Involuntary Outpatient Commitment (IOC) was adopted in New Jersey as a new form of civil commitment in 2009, pursuant to amendments to the existing civil commitment statutes in P.L. 2009, c. 115. The amendments that created IOC became effective in 2010 and implementation began in fiscal year 2012 after funding was made available. Currently, the following counties have fully operational IOC programs: Hudson, Union, Burlington, Essex, Warren and Ocean. In March 2014, a statewide RFP was issued to expand IOC services to the remaining fifteen (15) counties. At present there is an RFP soliciting bids for the remaining counties. The awards for the RFP will be made in June 2014.

The models that exist at this time are funded to provide outpatient clinical services, including case management and intensive outpatient support. Funding is not sufficient to offer supportive employment or housing services, so an individual must have a form of residence or housing as a prerequisite to consideration for involuntary outpatient commitment, and some form of income from employment or public entitlements.

I. LEGAL STANDARD FOR INVOLUNTARY CIVIL COMMITMENT

Under the amended civil commitment statute, the due process standard for inpatient and outpatient commitment is the same. An adult can be civilly committed to either inpatient or outpatient commitment only if s/he has a mental illness as defined in the statute and as a result of that mental illness presents a reasonably foreseeable danger to self, others or property. The commitment can only be involuntary if the individual will not voluntarily accept treatment, and involuntary treatment must be the least restrictive alternative that is available and will ameliorate the danger. N.J.S.A.30:4-4-27.2.

Once this threshold standard is met, a clinician must then determine whether inpatient or outpatient commitment is appropriate and certify that finding on a form approved by the Division of Mental Health and Addiction Services and the Administrative Office of the Courts. N.J.S.A. 30:4-27.2 (hh) defines outpatient treatment as care for *"a* person not in need of inpatient treatment." This definition is further amplified by the requirement that a plan of outpatient treatment be prepared *"for* a patient who has a history of responding to treatment. // N.J.S.A. 30:4-27.2(jj). The definition section of the statute requires that an outpatient plan be considered when a patient has a positive treatment history. To finalize the commitment, the outpatient program psychiatrist and a court must agree that the person is appropriate for outpatient commitment and the court must approve a treatment plan presented by the two providers recommending commitment.

The remainder of this memo focuses on the process for referring a consumer for commitment, and the standards that distinguish the process for inpatient civil commitment from outpatient civil commitment.

II. COMMENCEMENT OF AN ACTION

An action for involuntary outpatient civil commitment can be commenced by (A) a screening referral; (B) alternative or independent application (not through screening, sometimes called "alternate route") or (C) through conversion from inpatient to outpatient. N.J.S.A. 30:4-27.15a(d).

A. SCREENING PROCESS AND INVOLUNTARY OUTPATIENT COMMITMENT

The amendments to the statute provide criteria for a clinician and court to consider as part of the assessment for either inpatient or outpatient commitment. Once the legal standard is met for civil commitment, N.J.S.A. 30:4-27.5 directs a screening service to assign inpatient treatment if the person is imminently or immediately dangerous or if outpatient treatment is deemed inadequate to resolve the person's dangerousness within the reasonably foreseeable future.

Outpatient treatment should be considered if the consumer has a history of positive responses to treatment and is not imminently dangerous, but the dangerousness attributable to the mental illness is reasonably foreseeable and can be adequately addressed by the services provided by an outpatient commitment provider that is available. Note that the consumer has to be refusing to accept this level of service to be on involuntary commitment status. *See,* N.J.5.A. 30:4-27.2 (jj), (kk).

SCREENING DOCUMENT

The screening document requires the screener to:

- document whether or not the risk of the individual's dangerousness is imminent or only likely to happen in the reasonably foreseeable future;
- document the individual's current mental health condition; and
- document the individual's history of treatment and whether or not outpatient treatment is sufficient to resolve the individual's dangerousness.

FIRST CLINICAL CERTIFICATE

When the screening process is initiated in a county without an 10C program, but the individual being screened lives or intends to live in a county with an 10C program, then 10C must be considered by the clinicians assessing the individual. Once the screener and screening psychiatrist or physician filling out the first clinical certificate determine that the individual meets criteria for commitment, they must consider whether outpatient commitment is appropriate. If so, the screening psychiatrist or physician must also certify that the individual's dangerousness, while reasonably foreseeable, is not imminent and outpatient treatment is sufficient to render the patient unlikely to be dangerous in the reasonably foreseeable future.

The screening service may then make the referral to the 10C provider to evaluate the consumer. *See* N.J.S.A. 30:4-27.5. The 10C program will make an initial determination as to whether, based upon the preliminary assessment, services can be provided. If after consultation with the screening program, the 10C psychiatrist determines that the program that are clinically appropriate and confirms that there is capacity in the program to provide those services. The 10C program will create a preliminary treatment plan using the document attached to this memo. Attachment A.

