



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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August 22, 2019

TO: Michigan Court Forms Committee, Mental Health and Commitment Workgroup

FROM: Rebecca A. Schnelz, Forms and Resources Analyst

RE: Agenda and Materials for **September 12, 2019 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa, downtown Lansing

Below is the agenda for the September 12, 2019 meeting of the Michigan Court Forms Committee, Mental Health and Commitment Workgroup. The meeting will be held in room 1S-69 and will begin at 9:30 a.m. Lunch reservations have been made for you. **If you cannot attend, please contact me at least two days before the meeting.** Please note that our office is located at 925 W. Ottawa Street, Lansing, MI 48915.

Please bring these agenda materials to the meeting. Although documentation is provided with the agenda, it would also be helpful to bring a copy of the Michigan Court Rules and any other resources you believe are necessary.

1. **Minor Changes**

PCM 214, Initial Order After Hearing on Petition for Mental Health Treatment

A change will be made to correct the reference in item 17b. The reference currently reads "18a." It will be modified to "17a."

Draft provided.

PCM 245, Notice of Inability to Secure Evaluation/Examination

An additional line will be added to the signature block for the person completing the form to print his or her name.

Draft provided.

PCM 231, Order for Report After Notification and Report

A citation to MCL 330.1469a will be added to the bottom of the form.

Draft provided.

PCM 237, Petition for Continued Hospitalization of Minor

References to “mother” and “father” in the party grid will be changed to “parent”

Draft provided.

2. PCM 201, Petition for Mental Health Treatment

- A. A suggestion was made to add questions to this form as to whether the individual has a durable power of attorney or an advance directive. There is no statute that requires the information be on the petition. The suggestor noted, however, that in MCL 330.1468(4) and (6), the issue of whether the individual has either a power of attorney or advance directive must be addressed in relation to the development of an assisted outpatient treatment plan. Having the information provided on the petition would assist the court in gathering that information for consideration.

Should the form be modified?

- B. A probate register has suggested that item 9 of this form be modified to specifically list the three options for treatment that are available in all situations, i.e. hospitalization, assisted outpatient treatment, or combined hospitalization and assisted outpatient treatment. Specifically, the suggestor recommends modifying all relevant PCM forms so that the treatment options are consistently provided as three distinct options throughout.

Should this form be modified?

- C. A probate judge has suggested adding questions to the petition regarding the following:
- any known diagnoses of the individual
 - information on known medications and whether the individual takes them as prescribed
 - information specifically regarding the most recent event that was an issue

Should questions regarding these topics be added to the form?

3. **PCM 205, Order Following Hearing on Objection by Minor to Hospitalization/Administrative Admission**

A suggestion was received to reword the last sentence under item 9 on the form for the reason that it is awkward. The sentence currently reads, “[n]o order sustaining the objection will be entered.” The suggestion is to reword the sentence so that it reads, “[t]he objection is denied.”

The current language is written to coincide with the wording of MCL 330.1498n which reads:

(2) The court shall sustain an objection to hospitalization and order the discharge of the minor unless the court finds by clear and convincing evidence that the minor is suitable for hospitalization. If the court does not sustain the objection, an order shall not be entered, the objection shall be dismissed, and the hospital shall continue to hospitalize the minor.

Should the form be modified?

Public Comments:

- It’s ironic that we are considering a change to a form when the statute says: “an order shall not be entered.”

In any event, I understand the reason for the form and the reason for having #9 on the form. I would suggest that the proposed change be made, with the language more closely mirroring the statute: “The objection is dismissed.”

Thank you for your consideration.
Cindy Rude
Calhoun County Probate Court Manager/Register

4. **PCM 208, Clinical Certificate**

- A. A suggestion was received to either rewrite or remove the statement on the form that the examiner is to read to the individual because there is no specific requirement for the statement in MCL 330.1435. The concern is that there have been occasions where the doctor has not read the statement and the petition has been dismissed due to lack of a proper clinical certificate.

With the exception of a few non-substantive word changes, the statement has been on the form since 1980. Part of the content of the statement comes from MCL 330.1750(2) in relation to privileged communications. That statute provides:

(2) Privileged communications shall be disclosed upon request under 1 or more of the following circumstances:...

(b) If the privileged communication is relevant to a matter under consideration in a proceeding governed by this act, but only if the patient was informed that any communications could be used in the proceeding.

(e) If the privileged communication was made during an examination ordered by a court, prior to which the patient was informed that a communication made would not be privileged, but only with respect to the particular purpose for which the examination was ordered...

A clinical certificate is defined by MCL 330.1400(a) as:

(a) "Clinical certificate" means the written conclusion and statements of a physician or a licensed psychologist that an individual is a person requiring treatment, together with the information and opinions, in reasonable detail, that underlie the conclusion, on the form prescribed by the department or on a substantially similar form.

