Effective: June 30, 2005

Mckinney's Consolidated Laws of New York Annotated Currentness
Mental Hygiene Law (Refs & Annos)
Chapter 27. Of the Consolidated Laws (Refs & Annos)
Title B. Mental Health Act
Article 9. Hospitalization of the Mentally Ill (Refs & Annos)
§ 9.60 Assisted outpatient treatment

<[Expires and deemed repealed June 30, 2010, pursuant to L.1999, c. 408, § 18]>

(a) Definitions. For purposes of this section, the following definitions shall apply:

(1) “assisted outpatient treatment” shall mean categories of outpatient services which have been ordered by the court pursuant to this section. Such treatment shall include case management services or assertive community treatment team services to provide care coordination, and may also include any of the following categories of services: medication; periodic blood tests or urinalysis to determine compliance with prescribed medications; individual or group therapy; day or partial day programming activities; educational and vocational training or activities; 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; supervision of living arrangements; and any other services within a local or unified services plan developed pursuant to article forty-one of this chapter, [FN1] 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.

(2) “director” shall mean the director of community services of a local governmental unit, or the director of a hospital licensed or operated by the office of mental health which operates, directs and supervises an assisted outpatient treatment program.

(3) “director of community services” and “local governmental unit” shall have the same meanings as provided in article forty-one of this chapter.

(4) “assisted outpatient treatment program” shall mean 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 such individuals, and to ensure compliance with court orders.

(5) “assisted outpatient” shall mean the person under a court order to receive assisted outpatient treatment.

(6) “subject of the petition” or “subject” shall mean the person who is alleged in a petition, filed pursuant to the provisions of this section, to meet the criteria for assisted outpatient treatment.

(7) “correctional facility” and “local correctional facility” shall have the same meanings as provided in section two of the correction law.

(8) “health care proxy” and “health care agent” shall have the same meanings as provided in article twenty-nine-C of the public health law. [FN2]

(9) “program coordinator” shall mean an individual appointed by the commissioner of mental health, pursuant to subdivision (f) of section 7.17 of this chapter, who is responsible for the oversight and monitoring of assisted outpatient treatment programs.

(b) Programs. The director of community services of each local governmental unit shall operate, direct and supervise an assisted outpatient treatment program. The director of a hospital licensed or operated by the office of mental health may operate, direct and supervise an assisted outpatient treatment program, upon approval by the commissioner. Directors of community services shall be permitted to satisfy the provisions of this subdivision through the operation of joint assisted outpatient treatment programs. Nothing in this subdivision shall be interpreted to preclude the combination or coordination of efforts between and among local governmental units and hospitals in providing and coordinating assisted outpatient treatment.

(c) Criteria. A person may be ordered to receive assisted outpatient treatment if the court finds that such person:

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

(2) is suffering from a mental illness; and

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

(4) has a history of lack of compliance with treatment for mental illness that has:

(i) prior to the filing of the petition, at least twice within the last thirty-six months been a significant factor in necessitating hospitalization in a hospital, or receipt of services in a forensic or other mental health unit of 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

(ii) 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; and

(5) is, as a result of his or her mental illness, unlikely to voluntarily participate in outpatient treatment that would enable him or her to live safely in the community; and

(6) in view of his or her treatment history and current behavior, is in need of assisted outpatient treatment in order to prevent a relapse or deterioration which would be likely to result in serious harm to the person or others as defined in section 9.01 of this article; and

(7) is likely to benefit from assisted outpatient treatment.

(d) Health care proxy. Nothing in this section shall preclude a person with a health care proxy from being subject to a petition pursuant to this chapter and consistent with article twenty-nine-C of the public health law.

(e) Petition to the court. (1) A petition for an order authorizing assisted outpatient treatment 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. Such petition may be initiated only by the following persons:

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

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

(iii) the director of a hospital in which the subject of the petition is hospitalized; or

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

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

(vi) a psychologist, licensed pursuant to article one hundred fifty-three of the education law, or a social worker, licensed pursuant to article one hundred fifty-four of the education law, who is treating the subject of the petition for a mental illness; or

(vii) the director of community services, or his or her designee, or the social services official, as defined in the social services law, of the city or county in which the subject of the petition is present or reasonably believed to be present; or

(viii) 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 subdivision (c) of this section;

(ii) 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

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

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

(i) 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 the subject of the petition, and is willing and able to testify at the hearing on the petition; or

(ii) 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, and such physician is willing and able to examine the subject of the petition and testify at the hearing on the petition.

(4) In counties with a population of less than seventy-five thousand, the affirmation or affidavit required by

paragraph three of this subdivision 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 paragraph.

(f) 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 the persons listed in section 9.29 of this article, the mental hygiene legal service, the health care agent if any such agent is known to the petitioner, the appropriate program coordinator, and the appropriate director of community services, if such director is not the petitioner.

(g) Right to counsel. The subject of the petition shall have the right to be represented by the mental hygiene legal service, or privately financed counsel, at all stages of a proceeding commenced under this section.