If the 10C provider determines that the consumer is not appropriate for its services, then the 10C program should communicate that decision to the screening service and the screener will document that 10C, as a less restrictive alternative to hospitalization, was considered and why the consumer was not appropriate for the program.

SECOND CLINICAL CERTIFICATE

A second clinical certificate must:

- Be completed by the 10C psychiatrist (psychiatrist on the patient's treatment team) when commitment to the outpatient program is determined to be appropriate. See, N.J.S.A. 30:4- 27.10(a)(2).

- Include the clinical finding that the individual is not imminently dangerous and can be treated in an outpatient program.

- The screening certificate, 10C's clinical certificate, and treatment plan must be submitted to the court within 72 hours of the completion of the screening certificate. N.J.S.A.30:4-27.9(d).

B. **ALTERNATE OR INDEPENDENT ROUTE (NON-SCREENING ROUTE)**

If the screening service is not used, proceedings for involuntary outpatient commitment may be initiated by filing an application to the court for involuntary outpatient civil commitment. The application must be supported by two clinical certificates, a least one of which is prepared by a psychiatrist, stating that the individual is in need of involuntary commitment to treatment. If the alternate route process is followed, the following documents must be submitted to the court for review:

- Application for outpatient civil commitment See, R.4:74-7(b)(2);
- Two clinical certificates, at least one of which must be prepared by a psychiatrist; and
- An interim plan of outpatient treatment developed by an outpatient treatment program.

If proceedings are instituted by independent application, there shall be no involuntary commitment to treatment prior to entry of a temporary order by the court. See, R. 4:74-7(b)(2).

C. **CONVERSION**

The statute specifically provides a process between review hearings for a CEO of a psychiatric facility to recommend a change in status for a patient from inpatient to outpatient civil commitment. See, N.J.S.A. 30:4-27.1Sa(d). Because the individual is committed on an inpatient status at the time the conversion process is initiated, no application for temporary order of commitment is necessary. As part of the conversion process, the CEO or administrator of the facility or a designee of the CEO or administrator initiates a referral to the court and communicates that referral to the appropriate county adjuster. The completion of the form appended to this memo as Attachment B initiates the conversion process between court hearings. The referral form documents the referral by the facility as well as the disposition (whether the individual has been accepted or rejected by the 10C provider). The completion of the referral and communication to the county adjuster will generate a court hearing so that the court can consider the wisdom of the proposed change in legal status for the individual from inpatient to outpatient status. At the hearing for conversion, testimony shall be taken of the psychiatrist on the patient's treatment team who has conducted a personal examination of the patient as close to the court hearing date as possible, but no more than 5 days before the court hearing. N.J.5.A. 30:4-27.13(b), N.J. R.Ct 4:74-7

III. **TEMPORARY ORDERS FOR OUTPATIENT CIVIL COMMITMENT**

If outpatient commitment is initiated by a screening referral or alternate route commitment, then a temporary court order must be entered if the court finds that there is probable cause that the individual meets criteria for commitment to treatment. N.J.S.A. 30:4-27.2 (m).

There are two types of temporary court orders listed below. The first is a general court order for outpatient commitment which is entered in lieu of an order for inpatient hospitalization. The second type of temporary order of commitment is a hybrid order and was approved and issued for use by the Administrative Office of Courts (AOe) in October 2013. It is an order that was developed to ensure that

there were no gaps in treatment and that individuals were not unnecessarily hospitalized while waiting to return to the community after stabilization.

If the court has received the application for outpatient commitment either through the screening process as described above or through the alternate route process described at N.J.S.A. 30:4-27.10(b) and determines that foreseeable danger can be prevented or mitigated by the treatment plan submitted by the screening service and the IOC provider, then the court must enter a temporary order of commitment.

Attachments C and D are two forms of temporary court orders.

Attachment C: OUTPATIENT CIVIL COMMITMENT ORDER

The first type of temporary court order does not involve any type of involuntary hospitalization and is an order for outpatient civil commitment. For entry of this ex parte order, the court must have the following documents:

- Screening certificate (first clinical certificate)
- Second Clinical certificate
- Involuntary outpatient provider treatment plan

The court must be satisfied by a standard of probable cause that the individual is:

- Mentally ill and by reason of mental illness is dangerous to self, others or property;
- Can be managed in the IOC provider's program; and
- Involuntary commitment to treatment is the least restrictive environment for the consumer to receive clinically appropriate treatment that would ameliorate the danger posed by the consumer.

