STATE OF NEW YORK

7703

IN SENATE

January 7, 2022

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the correction law and the mental hygiene law, in relation to certain functions of the office of addiction services and supports, and to use of the term incarcerated individuals; and to amend a chapter of the laws of 2021 amending the correction law relating to the establishment of a program for the use of medication assisted treatment for inmates; and amending the mental hygiene law relating to the implementation of substance use disorder treatment and transition services in jails, as proposed in legislative bills numbers S. 1795 and A. 533, in relation to the effectiveness thereof

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

Section 1. Section 626 of the correction law, as added by a chapter of the laws of 2021 amending the correction law relating to the establishment of a program for the use of medication assisted treatment for inmates; and amending the mental hygiene law relating to the implementation of substance use disorder treatment and transition services in jails, as proposed in legislative bills numbers S. 1795 and A. 533, is amended to read as follows:

§ 626. Medication assisted treatment in correctional facilities. 1. For purposes of this section "medication assisted treatment" means treatment of chemical dependence or abuse and concomitant conditions with medications requiring a prescription or order from an authorized prescribing professional.

2. (a) The commissioner, in conjunction with the office of [~~alcoholism and substance abuse services~~] **addiction services and supports**, shall establish a program to be administered at correctional facilities within the department in the state, for the purpose of employing medication assisted treatment for [~~inmates~~] **incarcerated individuals** in such facilities who are undergoing treatment for a substance use disorder. Such program shall include all forms of medication assisted treatments approved for the treatment of a substance use disorder by the Federal Food and Drug Administration for the duration of an [~~inmate's~~] **incarcer-**

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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ated individual's incarceration and shall provide an individualized treatment plan for each participant. After a medical screening, [~~inmates~~] incarcerated individuals who are determined to suffer from a substance use disorder, for which FDA approved addiction medications exist shall be offered placement in the medication assisted treatment program. Placement in such program shall not be mandatory. Each participating [~~inmate~~] incarcerated individual shall work with an authorized specialist to determine an individualized treatment plan, including an appropriate level of counseling. Decisions regarding type, dosage, or duration of any medication regimen shall be made by a qualified health care professional licensed or certified under title eight of the education law who is authorized to administer such medication in conjunction with the [~~inmate~~] incarcerated individual.

(b) i. Such program shall also include conditions for a reentry strategy for [~~inmates~~] incarcerated individuals who have participated in medication assisted treatment. Such strategy shall include, but not be limited to, providing each participating [~~inmate~~] incarcerated individual with information on available treatment facilities in their area, information on available housing and employment resources, and any other information that will assist the [~~inmate~~] incarcerated individual in continued recovery once released. Such program shall also assist the [~~inmate~~] incarcerated individual in Medicaid enrollment, prior to release.

ii. Such program shall provide participating [~~inmates~~] incarcerated individuals preparing for release from prison with a one-week supply of any necessary medication, where permissible under federal laws and regulations to continue their medication assisted treatment in an effort to prevent relapse.

(c) Reentry planning and community supervision should include a collaborative relationship between clinical and parole staff including sharing of accurate information regarding the [~~inmate's~~] incarcerated individual's participation in medication assisted treatment to ensure that their medication is not deemed illicit or illegal. Additionally, procedures shall be developed to assist any reentrant who communicates a relapse with their parole officer or who fails a drug test, to receive substance use disorder support in lieu of arrest and/or incarceration.

3. The commissioner shall submit within one year of the effective date of this section and annually thereafter, a report to the governor, the temporary president of the senate and the speaker of the assembly on the effectiveness of the program established pursuant to this section. Such reports shall include an analysis of the impact of such program on the participating [~~inmates~~] incarcerated individuals, including factors such as institutional adjustment, behavior infractions, reentry rates, HIV and hepatitis C treatment, and program participation, among related relevant factors. The reports shall also include the impact on institutional safety and performance and any recommendations for additional legislative enactments that may be needed or required to improve or enhance the program as determined to be appropriate by the commissioner.

4. Participation in the medication assisted treatment program shall not be withheld from a qualified [~~inmate~~] incarcerated individual. An [~~inmate~~] incarcerated individual may enter into such program at any time during his or her incarceration. An [~~inmate~~] incarcerated individual using medication assisted treatment prior to such [~~inmate's~~] incarcerated individual's incarceration shall be eligible to, upon request by such [~~inmate~~] incarcerated individual, continue such treatment in the medication assisted treatment program for any period of time during the dura-

tion of such [~~inmate's~~] **incarcerated individual's** incarceration. No person shall be denied participation in the program on the basis of a positive drug screening upon entering custody or upon intake into the program; nor shall any person receive a disciplinary infraction for such positive drug screening. No person shall be removed from, or denied participation in the program on the basis of having received any disciplinary infraction: (a) before entry into the program; or (b) during participation in the program.

§ 2. Subdivision 18 of section 45 of the correction law, as added by a chapter of the laws of 2021 amending the correction law relating to the establishment of a program for the use of medication assisted treatment for inmates; and amending the mental hygiene law relating to the implementation of substance use disorder treatment and transition services in jails, as proposed in legislative bills numbers S. 1795 and A. 533, is amended to read as follows:

18. Establish standards and guidelines for a program of medication assisted treatment for [~~inmates~~] **incarcerated individuals** in county jails and/or county correctional facilities equivalent to the program established in state correctional facilities pursuant to section six hundred twenty-six of this chapter and submit an annual report consistent with the requirements of subdivision three of such section.