(h) Hearing. (1) 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 expeditiously. The court shall cause the subject of the petition, any other person receiving notice pursuant to subdivision (f) of this section, 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.

(2) The court shall not order assisted outpatient treatment unless an examining physician, who recommends assisted outpatient treatment and has personally examined the subject of the petition no more than ten days before the filing of the petition, testifies in person at the hearing. Such physician shall state the facts and clinical determinations which support the allegation that the subject of the petition meets each of the criteria for assisted outpatient treatment.

(3) 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 peace officers, acting pursuant to their special duties, or police officers who are members of an authorized police department or force, or of a sheriff's department to take the subject of the petition into custody and transport him or her to a hospital for examination by a physician. Retention of the subject of the petition under such order shall not exceed twenty-four hours. The examination of the subject of the petition may be performed by the physician whose affirmation or affidavit accompanied the petition pursuant to paragraph three of subdivision (e) of this section, if such physician is privileged by such hospital or otherwise authorized by such hospital to do so. If such examination is performed by another physician, the examining physician may consult with the physician whose affirmation or affidavit accompanied the petition as to whether the subject meets the criteria for assisted outpatient treatment.

(4) A physician who testifies pursuant to paragraph two of this subdivision shall state: (i) the facts which support the allegation that the subject meets each of the criteria for assisted outpatient treatment, (ii) that the treatment is the least restrictive alternative, (iii) the recommended assisted outpatient treatment, and (iv) the rationale for the recommended assisted outpatient treatment. If the recommended assisted outpatient treatment includes medication, such 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 such medication, and shall recommend whether such medication should be self-administered or administered by authorized personnel.

(5) 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.

(i) Written treatment plan. (1) The court shall not order assisted outpatient treatment unless a physician appointed by the appropriate director, in consultation with such director, develops and provides to the court a proposed written treatment plan. The written treatment plan shall include case management services or assertive community treatment team services to provide care coordination. The written treatment plan also shall include all categories of services, as set forth in paragraph one of subdivision (a) of this section, which such physician recommends that the subject of the petition receive. All service providers shall be notified regarding their inclusion in the written treatment plan. If the written treatment plan includes medication, it shall state whether such 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. If the written treatment plan includes alcohol or substance abuse counseling and treatment, such plan may include a provision requiring relevant testing for either alcohol or illegal substances provided the physician's clinical basis for recommending such plan provides sufficient facts for the court to find (i) that such person has a history of alcohol or substance abuse that is clinically related to the mental illness; and (ii) that such testing is necessary to prevent a relapse or deterioration which would be likely to result in serious harm to the person or others. If a director is the petitioner, the written treatment plan shall be provided to the court no later than the date of the hearing on the petition. If a person other than a director is the petitioner, such plan shall be provided to the court no later than the date set by the court pursuant to paragraph three of subdivision (j) of this section.

(2) 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.

(3) The court shall not order assisted outpatient treatment unless a physician appearing on behalf of a director testifies to explain the written proposed treatment plan. Such physician shall state the categories of assisted outpatient treatment recommended, the rationale for each such category, facts which establish that such treatment is the least restrictive alternative, and, if the recommended assisted outpatient treatment plan includes medication, such physician shall state the types or classes of medication recommended, the beneficial and detrimental physical and mental effects of such medication, and whether such medication should be self-administered or administered by an authorized professional. 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. If a director is the petitioner, testimony pursuant to this paragraph shall be given at the hearing on the petition. If a person other than a director is the petitioner, such testimony shall be given on the date set by the court pursuant to paragraph three of subdivision (j) of this section.

(j) Disposition. (1) 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, 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 may 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 an assisted outpatient treatment plan, which shall include all categories of assisted outpatient treatment, as set forth in paragraph one of subdivision (a) of this section, which 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 subdivision (i) of this section.

(3) If after hearing all relevant evidence presented by a petitioner who is not a director, 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 proposed treatment plan and testimony pursuant to subdivision (i) of this section, the court shall order the appropriate director to provide the court with such plan and testimony no later than the third day, excluding Saturdays, Sundays and holidays, immediately following the date of such order. Upon receiving such plan and testimony, the court may order assisted outpatient treatment as provided in paragraph two of this subdivision.

(4) A court may order the patient to self-administer psychotropic drugs or accept the administration of such drugs by authorized personnel as part of an assisted outpatient treatment program. Such order may specify the type and dosage range of such psychotropic drugs and such order shall be effective for the duration of such 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 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, the mental hygiene legal service or anyone acting on the assisted outpatient's behalf, the original petitioner, identified service providers, and all others entitled to notice under subdivision (f) of this section.

