

TRANSPORTATION FOR EMERGENCY INVOLUNTARY ADMISSION

TCA 33-6-406, TCA 33-6-901ⁱ

SECONDARY TRANSPORTATION AGENT

and

REQUIREMENTS TO REMAIN AT HOSPITAL OR TREATMENT RESOURCE

SECONDARY TRANSPORTATION AGENT

Authorization to designate a secondary agent under TCA 33-6-406

TCA 33-6-406 - <http://tennessee.gov/tccy/tnchild/33/33-6-406.htm>

If the person is certified for admission under § 33-6-404 and is not already at the hospital or treatment resource at which the person is proposed to be admitted, the physician, psychologist, or designated professional who completed the certificate of need shall give the sheriff or the transportation agent designated under chapter 6, part 9 of this title, the original of the certificate and turn the person immediately over to the custody of the sheriff or the transportation agent, who shall transport the person to a hospital or treatment resource that has available accommodations for the person for proceedings under § 33-6-407. Transportation to a state owned or operated hospital or treatment resource may not commence without a certificate of need executed by a mandatory prescreening agent, or by a physician or psychologist as authorized by § 33-6-105.

Abstract

If the individual is to be transported to a treatment facility after a certificate of need is completed in accordance with TN 33-6-404, the certificate of need will be given to the sheriff or, if the sheriff is not able to transport the individual, a *secondary transportation agent* may be designated by the sheriff to transport the individual.

Qualifications and Discretion in Assigning a Secondary Agent under TCA 33-6-901

TCA 33-6-901 - <http://tennessee.gov/tccy/tchild/33/33-6-901.htm>

(a) (1) The sheriff in a county in which a person with mental illness or serious emotional disturbance is to be transported under part 4 or 5 of this chapter, shall transport the person except for persons who are transported by:

(A) A secondary transportation agent under this section;

(B) A municipal law enforcement agency that meets the requirements for a secondary transportation agent under this section and is designated by the sheriff;

(C) A person authorized under other provisions of this title; or

(D) One or more friends, neighbors, other mental health professionals familiar with the person, relatives of the person, or a member of the clergy.

(2) The sheriff may designate a secondary transportation agent or agents for the county for persons with mental illness or serious emotional disturbance whom a physician or mandatory prescreening authority has evaluated and determined do not require physical restraint or vehicle security. A secondary transportation agent shall be available twenty-four (24) hours per day, provide adequately for the safety and security of the person to be transported, and provide appropriate medical conditions for transporting persons for involuntary hospitalization. The sheriff shall take into account in designating a secondary transportation agent or a municipal law enforcement agency both its funding and the characteristics of the persons who will be transported. The sheriff shall consult with the county mayor before designating a secondary transportation agent. A secondary transportation agent has the same duties and authority under this chapter in the detention or transportation of those persons as the sheriff. The designation of a transportation agent other than the sheriff is a discretionary function under § 29-20-205. If a mandatory prescreening agent, physician, or licensed psychologist with health service provider designation, who is acting under § 33-6-404(3)(B), determines that the person does not require physical restraint or vehicle security, then any person identified in subdivision (a)(1)(D) may, instead of the sheriff, transport the person at the transporter's expense.

(b) Transportation of persons to be involuntarily hospitalized is the responsibility of the county in which the person is initially detained. The sheriff or secondary transportation agent providing transportation may bill the county of residence for transportation costs.

(c) The department shall provide training on mental health crisis management for transportation agents and the sheriffs' personnel.

Abstract

A secondary transportation agent must:

1. Be available 24 hours a day
2. Provide adequately for the safety and security of the patient
3. Provide appropriate medical conditions for the transportation

A secondary transportation agent, acting under TN 33-6-406 may include the following entities:

1. A municipal law enforcement agency
2. A person authorized under the provisions of Title 33
3. One or more friends, neighbors, other mental health professionals, relatives, or a member of the clergy. This option may only be used when a mandatory prescreening agent, physician, or licensed psychologist determines the patient does not require physical restraint or vehicle security

It appears there are other individuals or entities (such as EMS or fire department personnel) which may be designated as a secondary transportation agent. As indicated above, this is a discretionary function. See TCA 29-20-205 below for the assignment of a secondary transportation agent as a discretionary act.

A secondary transportation agent may be designated when a physician or prescreening authority has determined the patient does not require physical restraint or vehicle security and after the sheriff has consulted with the county mayor. A secondary transportation agent has the same duties and authority as the sheriff.

The sheriff or secondary transportation agent may bill the patient's county of residence for the costs of transportation. It appears the process of billing is to be determined by the transporting sheriff or secondary agent and that no amount is specified. No provisions appear to have been made for homeless individuals who are residents of other states or countries.

The Tennessee Department of Mental Health is required to "provide training on mental health crisis management for transportation agents and the sheriffs' personnel." Training is provided through Criminal Justice Mental Health Liaisons located throughout the state. There is no requirement to use the Department of Mental Health's training. It is a training the Department of Mental Health offers for interested parties.

