

# STATE OF NEW YORK

524

2017-2018 Regular Sessions

## IN ASSEMBLY

January 9, 2017

Introduced by M. of A. GUNTHER, CUSICK, GOODELL -- read once and referred to the Committee on Alcoholism and Drug Abuse

AN ACT to amend the mental hygiene law, in relation to establishing protocols for assisted outpatient treatment for substance abuse

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The mental hygiene law is amended by adding a new article  
2 23 to read as follows:

### ARTICLE 23

#### ASSISTED OUTPATIENT TREATMENT FOR SUBSTANCE ABUSE

3 Section 23.01 Assisted outpatient treatment for substance abuse.

4 23.03 Definitions.

5 23.05 Criteria for assisted outpatient treatment for substance  
6 abuse.

7 23.07 Petition to the court.

8 23.09 Service.

9 23.11 Right to counsel.

10 23.13 Hearing.

11 23.15 Written treatment plan.

12 23.17 Disposition.

13 23.19 Petitions for additional periods of treatment; petitions  
14 for an order to stay, vacate or modify; and appeals.

15 23.21 Failure to comply with assisted outpatient treatment.

16 23.23 Effect of determination that a person is in need of  
17 assisted outpatient treatment.

18 23.25 False petition.

19 23.27 Education and training.

20 23.29 The assisted outpatient treatment for substance abuse  
21 advisory council.

22 § 23.01 Assisted outpatient treatment for substance abuse.  
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EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 There is hereby established the assisted outpatient treatment for  
2 substance abuse program. This program shall serve individuals with  
3 substance use disorders who, due to opioid abuse, require services to  
4 prevent them from causing harm to themselves and others. The commission-  
5 er, in consultation with the commissioner of the department of health  
6 and the commissioner of the office of mental health, and in conjunction  
7 with the assisted outpatient treatment for substance abuse advisory  
8 council, shall promulgate all rules and regulations necessary to imple-  
9 ment the provisions of this article.

10 § 23.03 Definitions.

11 For the purposes of this article, the following definitions shall  
12 apply:

13 (a) "Assisted outpatient treatment for substance abuse" shall mean  
14 categories of services that have been ordered by the court pursuant to  
15 this article. Such treatment shall include case management services to  
16 provide care coordination, and may also include any of the following  
17 categories of services: substance use disorder services, detoxification  
18 as deemed appropriate pursuant to a written treatment plan; medication  
19 supported recovery; individual or group therapy; day or partial day  
20 programming activities; tests for the presence of alcohol or illegal  
21 drugs; supervision of living arrangements; treatment for co-occurring  
22 disorders; and any other services prescribed to treat the person's  
23 substance use disorder and to assist the person in living and function-  
24 ing in the community, or to attempt to prevent a relapse or deteri-  
25 oration that may reasonably be predicted to result in the need for  
26 hospitalization or serious harm to the person or others.

27 (b) "Assisted outpatient treatment for substance abuse program" shall  
28 mean a system to arrange for, and coordinate the provision of, assisted  
29 outpatient treatment for substance abuse; to monitor treatment compli-  
30 ance by assisted outpatients; to take appropriate steps to address the  
31 needs of such individuals; and to ensure compliance with court orders.

32 (c) "Assisted outpatient" shall mean the person under a court order to  
33 receive assisted outpatient treatment for substance abuse due to a  
34 substance use disorder.

35 (d) "Opioid" shall mean an opiate, opium, opium poppy or poppy straw;  
36 and any salt, compound, derivative, or preparation of thereof that is  
37 chemically equivalent or identical to such substances.

38 (e) "Subject of the petition" or "subject" shall mean the person who  
39 is alleged in a petition, filed pursuant to the provisions of this arti-  
40 cle, to meet the criteria for assisted outpatient treatment for  
41 substance abuse.

42 (f) "Substance use disorder" shall mean the misuse of, dependence on,  
43 or addiction to a legal or illegal opioid leading to effects that are  
44 detrimental to the individual's physical and mental health, or the  
45 welfare of others.

46 § 23.05 Criteria for assisted outpatient treatment for substance abuse.