(k) Petition for additional periods of treatment. Within thirty days prior to the expiration of an order of assisted outpatient treatment, the appropriate director or the current petitioner, if the current petition was filed pursuant to subparagraph (i) or (ii) of paragraph one of subdivision (e) of this section, and the current petitioner retains his or her original status pursuant to the applicable subparagraph, may petition the court to order continued assisted outpatient treatment for a period not to exceed one year from the expiration date of the current order. If the court's disposition of such petition does not occur prior to the expiration date of the current order, the current order shall remain in effect until such disposition. The procedures for obtaining any order pursuant to this subdivision shall be in accordance with the provisions of the foregoing subdivisions of this section; provided that the time restrictions included in paragraph four of subdivision (c) of this section shall not be applicable. The notice provisions set forth in paragraph six of subdivision (j) of this section shall be applicable. 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 treatment plan or another physician designated by the director, and such physician shall be authorized to terminate such blood tests or urinalysis without further action by the court.

(l) Petition for an order to stay, vacate or modify. (1) In addition to any other right or remedy available by law with respect to the order for assisted outpatient treatment, the assisted outpatient, the mental hygiene legal service, or anyone acting on the assisted outpatient's behalf may petition the court on notice to the director, the original petitioner, and all others entitled to notice under subdivision (f) of this section to stay, vacate or modify the order.

(2) The appropriate director shall petition the court for approval before instituting a proposed material change in the assisted outpatient treatment plan, unless such change is authorized by the order of the court. Such petition shall be filed on notice to all parties entitled to notice under subdivision (f) of this section. Not later than five days after receiving such petition, excluding Saturdays, Sundays and holidays, the court shall hold a hearing on the petition;

provided that if the assisted outpatient informs the court that he or she agrees to the proposed material change, the court may approve such change without a hearing. Non-material changes may be instituted by the director without court approval. For the purposes of this paragraph, a material change is an addition or deletion of a category of services to or from a current assisted outpatient treatment plan, or any deviation without the assisted outpatient's consent from the terms of a current order relating to the administration of psychotropic drugs.

(m) Appeals. Review of an order issued pursuant to this section shall be had in like manner as specified in section 9.35 of this article.

(n) Failure to comply with assisted outpatient treatment. Where in the clinical judgment of a physician, (i) the assisted outpatient, has failed or refused to comply with the assisted outpatient treatment, (ii) efforts were made to solicit compliance, and (iii) such assisted outpatient may be in need of involuntary admission to a hospital pursuant to section 9.27 of this article or immediate observation, care and treatment pursuant to section 9.39 or 9.40 of this article, such physician may request the director of community services, the director's designee, or any physician designated by the director of community services pursuant to section 9.37 of this article, to direct the removal of such assisted outpatient to an appropriate hospital for an examination to determine if such person has a mental illness for which hospitalization is necessary pursuant to section 9.27, 9.39 or 9.40 of this article. Furthermore, if such assisted outpatient refuses to take medications as required by the court order, or he or she refuses to take, or fails a blood test, urinalysis, or alcohol or drug test as required by the court order, such physician may consider such refusal or failure when determining whether the assisted outpatient is in need of an examination to determine whether he or she has a mental illness for which hospitalization is necessary. Upon the request of such physician, the director, the director's designee, or any physician designated pursuant to section 9.37 of this article, may direct peace officers, acting pursuant to their special duties, or police officers who are members of an authorized police department or force or of a sheriff's department to take the assisted outpatient into custody and transport him or her to the hospital operating the assisted outpatient treatment program or to any hospital authorized by the director of community services to receive such persons. Such law enforcement officials shall carry out such directive. Upon the request of such physician, the director, the director's designee, or any physician designated pursuant to section 9.37 of this article, an ambulance service, as defined by subdivision two of section three thousand one of the public health law, or an approved mobile crisis outreach team as defined in section 9.58 of this article shall be authorized to take into custody and transport any such person to the hospital operating the assisted outpatient treatment program, or to any other hospital authorized by the director of community services to receive such persons. Any director of community services, or designee, shall be authorized to direct the removal of an assisted outpatient who is present in his or her county to an appropriate hospital, in accordance with the provisions of this subdivision, based upon a determination of the appropriate director of community services directing the removal of such assisted outpatient pursuant to this subdivision. Such person may be retained for observation, care and treatment and further examination in the hospital for up to seventy-two hours to permit a physician to determine whether such person has a mental illness and is in need of involuntary care and treatment in a hospital pursuant to the provisions of this article. Any continued involuntary retention in such hospital beyond the initial seventy-two hour period shall be in accordance with the provisions of this article relating to the involuntary admission and retention of a person. If at any time during the seventy-two hour period the person is determined not to meet the involuntary admission and retention provisions of this article, and does not agree to stay in the hospital as a voluntary or informal patient, he or she must be released. 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.

(o) 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 shall not be construed as or deemed to be a determination that such person is incapacitated pursuant to article eighty-one of this chapter. [FN3]

(p) 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 [FN4] or article two hundred ten [FN5] of the penal law.

(q) Exception. 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 article regarding receipt, retention or admission.

(r) Education and training. (1) The office of mental health, 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.

(2) The office, in consultation with the office of court administration, shall establish a mental health 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 mental illness and mental health treatment.

CREDIT(S)

(Added L.1999, c. 408, § 6; amended L.2005, c. 137, § 1, eff. June 30, 2005; L.2005, c. 158, § 4, eff. June 30, 2005.)