Additional Information on Discretionary Acts

TCA 29-20-205 - http://tennessee.gov/tacir/PDF_FILES/Other_Issues/tort.pdf - Page 14

T.C.A. § 29-20-205(1) provides that immunity exists when an injury “arises out of the exercise or performance or the failure to exercise or perform a **discretionary function**, whether or not the discretion is abused” [emphasis added]. The general legal meaning of a discretionary act is one for which there is no hard and fast rule as to course of conduct, thus requiring the exercise of judgement and choice.²¹

A discretionary act contrasts with a ministerial act, which refers to an act that involves obedience to instructions without demanding special discretion, judgement, or skill²² In *Bowers v. City of Chattanooga*, the Tennessee Supreme Court adopted the planning-operational test to determine which governmental acts are entitled to the protection of immunity under T.C.A. § 29-20-205(1)²³. Under the planning-operational test, which is derived from a voluminous collection of case law²⁴ [footnote 24] decisions that rise to the level of planning or policy-making are considered discretionary acts. In *Bowers*, the Court recognized that all acts involve some discretion, but suggested that an examination of the decision-making process often reveals whether a decision involves planning.

Abstract

The assignment of a secondary transportation agent is a discretionary act. “A discretionary act is one for which there is no hard and fast rule as to course of conduct, thus requiring the exercise of judgment and choice.” A discretionary act differs from a ministerial act, which “involves obedience to instructions without demanding special discretion, judgment, or skill.”

²¹ Summarized from Black’s Law Dictionary, 6th Edition, page 467.

²² Summarized from Black’s Law Dictionary, 6th Edition, page 996.

²³ *Bowers ex rel. Bowers v. City of Chattanooga*, 826 S.W.2d 427 (Tenn. 1992).

²⁴ *Ibid.*

REQUIREMENTS TO REMAIN AT HOSPITAL OR TREATMENT RESOURCE

TCA 33-6-406 - <http://tennessee.gov/tccy/tnchild/33/33-6-406.htm>

(b) (1) Before transportation begins, the sheriff or transportation agent shall notify the hospital or treatment resource at which the person is proposed to be admitted as to where the person is and the best estimate of anticipated time of arrival at the hospital or treatment resource.

(2) If the sheriff or transportation agent has given notice and arrives at the hospital or treatment resource within the anticipated time of arrival, then the sheriff or transportation agent is required to remain at the hospital or treatment resource only long enough for the person to be evaluated for admission under § 33-6-407, but not longer than one (1) hour and forty-five (45) minutes. After one (1) hour and forty-five (45) minutes, the person is the responsibility of the evaluating hospital or treatment resource, and the sheriff or transportation agent may leave.

(3) If the sheriff or transportation agent has not given notice as required under subdivision (b)(1) or has not arrived within the anticipated time of arrival, the sheriff or transportation agent shall remain at the hospital or treatment resource as long as it takes to complete the evaluation under § 33-6-407.

(4) In counties having a population of six hundred thousand (600,000) or more according to the 1970 federal census of population or any subsequent federal census, the provisions of subdivisions (b)(1)-(3) do not apply, and the sheriff or transportation agent is relieved of further transportation duties after the person has been delivered to the hospital or treatment resource, and transportation duties shall be assumed by appropriate personnel of the hospital or treatment resource.

Abstract

Before transportation begins, the sheriff or secondary transportation agent must notify the receiving hospital or treatment resource and provide an estimated time frame for arrival. After arriving, the sheriff or secondary transportation agent need only remain long enough for the patient to be evaluated.

The sheriff or secondary transportation agent need not wait longer than a period of 1 hour and 45 minutes if they arrived within the stated estimated time frame for arrival. If the sheriff or secondary transportation agent does not arrive within the stated estimated time frame for arrival, they must wait for the entire duration of the evaluation.

The above mandates do not apply for counties with populations of 600,000 or more. For these counties, the sheriff or secondary transportation agent need only deliver the patient and is not required to remain at the hospital or treatment resource.

DEFINITIONAL REFERENCES

TCA 33-6-403 - <http://tennessee.gov/tccy/tnchild/33/33-6-403.htm>

IF AND ONLY IF

- (1) a person has a mental illness or serious emotional disturbance, AND
 - (2) the person poses an immediate substantial likelihood of serious harm, under § 33-6-501, because of the mental illness or serious emotional disturbance, AND
 - (3) the person needs care, training, or treatment because of the mental illness or serious emotional disturbance, AND
 - (4) all available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person,
- THEN
- (5) the person may be admitted and detained by a hospital or treatment resource for emergency diagnosis, evaluation, and treatment under this part.

TCA 33-6-404 - <http://tennessee.gov/tccy/tnchild/33/33-6-404.htm>

IF

- (1) (A) a licensed physician, psychologist, or designated professional takes a person into custody under § 33-6-402, OR
 - (B) a person is brought to the physician, psychologist, or designated professional for examination under this section,
- THEN
- (2) the physician, psychologist, or designated professional shall immediately examine the person and decide whether the person is subject to admission to a hospital or treatment resource under § 33-6-403, AND
 - (3) (A) IF
 - (i) the person is not subject to admission, THEN
 - (ii) the physician, psychologist, or designated professional shall release the person, AND
 - (B) IF
 - (i) the person is subject to admission, THEN
 - (ii) the physician, psychologist, or designated professional shall complete a certificate of need for the emergency diagnosis, evaluation, and treatment showing the factual foundation for the conclusions on each item of § 33-6-403, AND
 - (iii) the physician, psychologist, or designated professional shall assess the person's clinical needs and need for physical restraint or vehicle security and determine the mode of transportation to the hospital in consultation with the mandatory pre-screening agent, other mental health professional familiar with the person, or a knowledgeable family member.

ⁱ Please note that all abstracts do not constitute legal opinions. Each agency should seek a formal opinion from available legal counsel.