

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 251** Session of
2009

INTRODUCED BY GREENLEAF, WASHINGTON, TARTAGLIONE, STOUT, ORIE,
BROWNE, KITCHEN, ERICKSON, O'PAKE, WOZNIAK, MUSTO, BOSCOLA,
LEACH, WONDERLING AND M. WHITE, FEBRUARY 19, 2009

REFERRED TO PUBLIC HEALTH AND WELFARE, FEBRUARY 19, 2009

AN ACT

Amending the act of July 9, 1976 (P.L.817, No.143), entitled "An act relating to mental health procedures; providing for the treatment and rights of mentally disabled persons, for voluntary and involuntary examination and treatment and for determinations affecting those charged with crime or under sentence," providing for assisted outpatient treatment programs.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, is amended by adding an article to read:

ARTICLE III-AAssisted Outpatient TreatmentSection 301-A. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Assisted outpatient" or "patient." A person under a court order to receive assisted outpatient treatment.

"Assisted outpatient treatment." Any of the following

categories of outpatient services which have been ordered by the court pursuant to section 305-A:

(1) Case management services or assertive community treatment team services to provide care coordination.

(2) Medication.

(3) Periodic blood tests or urinalysis to determine compliance with prescribed medications.

(4) Individual or group therapy.

(5) Day or partial programming activities.

(6) Educational and vocational training or activities.

(7) Alcohol or substance abuse treatment and counseling and periodic tests for the presence of alcohol or illegal drugs for persons with a history of alcohol or substance abuse.

(8) Supervision of living arrangements.

(9) Any other services within an individualized treatment plan developed pursuant to Article I prescribed to treat the person's mental illness 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 suicide or the need for hospitalization.

"Assisted outpatient treatment program" or "program." A system to arrange for and coordinate the provision of assisted outpatient treatment, to monitor treatment compliance by assisted outpatients, to evaluate the condition or needs of assisted outpatients, to take appropriate steps to address the needs of assisted outpatients and to ensure compliance with court orders.

"Director." The director of a hospital licensed or operated

by the Department of Public Welfare which operates, directs and supervises an assisted outpatient treatment program, or the county administrator which operates, directs and supervises an assisted outpatient treatment program.

"Program coordinator." An individual appointed under section 302-A(a) who is responsible for the oversight and monitoring of assisted outpatient treatment programs.

"Subject of the petition" or "subject." A person who is alleged in a petition, filed pursuant to the provisions of section 305-A, to meet the criteria for assisted outpatient treatment.

Section 302-A. Program coordinators to be appointed.

(a) Duty of secretary.--The Secretary of Public Welfare shall appoint program coordinators of assisted outpatient treatment, who shall be responsible for the oversight and monitoring of assisted outpatient treatment programs established pursuant to section 305-A. County administrators shall work in conjunction with the program coordinators to coordinate the implementation of assisted outpatient treatment programs.

(b) Oversight and monitoring duties.--The oversight and monitoring role of the program coordinator of the assisted outpatient treatment program shall include each of the following:

(1) That each assisted outpatient receives the treatment provided for in the court order issued pursuant to section 305-A.

(2) That existing services located in the assisted outpatient's community are utilized whenever practicable.

(3) That a case manager or assertive community treatment team is designated for each assisted outpatient.

(4) That a mechanism exists for a case manager, or assertive community treatment team, to regularly report the assisted outpatient's compliance, or lack of compliance, with treatment to the director of the assisted outpatient treatment program.

(5) That assisted outpatient treatment services are delivered in a timely manner.

(c) Standards to be developed.--The Secretary of Public Welfare shall develop standards designed to ensure that case managers or assertive community treatment teams have appropriate training and have clinically manageable caseloads designed to provide effective case management or other care coordination services for persons subject to a court order under section 305-A.

(d) Corrective action to be taken.--Upon review or receiving notice that services are not being delivered in a timely manner, the program coordinator shall require the director of the assisted outpatient treatment program to immediately commence corrective action and inform the program coordinator of the corrective action taken. Failure of a director to take corrective action shall be reported by the program coordinator to the Secretary of Public Welfare as well as to the court which ordered the assisted outpatient treatment.