Attachment D: AMENDED TEMPORARY OUTPATIENT CIVIL COMMITMENT ORDER

The second order is a hybrid of inpatient and outpatient commitment: an amended temporary outpatient civil commitment order intended to be used when an individual needs to be committed to inpatient services initially, but it is likely from history and current condition that s/he will, before a hearing can be held, no longer be immediately dangerous and will be appropriate for outpatient commitment to a program that has evaluated and agreed to accept the person once the imminent danger has passed. The amended order is limited to use in short term care facility settings and allows the inpatient program to transfer the individual to an outpatient commitment program's services upon the treating physician's certification that the danger presented by the mental illness of the individual is manageable in the available IOC program. Attachment D outlines the proofs required by the AOC to use this amended temporary ex parte order. It is important to note that while the consumer may be transferred to an IOC commitment prior to the twenty day initial hearing; since amended temporary order is entered without a hearing, the individual must appear for the initial hearing within 20 days as required by statute and as listed in the amended temporary order. In short, one need not wait for a hearing to be eligible for commitment to outpatient treatment in this special circumstance, but there

remains a requirement for the individual to have his/her status confirmed through the due process of a civil commitment hearing. See, N.J.S.A. 30:4-27.12 and N.J. ct. R. 4:74-7(f).1

The screening or committing physician would describe clinical conditions which would need to be met as a prerequisite to allowing the individual to be committed to 10C, and those conditions would be recited in the order. If converted before the initial hearing, the individual must return to the hospital for that initial hearing.

IV. REVIEW HEARINGS

Once the individual is committed to involuntary treatment through screening referral, independent route, or conversion, review hearings are required by statute. The review hearings for individuals who are committed and not administratively discharged are within six months from the date of the first hearing, within nine months from the date of the first hearing, 12 months from the date of the first hearing and annually thereafter. *See* ,N.J.S.A. 30:4-27.16.

The court must find by clear and convincing evidence that the patient needs continued involuntary commitment to treatment to continue the commitment. If those findings are not supported by the evidence, that court may discharge the person outright, or may discharge the person subject to conditions pursuant to N.J.S.A. 30:4-27.15 (c)(l)if it finds:

- That the patient's history indicates a high risk of re-hospitalization because of the patient's failure to comply with discharge plans or

- That there is substantial likelihood that by reason of mental illness the patient will be dangerous to himself, others or property if the patient does not receive other appropriate and available services that render involuntary commitment to treatment unnecessary.

In ordering the conditional discharge of a patient, the court has found that the patient no longer meets commitment criteria, that the individual is not currently dangerous by reason of mental illness, but through a consensual arrangement with the patient, court and mental health agency in the community, the patient agrees to certain conditions that the court finds necessary to maintain that stability. Those conditions cannot take the form of another sort of commitment to services. [For example the conditions cannot include involuntary commitment to residential drug treatment for the individual, though the clinical conditions can include voluntary participation in alcoholics anonymous.] *See*, N.J.S.A. 30:4-27.15 (c)(2).

1. An issue arose through the county adjusters regarding process when an individual who was initially committed to an IOC program and is subsequently committed on an inpatient status in another county. The inpatient commitment supersedes the earlier IOC commitment and as such, the only legal status at that point is the inpatient commitment. The county that is responsible for the inpatient commitment is responsible for scheduling and following through with the case until discharge. A separate memo regarding adjuster process will issue.

V. NON-COMPLIANCE WITH THE OUTPATIENT COMMITMENT TREATMENT PLAN

An outpatient provider must notify the court, the person's attorney and the county adjuster of any material non-compliance with the plan by the person or of the inadequacy of the plan of outpatient treatment N.J.S.A. 30:4-27.2(u). If the IOC provider believes that a change in the treatment plan would ameliorate any material noncompliance, it must seek the approval of the court for such a modification pursuant to N.J.S.A. 30:4-27.8a. Material noncompliance is generally viewed by the clinical community as behavior that raises the question of whether the IOC program is sufficient to manage the danger presented by the person's mental illness. [2] Additionally, the statute requires that the provider shall notify the "screening services of the material noncompliance or plan inadequacy, as applicable, and the patient shall be referred to a screening services for an assessment to determine what mental health services are appropriate and where those services may be provided in accordance with N.J.S.A. 30:4- 27.5."

The screening service, upon receiving such a referral, will need to determine whether the individual's level of dangerousness is such that he is immediately or imminently dangerous or whether the patient's noncompliance with the outpatient treatment plan means that any foreseeable dangerousness attributable to a mental illness is incapable of being ameliorated by the IOC program. If the consumer is materially non-compliant, the outpatient provider can authorize the police to transport the individual to screening to be evaluated. See, Attachment E, transport authorization form.

VI. DISCHARGE

An individual may be discharged from outpatient commitment by court order, conditionally by court order, or administratively.

[2] This interpretation of the term "material noncompliance" is not a legal definition: it is not defined in the statute nor has it been interpreted by the court. It is intended to reflect the term's current practical application where an IOC program must decide if an individual's inability or unwillingness to participate in IOC services warrants assessment by a screening service.