§ 3. Section 19.18-c of the mental hygiene law, as added by a chapter of the laws of 2021 amending the correction law relating to the establishment of a program for the use of medication assisted treatment for inmates; and amending the mental hygiene law relating to the implementation of substance use disorder treatment and transition services in jails, as proposed in legislative bills numbers S. 1795 and A. 533, is amended to read as follows:

§ 19.18-c Corrections-based substance use disorder treatment and transition services.

1. [~~The~~] **Notwithstanding any other provision of this chapter, the** commissioner, in consultation with local governmental units, county sheriffs, the New York city department of corrections and other stakeholders, shall implement a jail-based substance use disorder treatment and transition services program that supports the initiation, operation and enhancement of substance use disorder treatment and transition services for persons with substance use disorder who are incarcerated in jails.

2. The services to be provided by such program shall be in accordance with plans developed by participating local governmental units, in collaboration with county sheriffs, taking into account local needs and available resources. These plans must be approved by the commissioner and shall include, but not be limited to, the following:

(a) Alcohol, benzodiazepine, heroin and opioid withdrawal management;

(b) At least one formulation of every form of medication assisted treatments approved for the treatment of a substance use disorder by the Federal Food and Drug Administration necessary to ensure that each individual participating in the program receives the particular form found to be the most effective at treating and meeting their individual needs. The commissioner may allow jails a limited exemption to providing opioid full agonist treatment medications where the commissioner determines that no providers that have received the required accreditation are located within a reasonable distance of the facility. Jails that do not have the resources available to meet standards set forth herein may apply to the commissioner for a limited exception allowing such jail to enter into an agreement with a community- or jail-based program offering

substance use disorder treatment and transition services to provide such services to individuals in such jails. Any such determination shall be reviewed on a regular basis;

(c) Group and individual counseling and clinical support;

(d) Peer support;

(e) Discharge planning; and

(f) Re-entry and transitional supports.

3. (a) After a medical screening, incarcerated individuals who are determined to suffer from a substance use disorder for which medication assisted treatment exists shall be offered placement in the medication assisted treatment program. Placement in such program shall not be mandatory.

(b) Each participating incarcerated individual shall work with an authorized specialist to develop an individualized treatment plan, including an appropriate level of counseling and planning for continuity of care upon return to the community.

(c) Decisions regarding type, dosage, or duration of any medication regimen shall be made by a qualified health care professional licensed or certified under title eight of the education law who is authorized to administer such medication in conjunction with the incarcerated individual.

(d) Participation in the medication assisted treatment program shall not be unreasonably withheld from a qualified incarcerated individual. An incarcerated individual using medication assisted treatment prior to such individual's incarceration shall be eligible to, upon request by such individual, continue such treatment in the medication assisted treatment program for any period of time during the duration of such individual's incarceration.

(e) No person shall be denied participation in the program on the basis of a positive drug screening upon entering custody or upon intake into the program; nor shall any person receive a disciplinary infraction for such positive drug screening. No person shall be removed from, or denied participation in the program on the basis of having received any disciplinary infraction: (1) before entry into the program; or (2) during participation in the program.

4. Within amounts appropriated therefor, funding shall be made available pursuant to criteria established by the office of [~~alcoholism and substance abuse services~~] **addiction services and supports** in consultation with local governmental units, which shall take into consideration the local needs and resources as identified by local governmental units, the average daily jail population, the average number of persons incarcerated in the jail that require substance use disorder services and such other factors as may be deemed necessary.

5. Any jail-based substance use disorder treatment and transition services program that is already in operation at the time this act shall have become law and meets or exceeds the standards set forth in this section shall be deemed to have met the requirements of subdivisions one and two of this section. Such programs shall certify annually in writing to the commissioner that they have met or exceeded the standards set forth herein.

§ 4. Section 505 of the correction law is amended by adding a new subdivision 5 to read as follows:

5. Corrections-based substance use disorder treatment and transition services. Local correctional facilities shall operate a substance use disorder treatment and transition services program pursuant to a plan

approved by the commissioner of the office of addiction services and supports in accordance with section 19.18-c of the mental hygiene law.

§ 5. Section 4 of a chapter of the laws of 2021 amending the correction law relating to the establishment of a program for the use of medication assisted treatment for inmates; and amending the mental hygiene law relating to the implementation of substance use disorder treatment and transition services in jails, as proposed in legislative bills numbers S. 1795 and A. 533, is amended to read as follows:

§ 4. This act shall take effect [~~on the one hundred twentieth day~~] **one year** after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made on or before such date.

§ 6. This act shall take effect immediately; provided, however, sections one, two, three, and four of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2021, amending the correction law relating to the establishment of a program for the use of medication assisted treatment for inmates; and amending the mental hygiene law relating to the implementation of substance use disorder treatment and transition services in jails, as proposed in legislative bills numbers S. 1795 and A. 533, takes effect.