Section 303-A. Duties of county administrators.

Each county administrator shall be responsible for the filing of petitions for assisted outpatient treatment pursuant to section 305-A, for the receipt and investigation of reports of persons who are alleged to be in need of that treatment and for coordinating the delivery of court-ordered services with program coordinators, appointed by the Secretary of Public Welfare

pursuant to section 302-A(a). In discharge of the duties imposed by section 305-A, directors of community services may provide services directly, or may coordinate services with the offices of the Secretary of Public Welfare or may contract with any public or private provider to provide services for assisted outpatient treatment programs as may be necessary to carry out the duties imposed pursuant to this article.

Section 304-A. Directors of assisted outpatient treatment programs.

(a) General duties.--

(1) Directors of assisted outpatient treatment programs established pursuant to section 305-A shall provide a written report to the program coordinators, appointed by the Secretary of Public Welfare pursuant to section 302-A(a), within three days of the issuance of a court order. The report shall demonstrate that mechanisms are in place to ensure the delivery of services and medications as required by the court order and shall include, but not be limited to, the following:

(i) A copy of the court order.

(ii) A copy of the written treatment plan.

(iii) The identity of the case manager or assertive community treatment team, including the name and contact data of the organization which the case manager or assertive community treatment team member represents.

(iv) The identity of providers of services.

(v) The date on which services have commenced or will commence.

(2) The directors of assisted outpatient treatment programs shall ensure the timely delivery of services

described in section 305-A pursuant to any court order issued thereunder. Directors of assisted outpatient treatment programs shall immediately commence corrective action upon receiving notice from program coordinators that services are not being provided in a timely manner, and the directors shall inform the program coordinator of the corrective action taken.

(b) Quarterly reports to program coordinators.--Directors of assisted outpatient treatment programs shall submit quarterly reports to the program coordinators regarding the assisted outpatient treatment program operated or administered by them. The report shall include the following information:

- (1) The names of individuals served by the program.
- (2) The percentage of petitions for assisted outpatient treatment that are granted by the court.
- (3) Any change in status of assisted outpatients, including, but not limited to, the number of individuals who have failed to comply with court-ordered assisted outpatient treatment.
- (4) A description of material changes in written treatment plans of assisted outpatients.
- (5) Any change in case managers.
- (6) A description of the categories of services which have been ordered by the court.
- (7) Living arrangements of individuals served by the program including the number, if any, who are homeless.
- (8) Any other information as required by the Secretary of Public Welfare.
- (9) Any recommendations to improve the program Statewide or locally.

Section 305-A. Assisted outpatient treatment program.

(a) Director to obtain approval from secretary.--A director may operate, direct and supervise an assisted outpatient treatment program as provided in this section, upon approval by the Secretary of Public Welfare. The county administrator shall operate, direct and supervise an assisted outpatient treatment program as provided in this section, upon approval by the Secretary of Public Welfare. County administrators shall be permitted to satisfy the provisions of this article through the operation of joint assisted outpatient treatment programs. Nothing in this article shall be construed to preclude the combination or coordination of efforts between and among counties and hospitals in providing and coordinating assisted outpatient treatment.

(b) Criteria for assisted outpatient treatment.--A patient may be ordered to obtain assisted outpatient treatment if the court finds all of the following:

- (1) The patient is 18 years of age or older.
- (2) The patient is suffering from a mental illness.
- (3) The patient is unlikely to survive safely in the community without supervision, based on a clinical determination.
- (4) The patient has a history of lack of compliance with treatment for mental illness that has:
 - (i) at least twice within the preceding 36 months been a significant factor in necessitating hospitalization, or receipt of services in a forensic or other mental health unit of a correctional facility, not including any period during which the person was hospitalized or imprisoned immediately preceding the

filing of the petition; or

(ii) 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 preceding 48 months, not including any period in which the person was hospitalized or imprisoned immediately preceding the filing of the petition.

(5) The patient is, as a result of the patient's mental illness, unlikely to voluntarily participate in the recommended treatment pursuant to the treatment plan.