Alternatively, a probate register suggested adding the following statement to the certification at the end of the form: I have read the required statement at the top of the first page of this certificate to the individual before proceeding with any questions.

Should the language be modified or removed from the form? Alternatively, should language be added to the certification?

- B. A suggestion was received to add options under the signature line for the signatory to indicate whether they are a licensed psychologist, physician, or psychiatrist.

As a result of the 2015 workgroup discussions, item 1 was added to the form and a line for designating the professional's title was removed from the signature block. Item 1 on the form requires the person completing it to indicate whether they are a psychiatrist, licensed psychologist, or physician. The change was made to clarify that the form could be completed by a psychiatrist.

The current suggestion was made to address a concern that persons other than the individual that did the examination are filling out and signing the form.

Should options be added under the signature line to clarify a person's authority for filling out the form?

- C. A suggestion was received to add an option box under item 10 of the form to allow a recommendation specifically for a combined treatment order, which is not currently available on the form. In addition, it was suggested that a fill-in blank be added to each checkbox item under item 10 to detail the proposed maximum number of treatment days.

Alternatively, a probate register has suggested that item 10 of this form be modified to specifically list the three options for treatment that are available in all situations, i.e. hospitalization, assisted outpatient treatment, or combined hospitalization and assisted outpatient treatment. Specifically, the suggestor recommends modifying all relevant PCM forms so that the treatment options are consistently provided as three distinct options throughout.

Should this form be modified?

5. **PCM 214, Initial Order After Hearing on Petition for Mental Health Treatment**
PCM 217a, Order to Modify Order for Assisted Outpatient Treatment or Combined Hospitalization and Assisted Outpatient Treatment
PCM 219, Second or Continuing Order for Mental Health Treatment
PCM 222, Order After Hearing on Petition for Discharge from Continuing Mental Health Treatment
PCM 244, Order After Notice of Noncompliance with Assisted Outpatient Treatment or Combined Hospitalization and Assisted Outpatient Treatment Order

- A. Multiple suggestions were received to add checkboxes to the appropriate items on the forms that would detail the particular services to be provided to the individual under an assisted outpatient treatment order. One of the suggestors noted that doctors are not administering medication because the orders they receive do not specifically indicate that it can be given.

The forms currently have writing space for the judge to list the particular services ordered. PCM 214, PCM 219, and PCM 222 also include a reference to the statute for specific service options. If the checkbox options are not added to the forms, this reference will be modified to correctly reflect the citation to MCL 330.1468(2)(d).

Should the forms be modified?

- B. A probate register has suggested that item 11 be removed from PCM 214 and PCM 219 and that items 12 and 13 be revised to more clearly reflect the three options for treatment that are available in all situations, i.e. hospitalization, assisted outpatient treatment, or combined hospitalization and assisted outpatient treatment. Specifically, the suggestor recommends modifying all relevant PCM forms so that the treatment options are consistently provided as three distinct options throughout. Item 11 would be unnecessary because the appropriate hospital is named in item 9.

Alternatively, a probate judge suggested that item 13 on PCM 214 be modified. Specifically, the suggestion is to remove the second checkbox under item 13 and change the language for the first checkbox, b, from “shall” to “may,” to allow initial hospitalization for as long as needed.

Should the forms be modified?

6. **PCM 216, Order and Report on Alternative Mental Health Treatment**

A suggestion was received to add an option for alternative outpatient treatment only under item 5 of this form.

MCL 330.1453a provides:

Upon receipt of documents described in section 452, the court shall order a report assessing the current availability and appropriateness for the individual of alternatives to hospitalization, including alternatives available following an initial period of court-ordered hospitalization...

Should the form be modified?

Draft provided.

7. PCM 218, Petition for Second or Continuing Mental Health Treatment Order

- A. Suggestions were received to modify item 4 of the form by adding an option for the petitioner to request a combined hospitalization and assisted outpatient treatment order for not more than 90 days. The purpose of the addition would be to make the options that the petitioner can request under item 4 match the options the judge can order under item 13.

Should the form be modified? Draft provided.

- B. A suggestion was received for the committee to review the language of item 8 on the form and whether the inclusion of the word “physical” would leave a petitioner to believe that this item involved treatment other than mental health treatment.

Should the language be revised?

8. PCM 219, Second or Continuing Order for Mental Health Treatment

A suggestion was received that the current language of the form may need to be updated due to the holding in *In re Charles Portus*, 325 Mich. App. 374 (2018), which cited MCL 330.1469a in regard to findings that the court must make regarding alternatives to hospitalization. The suggestor stated that, under *In re Portus*, the form should include a finding related to MCL 330.1469a(1)(b) as to “whether there is an agency or mental health professional available to supervise the individual's treatment program.”