[FN1]Mental Hygiene Law § 41.01 et seq.

[FN2]Public Health Law § 2980 et seq.

[FN3]Mental Hygiene Law § 81.01 et seq.

[FN4]Penal Law § 175.00 et seq.

[FN5]Penal Law § 210.00 et seq.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

L.2005, c. 158 legislation

Subd. (a), par. (2). L.2005, c. 158, § 4, rewrote par. (2), which had read:

" 'director' shall mean the director of a hospital licensed or operated by the office of mental health which operates, directs and supervises an assisted outpatient treatment program, or the director of community services of a local governmental unit, as such term is defined in section 41.03 of this chapter, which operates, directs and supervises an assisted outpatient treatment program."

Subd. (a), par. (3). L.2005, c. 158, § 4, rewrote par. (3), which had read:

" 'director of community services' shall have the same meaning as provided in article forty-one of this chapter."

Subd. (a), par. (5). L.2005, c. 158, § 4, deleted "or patient" following "outpatient".

Subd. (a), par. (7). L.2005, c. 158, § 4, rewrote par. (7), which had read:

" 'correctional facility' or 'local correctional facility' shall have the same meaning as defined in section two of the

correction law."

Subd. (a), par. (8). L.2005, c. 158, § 4, rewrote par. (8), which had read:

" 'health care proxy' and 'health care agent' shall have the same meaning as defined in article 29-C of the public health law."

Subd. (b). L.2005, c. 158, § 4, rewrote subd. (b), which had read:

"The director of a hospital licensed or operated by the office of mental health may operate, direct and supervise an assisted outpatient treatment program as provided in this section, upon approval by the commissioner of mental health. The director of community services of a local governmental unit shall operate, direct and supervise an assisted outpatient treatment program as provided in this section, upon approval by the commissioner of mental health. Directors of community services of local governmental units shall be permitted to satisfy the provisions of this subdivision through the operation of joint assisted outpatient treatment programs. Nothing in this subdivision shall be interpreted to preclude the combination or coordination of efforts between and among local governmental units and hospitals in providing and coordinating assisted outpatient treatment."

Subd. (c), opening par. L.2005, c. 158, § 4, rewrote the opening paragraph, which had read:

"Criteria for assisted outpatient treatment. A patient may be ordered to obtain assisted outpatient treatment if the court finds that:".

Subd. (c), par. (1). L.2005, c. 158, § 4, deleted "the patient" at the beginning.

Subd. (c), par. (2). L.2005, c. 158, § 4, deleted "the patient" at the beginning.

Subd. (c), par. (3). L.2005, c. 158, § 4, deleted "the patient" at the beginning.

Subd. (c), par. (4), opening par. L.2005, c. 158, § 4, deleted "the patient" at the beginning.

Subd. (c), par. (4), subpar. (i). L.2005, c. 158, § 4, rewrote the subparagraph, which had read:

"at least twice within the last thirty-six months been a significant factor in necessitating hospitalization in a hospital, or receipt of services in a forensic or other mental health unit of a correctional facility or a local correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition or;".

Subd. (c), par. (4), subpar. (ii). L.2005, c. 158, § 4, rewrote the subparagraph, which had read:

"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 period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition; and".

Subd. (c), par. (5). L.2005, c. 158, § 4, rewrote the paragraph, which had read:

"the patient is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment pursuant to the treatment plan; and".

Subd. (c), par. (6). L.2005, c. 158, § 4, rewrote par. (6), which had read:

“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 result in serious harm to the patient or others as defined in section 9.01 of this article; and”.

Subd. (c), par. (7). L.2005, c. 158, § 4, rewrote par. (7), which had read:

“it is likely that the patient will benefit from assisted outpatient treatment; and”.

Subd. (c), par. (8). L.2005, c. 158, § 4, deleted par. (8), which had read:

“if the patient has executed a health care proxy as defined in article 29-C of the public health law, that any directions included in such proxy shall be taken into account by the court in determining the written treatment plan.”

Subd. (d). L.2005, c. 158, § 4, rewrote subd. (d), which had read:

“Nothing herein shall preclude a person with a health care proxy from being subject to a petition pursuant to this chapter and consistent with article 29-C of the public health law.”

Subd. (e), par. (1), opening par. L.2005, c. 158, § 4, rewrote the last sentence, which had read: “A petition to obtain an order authorizing assisted outpatient treatment may be initiated only by the following persons:”.

Subd. (e), par. (1), subpar. (vi). L.2005, c. 158, § 4, redesignated prior subpar. (vi) as (vii) and added a new subpar. (vi).

Subd. (e), par. (1), subpar. (vii). L.2005, c. 158, § 4, redesignated prior subpar. (vii) as (viii) and prior subpar. (vi) as (vii).

Subd. (e), par. (1), subpar. (viii). L.2005, c. 158, § 4, redesignated prior subpar. (vii) as (viii).