(6) In view of the patient's treatment history and current behavior, the patient is in need of assisted outpatient treatment in order to prevent a relapse or deterioration which would be likely to pose a clear and present danger of harm to others or to himself as determined under section 301.

(7) It is likely that the patient will benefit from assisted outpatient treatment.

(c) Petition to the court.--

(1) A petition for an order authorizing assisted outpatient treatment may be filed in the court of common pleas of 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 may be initiated only by the following persons:

(i) a person 18 years of age or older with whom the subject of the petition resides;

(ii) the parent, spouse, sibling 18 years of age or older, or child 18 years of age or older of the subject of the petition;

(iii) the director of the facility in which the subject of the petition is hospitalized;

(iv) the director of any public or charitable organization, agency or home providing mental health services to the subject of the petition in whose institution the subject of the petition resides;

(v) a qualified psychiatrist who is either supervising the treatment of or treating the subject of the petition for a mental illness;

(vi) the county administrator, or his designee; or

(vii) a parole officer or probation officer assigned to supervise the subject of the petition.

(2) The petition shall state:

(i) Each of the criteria for assisted outpatient treatment as set forth in subsection (b).

(ii) The facts which support the petitioner's belief that the person who is the subject of the petition meets each criterion, provided that the hearing on the petition need not be limited to the stated facts.

(iii) That the subject of the petition is present, or is reasonably believed to be present, within the county where the petition is filed.

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

(i) The physician has personally examined the person who is the subject of the petition not more than ten days prior to the submission of the petition, recommends assisted outpatient treatment for the subject of the petition and is willing and able to testify at the

hearing on the petition.

(ii) Not more than ten days prior to the filing of the petition, the physician or his designee has made appropriate attempts to elicit the cooperation of the subject of the petition but has not been successful in persuading the subject to submit to an examination, that the physician has reason to suspect that the subject of the petition meets the criteria for assisted outpatient treatment, and that the physician is willing and able to examine the subject of the petition and testify at the hearing on the petition.

(d) 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 section. The subject of the petition shall be represented either by counsel of his selection or, if unrepresented and unable to afford counsel as determined by the court, by court-appointed counsel.

(e) Hearing.--

(1) Upon receipt by the court of the petition submitted pursuant to subsection (c), the court shall fix the date for a hearing at a time not later than three days from the date the 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 expeditiously.

(2) The court shall cause the subject of the petition, the petitioner, the physician whose affirmation or affidavit accompanied the petition, the appropriate director, and such

other persons as the court may determine to be advised. The subject of the petition shall have the opportunity to provide, in writing, names and parties to be notified of the hearing which shall be considered by the court.

(3) Upon the date for the hearing, 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 alleged to be in need of assisted outpatient treatment in or out of court.

(4) 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. If the hearing is conducted without the subject of the petition present, the court shall set forth the factual basis for conducting the hearing without the presence of the subject of the petition.

(5) The court may not order assisted outpatient treatment unless an examining physician, who has personally examined the subject of the petition within the time period commencing ten days before the filing of the petition, testifies in person at the hearing.

(6) If the subject of the petition has refused to be examined by a physician, the court may request the subject to consent to an examination by a physician appointed by the court. If the subject of the petition does not consent and the court finds reasonable cause to believe that the allegations in the petition are true, the court may order law enforcement officers or of a sheriff's department to take the subject of the petition into custody and transport him to a

hospital for examination by a physician. Retention of the subject of the petition under the order shall not exceed 24 hours.

(7) The examination of the subject of the petition may be performed by the physician whose affirmation or affidavit accompanied the petition, if the physician is privileged by the hospital or otherwise authorized by the hospital to do so. If the examination is performed by another physician of the hospital, the examining physician shall be authorized to consult with the physician whose affirmation or affidavit accompanied the petition regarding the issues of whether the allegations in the petition are true and whether the subject meets the criteria for assisted outpatient treatment.

