctional facility may satisfy one of the prerequisite criteria for Assisted Outpatient Treatment (AOT). This

means an individual can be referred directly from jail, with the understanding that they are transitioning back into the community. In such cases, the referral would typically come from the mental health team such as a social worker or any party with a legitimate interest, as permitted under the statute. This could include a psychologist, psychiatrist, or a re-entry team. In situations where there are no full-time psychiatrists, the psychiatrist from the care coordination team can perform an evaluation if needed and if the individual is willing to participate in an evaluation. Additionally, the Department of Corrections maintains the authority to approve individuals entering the facility for assessment.