Subd. (e), par. (2), subpar. (ii). L.2005, c. 158, § 4, substituted “the” for “such” following “support” and deleted “the person who is” following “that”.

Subd. (e), par. (3), opening par. L.2005, c. 158, § 4, substituted “stating” for “and shall state”.

Subd. (e), par. (3), subpar. (i). L.2005, c. 158, § 4, rewrote subpar. (i), which had read:

“such physician has personally examined the person who is the subject of the petition no more than ten days prior to the submission of the petition, he or she recommends assisted outpatient treatment for the subject of the petition, and he or she is willing and able to testify at the hearing on the petition; or”.

Subd. (e), par. (3), subpar. (ii). L.2005, c. 158, § 4, rewrote subpar. (ii), which had read:

“no more than ten days prior to the filing of the petition, such physician or his or her 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 such physician has reason to suspect that the subject of the petition meets the

criteria for assisted outpatient treatment, and that such physician is willing and able to examine the subject of the petition and testify at the hearing on the petition."

Subd. (e), par. (4). L.2005, c. 158, § 4, added par. (4).

Subd. (f). L.2005, c. 158, § 4, rewrote subd. (f), which had read:

"Service. The petitioner shall cause written notice of the petition to be given to the subject of the petition and a copy thereof shall be given personally or by mail to the persons listed in section 9.29 of this article, the mental hygiene legal service, the current health care agent appointed by the subject of the petition, if any such agent is known to the petitioner, the appropriate program coordinator, the appropriate director of community services, if such director is not the petitioner."

Subd. (g). L.2005, c. 158, § 4, rewrote subd. (g), which had read:

"Right to counsel. The subject of the petition shall have the right to be represented by the mental hygiene legal service, or other counsel at the expense of the subject of the petition, at all stages of a proceeding commenced under this section."

Subd. (h), par. (1). L.2005, c. 158, § 4, rewrote par. (1), which had read:

"Upon receipt by the court of the petition submitted pursuant to subdivision (e) of this section, the court shall fix the date for a hearing at a time not 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 expeditiously. The court shall cause the subject of the petition, any other person receiving notice pursuant to subdivision (f) of this section, 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 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 alleged to be in need of assisted outpatient treatment 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 such 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."

Subd. (h), par. (2). L.2005, c. 158, § 4, rewrote par. (2), which had read:

"The court shall 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."

Subd. (h), par. (3). L.2005, c. 158, § 4, rewrote par. (3), which had read:

"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 peace officers, acting pursuant to their special duties, or police officers who are members of an authorized police department or force, or of a sheriff's department to take the subject of the petition into custody and transport him or her to a hospital for examination by a physician. Retention of the subject of the petition under such order shall not exceed twenty-four hours. The examination of the subject of the petition may be performed by the physician whose

affirmation or affidavit accompanied the petition pursuant to paragraph three of subdivision (e) of this section, if such physician is privileged by such hospital or otherwise authorized by such hospital to do so. If such examination is performed by another physician of such 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."

Subd. (h), par. (4). L.2005, c. 158, § 4, rewrote par. (4), which had read:

"A physician who testifies pursuant to paragraph two of this subdivision 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, such 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 such medication, and shall recommend whether such medication should be self-administered or administered by authorized personnel."

Subd. (h), par. (5), opening par. L.2005, c. 158, § 4, rewrote the opening paragraph, which had read:

"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."

Subd. (h), par. (5), subpar. (i). L.2005, c. 158, § 4, rewrote subpar. (i), which had read:

"(1) Written treatment plan. The court shall not order assisted outpatient treatment unless an examining physician appointed by the appropriate director develops and provides to the court a proposed written treatment plan. The written treatment plan shall include case management services or assertive community treatment teams to provide care coordination. The written treatment plan also shall include all categories of services, as set forth in paragraph one of subdivision (a) of this section, which such physician recommends that the subject of the petition should receive. If the written treatment plan includes medication, it shall state whether such 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. If the written treatment plan includes alcohol or substance abuse counseling and treatment, such plan may include a provision requiring relevant testing for either alcohol or illegal substances provided the physician's clinical basis for recommending such plan provides sufficient facts for the court to find (i) that such person has a history of alcohol or substance abuse that is clinically related to the mental illness; and (ii) that such testing is necessary to prevent a relapse or deterioration which would be likely to result in serious harm to the person or others. In developing such a plan, the physician 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; 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 subject. If the petitioner is a director, such 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. Such testimony shall state the categories of assisted outpatient treatment recommended, the rationale for each such category, facts which establish that such treatment is the least restrictive alternative, and, if the recommended assisted outpatient treatment includes medication, the types or classes of medication recommended, the beneficial and detrimental physical and mental effects of such medication, and whether such medication should be self-administered or administered by an authorized professional. If the petitioner is a director such testimony shall be given at the hearing on the petition."

Subd. (j), par. (1). L.2005, c. 158, § 4, rewrote par. (1), which had read:

"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."