47 (a) A person may be ordered to receive assisted outpatient treatment  
48 for substance abuse if the court finds that such person:

- 49 (1) is eighteen years of age or older; and  
50 (2) is suffering from a substance use disorder; and  
51 (3) is unlikely to survive safely in the community without super-  
52 vision, based on a clinical determination; and

53 (4) has a history of lack of compliance with treatment for a substance  
54 use disorder, as evidenced by:

55 (i) prior to the filing of the petition, at least twice within the  
56 last thirty-six months, his or her substance use disorder has been a

1 significant factor in necessitating hospitalization in a hospital, as  
2 defined in article twenty-eight of the public health law, or receipt of  
3 substance abuse treatment services in a correctional facility or a local  
4 correctional facility, not including any current period, or period  
5 ending within the last six months, during which the person was or is  
6 hospitalized or incarcerated; or

7 (ii) prior to the filing of the petition, resulted in one or more acts  
8 of serious violent behavior toward self or others or threats of, or  
9 attempts at, serious physical harm to self or others within the last  
10 forty-eight months, not including any current period, or period ending  
11 within the last six months, in which the person was or is hospitalized  
12 or incarcerated; provided, however, that use of an opioid alone shall  
13 not be deemed as satisfying this requirement; and

14 (5) is, as a result of his or her substance abuse, unlikely to volun-  
15 tarily participate in substance use disorder services that would enable  
16 him or her to live safely in the community; and

17 (6) in view of his or her treatment history and current behavior, is  
18 in need of assisted outpatient treatment for substance abuse in order to  
19 prevent a relapse or deterioration that would be likely to result in  
20 serious harm to the person or others; and

21 (7) is likely to benefit from assisted outpatient treatment for  
22 substance abuse.

23 § 23.07 Petition to the court.

24 (a) A petition for an order authorizing assisted outpatient treatment  
25 for substance abuse may be filed in the supreme or county court in the  
26 county in which the subject of the petition is present or reasonably  
27 believed to be present. A petition to obtain an order authorizing  
28 assisted outpatient treatment for substance abuse may be initiated only  
29 by the following persons:

30 (1) any person eighteen years of age or older with whom the subject of  
31 the petition resides; or

32 (2) the parent, spouse, sibling, or child of the subject of the peti-  
33 tion who is eighteen years of age or older; or

34 (3) any other person deemed appropriate by the commissioner in regu-  
35 lation.

36 (b) The petition shall state:

37 (1) each of the criteria for assisted outpatient treatment for  
38 substance abuse as set forth in section 23.05 of this article;

39 (2) facts which support the petitioner's belief that the subject of  
40 the petition meets each criterion, provided that the hearing on the  
41 petition need not be limited to the stated facts; and

42 (3) that the subject of the petition is present, or is reasonably  
43 believed to be present, within the county where such petition is filed.

44 (c) The petition shall be accompanied by an affirmation or affidavit  
45 of a physician, who shall not be the petitioner, stating either that:

46 (1) such physician has personally examined the subject of the petition  
47 no more than ten days prior to the submission of the petition, recom-  
48 mends assisted outpatient treatment for substance abuse for the subject  
49 of the petition, and is willing and able to testify at the hearing on  
50 the petition; or

51 (2) no more than ten days prior to the filing of the petition, such  
52 physician or his or her designee has made appropriate attempts, but has  
53 not been successful in eliciting the cooperation of the subject of the  
54 petition to submit to an examination; such physician has reason to  
55 suspect that the subject of the petition meets the criteria for assisted  
56 outpatient treatment for substance abuse; and such physician is willing

1 and able to examine the subject of the petition and testify at the hear-  
2 ing on the petition.

3 (d) In counties with a population of less than seventy-five thousand,  
4 the affirmation or affidavit required by subdivision (c) of this section  
5 may be made by a physician who is an employee of the office. The office  
6 is authorized to make available, at no cost to the county, a qualified  
7 physician for the purpose of making such affirmation or affidavit  
8 consistent with the provisions of such subdivision.

9 § 23.09 Service.

10 The petitioner shall cause written notice of the petition to be given  
11 to the subject of the petition, and a copy thereof to be given  
12 personally or by mail to such other persons as the commissioner deems  
13 appropriate in regulation.

14 § 23.11 Right to counsel.

15 The subject of the petition shall have the right to be represented by  
16 counsel at all stages of a proceeding commenced under this section.

17 § 23.13 Hearing.

18 (a) Upon receipt of the petition, the court shall fix the date for a  
19 hearing. Such date shall be no later than three days from the date such  
20 petition is received by the court, excluding Saturdays, Sundays and  
21 holidays. Adjournments shall be permitted only for good cause shown. In  
22 granting adjournments, the court shall consider the need for further  
23 examination by a physician or the potential need to provide assisted  
24 outpatient treatment for substance abuse expeditiously. The court shall  
25 cause the subject of the petition, any other person receiving notice  
26 pursuant to section 23.09 of this article, the petitioner, the physician  
27 whose affirmation or affidavit accompanied the petition, and such other  
28 persons as the court may determine to be advised of such date. Upon such  
29 date, or upon such other date to which the proceeding may be adjourned,  
30 the court shall hear testimony and, if it be deemed advisable and the  
31 subject of the petition is available, examine the subject of the peti-  
32 tion in or out of court. If the subject of the petition does not appear  
33 at the hearing, and appropriate attempts to elicit the attendance of the  
34 subject have failed, the court may conduct the hearing in the subject's  
35 absence. In such case, the court shall set forth the factual basis for  
36 conducting the hearing without the presence of the subject of the peti-  
37 tion.