Should the form be modified?

**9. PCM 218, Petition for Second/Continuing Mental Health Treatment Order
PCM 219, Second/Continuing Order for Mental Health Treatment**

A probate register has suggested splitting each of these forms into two forms so that there are individualized forms for second and continuing petitions and orders in order to reduce confusion. In addition, it is suggested to add a blank space next to the word “continuing”

in the titles of forms regarding continuing petitions and orders. The purpose would be to provide a space to specify the sequential number of the petition or order.

Should the forms be modified?

10. PCM 223, Certificate of Legal Counsel/Waiver of Attendance

A suggestion was received to update the language under the waiver portion of the form to read “mental health treatment” rather than “admission/hospitalization/assisted outpatient treatment” in order to be consistent with statutory language.

Should the language be modified?

11. PCM 226, Six-Month Review Report

A. It has been suggested that the option boxes regarding treatment be removed from item 7 given that the type of treatment ordered is specified in item 3. This would help prevent confusion between the term “assisted outpatient treatment” for individuals with a mental illness and “outpatient program of care and treatment” for a person with an intellectual disability.

Should the form be modified?

B. MCL 330.1468 details the assisted outpatient treatment and services that a court can order the individual receives. MCL 330.1468(2)(d)(ix) provides the option for:

Substance use disorder testing for individuals with a history of alcohol or substance use and for whom that testing is necessary to assist the court in ordering treatment designed to prevent deterioration. A court order for substance use testing is subject to review hearing once every 180 days.

The authority for PCM 226 comes from MCL 330.1483(1) which states:

The results of each periodic review shall be made part of the individual's record, and shall be filed within 5 days of the review in the form of a written report with the court that last ordered the individual's treatment,...

A suggestion was made that the report form should include information regarding any substance abuse testing so that the court may perform the 180 day review required under MCL 330.1468.

Should information regarding substance abuse testing be added to the form?

12. **PCM 237, Petition for Continued Hospitalization of Minor
PCM 240, Petition and Order Regarding Transport of Minor**

It has been suggested that these two forms should include a space for the petitioner to include information on whether there is a court with prior continuing jurisdiction over the minor. MCR 5.112 provides:

Proceedings affecting the person of a minor subject to the prior continuing jurisdiction of another court of record are governed by MCR 3.205, including the requirement that petitions in such proceedings must contain allegations with respect to the prior proceedings.

MCR 3.205(A) states:

(A) Jurisdiction. If an order or judgment has provided for continuing jurisdiction of a minor and proceedings are commenced in another Michigan court having separate jurisdictional grounds for an action affecting that minor, a waiver or transfer of jurisdiction is not required for the full and valid exercise of jurisdiction by the subsequent court.

Should the forms be modified to include information regarding courts with prior continuing jurisdiction of the minor?

13. **Discussion regarding stipulation process**

Multiple suggestions have been received to modify PCM 223, Certificate of Legal Counsel/Waiver of Attendance so that it may also be used to provide the court with detailed information regarding an individual's stipulation to treatment under MCL 330.1455(2).

In addition, a request was received to put signature lines on forms ordering treatment so that parties may stipulate to an order.

MCL 330.1455(2) provides that, “[t]he subject of the petition under [MCL 330.1434], after consultation with counsel, may stipulate to the entry of any order for treatment.” By reference to MCL 330.1434, this subsection does not appear to apply to petitions for second or continuing treatment under MCL 330.1473.

In reviewing possible changes to PCM 223 as well as the forms that order treatment in order to incorporate stipulation, several topics need to be considered so that an appropriate process for forms utilization can be created. These topics include, but may not be limited to:

- What is the process for obtaining and entering a stipulated order for treatment?
- Does the ability to stipulate apply only to petitions for mental health treatment under MCL 330.1434, or does another statute provide authority for stipulating to second and continuing orders?
- Does a stipulation apply only to the finding that the individual has a mental illness and is in need of treatment? Or does an individual have the ability to stipulate specifically to hospitalization, assisted outpatient treatment, or combined treatment?
- If the individual can stipulate to assisted outpatient treatment, should the stipulation specify which available treatments they agree to?
- Can the individual stipulate to specific maximum days of treatment that are different, but no greater than, the statutory maximums?
- Should treatment orders include space for the individual and attorneys to sign indicating it is a stipulated order?
- Should a separate form for stipulation be created to assist in the process and to keep the issue clearly separate from an individual’s right to waive attendance or not?

Should options regarding stipulation be added to any of the forms? What should those options be? To which forms would they apply?

14. **New Form – Order to Appoint Appellate Counsel**

A probate register has suggested the creation of a form for use in the appointment of an attorney for the appeal of a mental health order.

Should an order be created?