Subd. (j), par. (2). L.2005, c. 158, § 4, rewrote par. (2), which had read:

"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, as set forth in subdivision (a) of this section, which the subject is to receive, and 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 subdivision (i) of this section."

Subd. (j), par. (3). L.2005, c. 158, § 4, rewrote par. (3), which had read:

"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 proposed treatment plan and testimony pursuant to subdivision (i) of this section, the court shall order the director of community services to provide the court with such plan and testimony no later than the third day, excluding Saturdays, Sundays and holidays, immediately following the date of such order. Upon receiving such plan and testimony, the court may order assisted outpatient treatment as provided in paragraph two of this subdivision."

Subd. (j), par. (6). L.2005, c. 158, § 4, rewrote par. (6), which had read:

"The director or his or her designee shall apply to the court for approval before instituting a proposed material change in the assisted outpatient treatment order unless such change is contemplated in the order. Non-material changes may be instituted by the assisted outpatient treatment program without court approval. For the purposes of this subdivision, 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. Any such application for approval shall be served upon those persons required to be served with notice of a petition for an order authorizing assisted outpatient treatment."

Subd. (k). L.2005, c. 158, § 4, rewrote subd. (k), which had read:

"Applications for additional periods of treatment. If the director determines that the condition of such 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 subdivision shall be in accordance with the provisions of the foregoing subdivisions of this section, provided that the time period included in subparagraphs (i) and (ii) of paragraph four of subdivision (c) of this section 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 treatment plan or another physician designated by the director, and such physician shall be authorized to terminate such blood tests or urinalysis without further action by the court."

Subd. (l). L.2005, c. 158, § 4, rewrote subd. (l), which had read:

"Application for an 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, mental hygiene legal service, 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."

Subd. (n). L.2005, c. 158, § 4, rewrote subd. (n), which had read:

"Failure to comply with assisted outpatient treatment. Where in the clinical judgment of a physician, the patient has failed or has refused to comply with the treatment ordered by the court, and in the physician's clinical judgment, efforts were made to solicit compliance, and, in the clinical judgment of such physician, such patient may be in need of involuntary admission to a hospital pursuant to section 9.27 of this article, or for whom immediate observation, care and treatment may be necessary pursuant to section 9.39 or 9.40 of this article, such physician may request the director, the director's designee, or persons designated pursuant to section 9.37 of this article, to direct the removal of such patient to an appropriate hospital for an examination to determine if such person has a mental illness for which hospitalization is necessary pursuant to section 9.27, 9.39 or 9.40 of this article. Furthermore, if such assisted outpatient refuses to take medications as required by the court order, or he or she refuses to take, or fails a blood test, urinalysis, or alcohol or drug test as required by the court order, such physician may consider such refusal or failure when determining whether the assisted outpatient is in need of an examination to determine whether he or she has a mental illness for which hospitalization is necessary. Upon the request of such physician, the director, the director's designee, or persons designated pursuant to section 9.37 of this article, may direct peace officers, when acting pursuant to their special duties, or police officers who are members of an authorized police department or force or of a sheriff's department to take into custody and transport any such person to the hospital operating the assisted outpatient treatment program or to any hospital authorized by the director of community services to receive such persons. Such law enforcement officials shall carry out such directive. Upon the request of such physician, the director, the director's designee, or person designated pursuant to section 9.37 of this article, an ambulance service, as defined by subdivision two of section three thousand one of the public health law, or an approved mobile crisis outreach team as defined in section 9.58 of this article shall be authorized to take into custody and transport any such person to the hospital operating the assisted outpatient treatment program, or to any other hospital authorized by the director of community services to receive such persons. Such person may be retained for observation, care and treatment and further examination in the hospital for up to seventy-two hours to permit a physician to determine whether such person has a mental illness and is in need of involuntary care and treatment in a hospital pursuant to the provisions of this article. Any continued involuntary retention in such hospital beyond the initial seventy-two hour period shall be in accordance with the provisions of this article relating to the involuntary admission and retention of a person. If at any time during the seventy-two hour period the person is determined not to meet the involuntary admission and retention provisions of this article, and does not agree to stay in the hospital as a voluntary or informal patient, he or she must be released. 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."

Subd. (o). L.2005, c. 158, § 4, rewrote subd. (o), which had read:

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

Subd. (p). L.2005, c. 158, § 4, substituted "shall be" for "is".

Subd. (r). L.2005, c. 158, § 4, rewrote subd. (r), which had read:

"Educational materials. The office of mental health, 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 as defined in article forty-one of this chapter, providers of services, judges, court personnel, law enforcement officials and the general public."

L.2005, c. 158, § 1, provides:

"Legislative intent. In 1999, the legislature enacted a statutory framework, commonly referred to as "Kendra's Law", that established a statewide court-ordered assisted outpatient treatment (AOT) program to ensure that persons with mental illness who are capable of living in the community, with the help of family, friends or others, along with routine care and treatment on an outpatient basis, are provided this opportunity. The provisions of Kendra's Law are set to expire on June 30, 2005, and while the legislature finds that the law should be extended, it also determines that modifications and further study of its implementation are needed.