(8) A physician who testifies pursuant to paragraph (5) shall state the facts which support the allegation that the subject meets each of the criteria for assisted outpatient treatment, and the treatment is the least restrictive alternative, the recommended assisted outpatient treatment, and the rationale for the recommended assisted outpatient treatment. If the recommended assisted outpatient treatment includes medication, the physician's testimony shall describe the types or classes of medication which should be authorized, shall describe the beneficial and detrimental physical and mental effects of the medication, and shall recommend whether the medication should be self-administered or administered by authorized personnel.

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

(f) Written individualized treatment plan.--

(1) (i) The court may not order assisted outpatient treatment unless an examining physician appointed by the appropriate director develops and provides to the court a proposed written individualized treatment plan. The written individualized treatment plan shall include case management services or assertive community treatment teams to provide care coordination, and all categories of services which the physician recommends that the subject of the petition should receive.

(ii) If the written individualized treatment plan includes medication, it shall state whether the medication should be self-administered or administered by authorized personnel, and shall specify type and dosage range of medication most likely to provide maximum benefit for the subject.

(iii) If the written individualized treatment plan includes alcohol or substance abuse counseling and treatment, the plan may include a provision requiring relevant testing for either alcohol or illegal substances provided the physician's clinical basis for recommending the plan provides sufficient facts for the court to find:

(A) That the person has a history of alcohol or substance abuse that is clinically related to the mental illness.

(B) That the testing is necessary to prevent a relapse or deterioration which would be likely to result in serious harm to the person or others.

(iv) In developing the plan, the physician shall provide the following persons with an opportunity to actively participate in the development of the plan: the

subject of the petition; the treating physician; and upon the request of the patient, an individual significant to the patient including any relative, close friend or individual otherwise concerned with the welfare of the patient. If the petitioner is a director, the plan shall be provided to the court no later than the date of the hearing on the petition.

(2) The court shall not order assisted outpatient treatment unless a physician testifies to explain the written proposed treatment plan. The testimony shall state:

(i) The categories of assisted outpatient treatment recommended.

(ii) The rationale for each category.

(iii) Facts which establish that the treatment is the least restrictive alternative.

(iv) If the recommended assisted outpatient treatment includes medication, the types or classes of medication recommended, the beneficial and detrimental physical and mental effects of the medication, and whether the medication should be self-administered or administered by an authorized professional.

If the petitioner is a director the testimony shall be given at the hearing on the petition.

(g) Disposition.--

(1) If after hearing all relevant evidence, the court finds that the subject of the petition does not meet the criteria for assisted outpatient treatment, the court shall dismiss the petition.

(2) 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 and there is no appropriate and feasible less restrictive alternative, the court shall be authorized to order the subject to receive assisted outpatient treatment 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 the categories of assisted outpatient treatment which the subject is to receive. The court may not order treatment that has not been recommended by the examining physician and included in the written treatment plan for assisted outpatient treatment as required by subsection (f).

(3) 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, and the court has yet to be provided with a written individualized treatment plan and testimony pursuant to subsection (f), the court shall order the county administrator to provide the court with the plan and testimony no later than the third day, excluding Saturdays, Sundays and holidays, immediately following the date of the order. Upon receiving the plan and testimony, the court may order assisted outpatient treatment as provided in paragraph (2).

(4) A court may order the patient to self-administer psychotropic drugs or accept the administration of the drugs by authorized personnel as part of an assisted outpatient treatment program. The order may specify the type and dosage

range of psychotropic drugs and the order shall be effective for the duration of the assisted outpatient treatment.

(5) If the petitioner is the director of a hospital that operates an assisted outpatient treatment program, the court order shall direct the hospital director to provide or arrange for all categories of assisted outpatient treatment for the assisted outpatient throughout the period of the order. For all other persons, the order shall require the director of community services of the appropriate local governmental unit to provide or arrange for all categories of assisted outpatient treatment for the assisted outpatient throughout the period of the order.

(6) The director or his designee shall apply to the court for approval before instituting a proposed material change in the assisted outpatient treatment order unless the change is contemplated in the order. Nonmaterial changes may be instituted by the assisted outpatient treatment program without court approval. For the purposes of this paragraph, a material change shall mean an addition or deletion of a category of assisted outpatient treatment from the order of the court, or any deviation without the patient's consent from the terms of an existing order relating to the administration of psychotropic drugs.