38 (b) The court shall not order assisted outpatient treatment for  
39 substance abuse unless an examining physician, who recommends assisted  
40 outpatient treatment for substance abuse and has personally examined the  
41 subject of the petition no more than six months before the filing of the  
42 petition, testifies in person at the hearing. Such physician shall state  
43 the facts and clinical determinations that support the allegation that  
44 the subject of the petition meets each of the criteria for assisted  
45 outpatient treatment for substance abuse. The commissioner shall in  
46 regulation address instances in which the subject of the petition  
47 refuses examination by a physician.

48 (c) A physician who testifies pursuant to subdivision (b) of this  
49 section shall state: (i) the facts that support the allegation that the  
50 subject meets each of the criteria for assisted outpatient treatment for  
51 substance abuse, (ii) that the treatment is the least restrictive alter-  
52 native, (iii) the recommended assisted outpatient treatment for  
53 substance abuse, and (iv) the rationale for the recommended assisted  
54 outpatient treatment for substance abuse. If the recommended assisted  
55 outpatient treatment for substance abuse includes medication supported

1 recovery, such physician's testimony shall provide such details as the  
2 commissioner shall require in regulation.

3 (d) The subject of the petition shall be afforded an opportunity to  
4 present evidence, to call witnesses on his or her behalf, and to cross-  
5 examine adverse witnesses.

6 § 23.15 Written treatment plan.

7 (a) The court shall not order assisted outpatient treatment for  
8 substance abuse unless a physician develops and provides to the court a  
9 proposed written treatment plan, in accordance with regulations promul-  
10 gated by the commissioner. The written treatment plan shall include case  
11 management services to provide care coordination. The written treatment  
12 plan also shall include all categories of services that such physician  
13 recommends that the subject of the petition receive. All substance abuse  
14 programs shall be notified regarding their inclusion in the written  
15 treatment plan.

16 (b) The physician appointed to develop the written treatment plan  
17 shall provide the following persons with an opportunity to actively  
18 participate in the development of such plan: the subject of the peti-  
19 tion; the treating physician, if any; and upon the request of the  
20 subject of the petition, an individual significant to the subject  
21 including any relative, close friend or individual otherwise concerned  
22 with the welfare of the subject. If the subject of the petition has  
23 executed a health care proxy, the appointed physician shall consider any  
24 directions included in such proxy in developing the written treatment  
25 plan.

26 (c) The court shall not order assisted outpatient treatment for  
27 substance abuse unless a physician who developed such plan testifies to  
28 explain the proposed written treatment plan. Such physician shall state  
29 the categories of assisted outpatient treatment for substance abuse  
30 recommended, the rationale for each such category, facts which establish  
31 that such treatment is the least restrictive alternative, and any other  
32 information required by the commissioner in regulation. If the subject  
33 of the petition has executed a health care proxy, such physician shall  
34 state the consideration given to any directions included in such proxy  
35 in developing the written treatment plan.

36 § 23.17 Disposition.

37 (a) If after hearing all relevant evidence, the court does not find by  
38 clear and convincing evidence that the subject of the petition meets the  
39 criteria for assisted outpatient treatment for substance abuse, the  
40 court shall dismiss the petition.

41 (b) If after hearing all relevant evidence, the court finds by clear  
42 and convincing evidence that the subject of the petition meets the  
43 criteria for assisted outpatient treatment for substance abuse, and  
44 there is no appropriate and feasible less restrictive alternative, the  
45 court may order the subject to receive assisted outpatient treatment for  
46 substance abuse for an initial period not to exceed six months. In  
47 fashioning the order, the court shall specifically make findings by  
48 clear and convincing evidence that the proposed treatment is the least  
49 restrictive treatment appropriate and feasible for the subject. The  
50 order shall state an assisted outpatient treatment for substance abuse  
51 plan, which shall include all categories of assisted outpatient treat-  
52 ment for substance abuse that the assisted outpatient is to receive, but  
53 shall not include any such category that has not been recommended in  
54 both the proposed written treatment plan and the testimony provided to  
55 the court pursuant to section 23.15 of this article.

1 (c) The commissioner shall establish in regulation procedures for the  
2 provision or arrangement for all categories of assisted outpatient  
3 treatment for substance abuse to the assisted outpatient throughout the  
4 period of the order.