"Specifically, the legislature finds that Kendra's Law should require more accountability from those responsible for its implementation, that families and caregivers should be appropriately engaged in the AOT process, that procedural improvements are needed, and that improved coordination and delivery of services to assisted outpatients are critical. The legislature recognizes the importance of understanding mental illness and treatment, and to this end, finds that the New York state office of mental health (OMH) should develop and provide mental health education and training to judges and court officials.

"Finally, the legislature finds that while data compiled by the OMH indicates that Kendra's Law has been effective in improving outcomes for its targeted population, including documented declines in the rates of homelessness, hospitalization, arrest and incarceration, the legislature also finds that additional evaluation of the AOT program is needed. Questions remain regarding local variation in the implementation of AOT, the opinions regarding the experiences of those under court order, the regional and cultural differences in AOT programs, and the outcomes for persons receiving services under a court order and for those voluntarily receiving enhanced services. The legislature therefore finds that an additional evaluation of Kendra's Law is required, and resolves that Kendra's Law should be extended for another five years."

L.2005, c. 158, § 11, subsec. (b), provides:

"the amendments to paragraph 2 of subdivision (f) of section 7.17, made by section two of this act, subdivision (b) of section 9.47, made by section three of this act, and section 9.60 of the mental hygiene law, made by section four of this act, shall not affect the expiration and repeal of such provisions of the mental hygiene law pursuant to section 18 of chapter 408 of the laws of 1999, as amended, and shall expire and be deemed repealed therewith."

L.2005, c. 137 legislation

Subd. (c), par. (5). L.2005, c. 137, § 1, inserted "that would enable him or her to live safely in the community" in par. (5) as amended by L.2005, c. 158.

L.2005, c. 137, § 2, provides:

"This act [amending this section] shall take effect on the same date [June 30, 2005] and in the same manner as a chapter [L.2005, c. 158] of the laws of 2005 amending the mental hygiene law relating to the assisted outpatient treatment program, as proposed in legislative bills numbers S. 5876 and A. 8954, takes effect."

L.1999, c. 408 legislation

L.1999, c. 408, §§ 1 and 2, eff. Aug. 9, 1999, provide:

"§ 1. This act shall be known and may be cited as 'Kendra's Law'."

"§ 2. Legislative findings. The legislature finds that there are mentally ill persons who are capable of living in the community with the help of family, friends and mental health professionals, but who, without routine care and treatment, may relapse and become violent or suicidal, or require hospitalization. The legislature further finds that there are mentally ill persons who can function well and safely in the community with supervision and treatment, but who without such assistance, will relapse and require long periods of hospitalization.

"The legislature further finds that some mentally ill persons, because of their illness, have great difficulty taking responsibility for their own care, and often reject the outpatient treatment offered to them on a voluntary basis. Family members and caregivers often must stand by helplessly and watch their loved ones and patients decompensate. Effective mechanisms for accomplishing these ends include: the establishment of assisted outpatient treatment as a mode of treatment; improved coordination of care for mentally ill persons living in the community; the expansion of the use of conditional release in psychiatric hospitals; and the improved dissemination of information between and among mental health providers and general hospital emergency rooms.

"The legislature further finds that if such court-ordered treatment is to achieve its goals, it must be linked to a system of comprehensive care, in which state and local authorities work together to ensure that outpatients receive case management and have access to treatment services. The legislature therefore finds that assisted outpatient treatment as provided in this act is compassionate, not punitive, will restore patients' dignity, and will enable mentally ill persons to lead more productive and satisfying lives.

"The legislature further finds that many mentally ill persons are more likely to enjoy recovery from non-dangerous, temporary episodes of mental illness when they are engaged in planning the nature of the medications, programs or treatments for such episodes with assistance and support from family, friends and mental health professionals. A health care proxy executed pursuant to article 29-C of the public health law provides mentally ill persons with a means to accept individual responsibility for their own continuing mental health care by providing advance directives concerning their wishes as to medications, programs or treatments that they feel are appropriate when they are temporarily unable to make mental health care decisions. The legislature therefore finds that the voluntary use of such proxies should be encouraged so as to minimize the need for involuntary mental health treatment."

L.1999, c. 408, § 18, eff. Aug. 9, 1999, amended L.2005, c. 158, § 9, eff. June 30, 2005, provides:

"This act shall take effect immediately, provided that section fifteen of this act shall take effect April 1, 2000, provided, further, that subdivision (e) of section 9.60 of the mental hygiene law as added by section six of this act shall be effective 90 days after this act shall become law; and that this act shall expire and be deemed repealed June 30, 2010; and, provided, further, that the amendments to section 9.61 of the mental hygiene law made by section seven of this act shall not affect the expiration of such section and shall be deemed to expire therewith."

CROSS REFERENCES

Mental hygiene legal services, see Mental Hygiene Law § 47.03.
Oversight and monitoring of assisted outpatient treatment programs, see Mental Hygiene Law § 7.17.