(h) Applications for additional periods of treatment.--If the director determines that the condition of the patient requires further assisted outpatient treatment, the director shall apply prior to the expiration of the period of assisted outpatient treatment ordered by the court for a second or subsequent order authorizing continued assisted outpatient treatment for a period not to exceed one year from the date of

the order. The procedures for obtaining any order pursuant to this subsection shall be in accordance with this section, provided that the time period included in subsection (b)(4)(i) and (ii) shall not be applicable in determining the appropriateness of additional periods of assisted outpatient treatment. Any court order requiring periodic blood tests or urinalysis for the presence of alcohol or illegal drugs shall be subject to review after six months by the physician who developed the written individualized treatment plan or another physician designated by the director, and the physician shall be authorized to terminate the blood tests or urinalysis without further action by the court.

(i) Application for order to stay, vacate or modify.--In addition to any other right or remedy available by law with respect to the order for assisted outpatient treatment, the patient, the patient's counsel, or anyone acting on the patient's behalf may apply on notice to the appropriate director and the original petitioner to the court to stay, vacate or modify the order.

(j) Appeals.--Review of an order issued pursuant to this section shall be had in like manner as specified in section 303.

(k) Failure to comply with the assisted outpatient treatment.--

(1) (i) Where, in the clinical judgment of a physician, the assisted outpatient has failed or refused to comply with the assisted outpatient treatment and efforts were made to solicit compliance and such assisted outpatient may be in need of involuntary admission to a hospital or immediate observation, care and treatment pursuant to section 302 or 303, the physician may request the

director of community services, the director's designee or any physician designated by the director of community services to bring the assisted outpatient to an appropriate hospital for an examination to determine if the assisted outpatient has a mental illness for which hospitalization is necessary.

(ii) If the assisted outpatient refuses to take medication as required by the court order or refuses to take or fails a blood test, urinalysis or alcohol or drug test as required by the court order, the physician may consider the refusal or failure when determining whether the assisted outpatient is in need of an examination to determine whether the assisted outpatient has a mental illness for which hospitalization is necessary.

(2) Upon the request of the physician, the director or the director's designee may direct law enforcement officers or the sheriff's department to take into custody and transport the patient to the hospital operating the assisted outpatient treatment program or to any hospital authorized by the director of community services to receive such patients. The law enforcement officials shall carry out the directive.

(3) (i) Upon the request of the physician, the director or the director's designee, the court may authorize the patient to be taken into custody and transported to the hospital operating the assisted outpatient treatment program, or to any other hospital authorized by the county administrator to receive such patients in accordance with section 306.

(ii) The patient may be retained for observation, care and treatment and further examination in the

hospital for up to 72 hours to permit a physician to determine whether the patient has a mental illness and is in need of involuntary care and treatment in a hospital pursuant to this act.

(iii) Any continued involuntary retention in the hospital beyond the initial 72-hour period shall be in accordance with this act relating to the involuntary admission and retention of a person.

(iv) If at any time during the 72-hour period the person is determined not to meet the involuntary admission and retention provisions of this act, and does not agree to stay in the hospital as a voluntary or informal patient, he shall be released.

(v) Failure to comply with an order of assisted outpatient treatment shall not be grounds for involuntary civil commitment or a finding of contempt of court.

(1) False petition.--A person making a false statement or providing false information or false testimony in a petition or hearing under this section is subject to criminal prosecution pursuant to 18 Pa.C.S. § 4903 (relating to false swearing).

(m) Construction.--Nothing in this section shall be construed to affect the ability of the director of a hospital to receive, admit or retain patients who otherwise meet the provisions of this act regarding receipt, retention or admission.

(n) Educational materials.--The Department of Public Welfare, in consultation with the county administrator, shall prepare educational and training materials on the use of this section, which shall be made available to county providers of services, judges, court personnel, law enforcement officials and

the general public.

Section 2. This act shall take effect in 60 days.