5 (d) The director shall cause a copy of any court order issued pursuant to  
6 this section to be served personally, or by mail, facsimile or elec-  
7 tronic means, upon the assisted outpatient, or anyone acting on the  
8 assisted outpatient's behalf, the original petitioner, identified  
9 service providers, and all others entitled to notice under section 23.09  
10 of this article.

11 § 23.19 Petitions for additional periods of treatment; petitions for an  
12 order to stay, vacate or modify; and appeals.

13 The commissioner shall establish in regulation such rules and proce-  
14 dures to ensure that assisted outpatients: receive appropriate substance  
15 use disorder services; are afforded all rights and remedies available by  
16 law with respect to the order for assisted outpatient treatment for  
17 substance abuse, including the ability to petition the court to stay,  
18 vacate or modify the order; and are given the opportunity to appeal an  
19 order issued pursuant to this article.

20 § 23.21 Failure to comply with assisted outpatient treatment.

21 Where the subject fails to comply with the assisted outpatient for  
22 substance abuse treatment plan set forth in accordance with section  
23 23.15 of this article, the subject shall be brought to a facility or  
24 treatment program for emergency services pursuant to section 22.09 of  
25 this title.

26 § 23.23 Effect of determination that a person is in need of assisted  
27 outpatient treatment.

28 The determination by a court that a person is in need of assisted  
29 outpatient treatment for substance abuse shall not be construed as or  
30 deemed to be a determination that such person is incapacitated pursuant  
31 to article eighty-one of this chapter.

32 § 23.25 False petition.

33 A person making a false statement or providing false information or  
34 false testimony in a petition or hearing under this section shall be  
35 subject to criminal prosecution pursuant to article one hundred seven-  
36 ty-five or article two hundred ten of the penal law.

37 § 23.27 Education and training.

38 (a) The office of alcoholism and substance abuse services, in consul-  
39 tation with the office of court administration, shall prepare educa-  
40 tional and training materials on the use of this section, which shall be  
41 made available to local governmental units, providers of services, judg-  
42 es, court personnel, law enforcement officials and the general public.

43 (b) The office, in consultation with the office of court adminis-  
44 tration, shall establish a substance abuse training program for supreme  
45 and county court judges and court personnel. Such training shall focus  
46 on the use of this section and generally address issues relating to  
47 heroin and opioid addiction.

48 § 23.29 The assisted outpatient treatment for substance abuse advisory  
49 council.

50 There is hereby created the assisted outpatient treatment for  
51 substance abuse advisory council. (a) The council shall consist of: the  
52 commissioner, or his or her designee; the commissioner of mental health,  
53 or his or her designee; the commissioner of health, or his or her desig-  
54 nee; and fourteen members appointed by the governor by and with the  
55 advice and consent of the senate. The governor shall designate one of  
56 the appointed members of the council as chair, who shall serve as such

1 for a three year term. Membership shall be representative of the public,  
2 shall have broad programmatic and geographic representation, shall  
3 include both not-for-profit and proprietary providers of substance abuse  
4 services, and shall include:

5 (1) Five consumer representatives, including persons who are recover-  
6 ing from substance use disorders, their family members, and patient  
7 advocates.

8 (2) Five representatives of providers of services to persons with  
9 substance use disorders, including but not limited to representatives of  
10 free standing substance abuse facilities, general hospitals, residential  
11 facilities for persons who abuse or are dependent upon opioids, metha-  
12 done maintenance programs, and outpatient facilities for persons who  
13 abuse or are dependent on opioids. Of these appointments, at least one  
14 representative must be a physician.

15 (3) Four representatives of law enforcement, local governments, and  
16 public and private payors of alcoholism substance abuse treatment.

17 (b) Members shall be appointed for terms of three years, provided  
18 however, that of the members first appointed, one-third shall be  
19 appointed for one year terms and one-third shall be appointed for two  
20 year terms. Vacancies shall be filled in the same manner as original  
21 appointments for the remainder of any unexpired term.

22 (c) The council shall meet at the request of its chair or the commis-  
23 sioner, but no less frequently than four times in each full calendar  
24 year.

25 (d) The council shall provide recommendations to the commissioner  
26 regarding policies, rules and regulations necessary to implement the  
27 assisted outpatient treatment for substance abuse program according to  
28 this article.

29 § 2. This act shall take effect on the one hundred twentieth day after  
30 it shall have become a law; provided, however, that effective immediate-  
31 ly, the addition, amendment and/or repeal of any rule or regulation  
32 necessary for the implementation of this act on its effective date are  
33 authorized and directed to be made and completed on or before such  
34 effective date.