STATE OF NEW YORK

5216

2021-2022 Regular Sessions

IN ASSEMBLY

February 12, 2021

Introduced by M. of A. GUNTHER, CUSICK, GOODELL, MORINELLO, NORRIS, WALSH -- 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:

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

ARTICLE 23
ASSISTED OUTPATIENT TREATMENT FOR SUBSTANCE ABUSE
Section 23.01 Assisted outpatient treatment for substance abuse.
23.03 Definitions.
23.05 Criteria for assisted outpatient treatment for substance abuse.
23.07 Petition to the court.
23.09 Service.
23.11 Right to counsel.
23.13 Hearing.
23.15 Written treatment plan.
23.17 Disposition.
23.19 Petitions for additional periods of treatment; petitions for an order to stay, vacate or modify; and appeals.
23.21 Failure to comply with assisted outpatient treatment.
23.23 Effect of determination that a person is in need of assisted outpatient treatment.
23.25 False petition.
23.27 Education and training.
23.29 The assisted outpatient treatment for substance abuse advisory council.

§ 23.01 Assisted outpatient treatment for substance abuse.

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

LBD02735-01-1

There is hereby established the assisted outpatient treatment for substance abuse program. This program shall serve individuals with substance use disorders who, due to opioid abuse, require services to prevent them from causing harm to themselves and others. The commissioner, in consultation with the commissioner of the department of health and the commissioner of the office of mental health, and in conjunction with the assisted outpatient treatment for substance abuse advisory council, shall promulgate all rules and regulations necessary to implement the provisions of this article.

§ 23.03 Definitions.

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

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

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

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

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

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

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

§ 23.05 Criteria for assisted outpatient treatment for substance abuse.

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

(a) is eighteen years of age or older; and

(b) is suffering from a substance use disorder; and

(c) is unlikely to survive safely in the community without supervision, based on a clinical determination; and

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

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

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

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

(e) is, as a result of his or her substance abuse, unlikely to voluntarily participate in substance use disorder services that would enable him or her to live safely in the community; and

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

(g) is likely to benefit from assisted outpatient treatment for substance abuse.

§ 23.07 Petition to the court.

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

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

(2) the parent, spouse, sibling, or child of the subject of the petition who is eighteen years of age or older; or

(3) any other person deemed appropriate by the commissioner in regulation.

(b) The petition shall state:

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

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

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

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

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

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

and able to examine the subject of the petition and testify at the hearing on the petition.

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

§ 23.09 Service.

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

§ 23.11 Right to counsel.

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

§ 23.13 Hearing.

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

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

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

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

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

§ 23.15 Written treatment plan.

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

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

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

§ 23.17 Disposition.

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

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

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

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

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

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

§ 23.21 Failure to comply with assisted outpatient treatment.

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

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

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

§ 23.25 False petition.

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

§ 23.27 Education and training.

(a) The office of alcoholism and substance abuse services, in consultation with the office of court administration, shall prepare educational and training materials on the use of this section, which shall be made available to local governmental units, providers of services, judges, court personnel, law enforcement officials and the general public.

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

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

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

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

(1) Five consumer representatives, including persons who are recovering from substance use disorders, their family members, and patient advocates.

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

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

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

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

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

§ 2. This act shall take effect on the one hundred twentieth day 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 and completed on or before such effective date.