LAW REVIEW AND JOURNAL COMMENTARIES

Discharge under Kendra's Law. Thomas A. Sipp and John Peter Sipp, 228 N.Y.L.J. 4 (July 19, 2002).

Has Kendra's law been a boon or a bust? Susan L. Pollet, 224 N.Y.L.J. 1 (Oct. 23, 2000).

Is Kendra's Law a keeper? How Kendra's Law erodes fundamental rights of the mentally ill. Erin O'Connor, 11 J.L. & Pol'y 313 (2002).

Overview of Kendra's Law; the new mental health law. Martin G. Karopkin, 222 N.Y.L.J. 1 (Oct. 7, 1999).

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Mental Health 31, 51.5.
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C.J.S. Mental Health §§ 45, 47, 53, 86 to 87.

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74 ALR 4th 1099, Nonconsensual Treatment of Involuntarily Committed Mentally Ill Persons With Neuroleptic or Antipsychotic Drugs as Violative of State Constitutional Guaranty.

Encyclopedias

8 Am. Jur. Trials 483, Incompetency and Commitment Proceedings.

26 Am. Jur. Trials 97, Representing the Mentally Ill: Civil Commitment Proceedings.

NY Jur. 2d, Appellate Review § 638, Issues Which Are Recurring, Substantial and Novel, and Which Typically Evade Review.

NY Jur. 2d, Evidence & Witnesses § 884, Statutory Abrogation of Privilege in Public Interest.

NY Jur. 2d, Infants & Persons Under Legal Disability § 75, Medical Intervention.

NY Jur. 2d, Infants & Persons Under Legal Disability § 79, Constitutional Protections.

NY Jur. 2d, Infants & Persons Under Legal Disability § 91, Hearing and Determination.

NY Jur. 2d, Infants & Persons Under Legal Disability § 94, Review of Court Authorization to Retain Involuntary Patient or Resident.

NY Jur. 2d, Infants & Persons Under Legal Disability § 103, Discharge and Conditional Release; Generally.

NY Jur. 2d, Infants & Persons Under Legal Disability § 104, Periodic Review of Status of Patient Conditionally

Released.

Forms

McKinney's Forms, Civil Practice Law & Rules § 4:2, The Complaint; Certificate of Merit.

Treatises and Practice Aids

New York Pattern Jury Instructions--Civil 8:7, Mental Hygiene Law--Involuntary Retention of the Mentally Retarded or Mentally Ill.

NOTES OF DECISIONS

1. Validity

Provision in assisted outpatient treatment (AOT) law which allowed for hospitalization of noncompliant assisted outpatient for 72-hour psychiatric evaluation did not violate federal and state constitutional prohibition against unreasonable searches and seizures, although there was no requirement that physician must have probable cause or reasonable grounds to believe that outpatient was in need of involuntary hospitalization before seeking outpatient's detention, where AOT law required that detention be based on physician's reasonable belief that outpatient was in need of such care. In re K.L., 2004, 1 N.Y.3d 362, 774 N.Y.S.2d 472, 806 N.E.2d 480. Mental Health 32

Provision in assisted outpatient treatment (AOT) law, that noncomplying assisted outpatient could be retained in hospital for up to 72 hours for psychiatric examination to determine if he or she needed involuntary care and treatment, did not violate outpatient's procedural due process rights, even though it did not require pre-removal notice and hearing; standards for involuntary commitment rendered risk of erroneous deprivation of liberty minimal, and state had strong interest in removing noncompliant patients from streets and warding off longer periods of hospitalization that tended to accompany relapse or deterioration. In re K.L., 2004, 1 N.Y.3d 362, 774 N.Y.S.2d 472, 806 N.E.2d 480. Constitutional Law 255(5); Mental Health 32

Equal protection did not require judicial finding of incapacity prior to implementation of assisted outpatient treatment plan (AOT) on behalf of mentally-ill patient, although persons subject to guardianship proceedings and involuntarily committed psychiatric patients had to be found incapacitated before they could be forcibly medicated against their will, where a court-ordered AOT plan did not authorize forcible medical treatment. In re K.L., 2004, 1 N.Y.3d 362, 774 N.Y.S.2d 472, 806 N.E.2d 480. Constitutional Law 242.1(5); Mental Health 32

The state has authority under its police power to protect the community from the dangerous tendencies of some who are mentally ill, and accordingly, when a patient presents a danger to self or others, the state may be warranted, in the exercise of its police power interest in preventing violence and maintaining order, in mandating treatment over the patient's objection. In re K.L., 2004, 1 N.Y.3d 362, 774 N.Y.S.2d 472, 806 N.E.2d 480. Mental Health 51.15

Due process did not require judicial finding of incapacity prior to implementation of assisted outpatient treatment plan (AOT) on behalf of mentally-ill patient, where AOT law did not permit forced medical treatment, and state's compelling interests in both its police and parens patriae powers outweighed patient's right to refuse treatment; standards for involuntary commitment provided all due process that was required. In re K.L., 2004, 1 N.Y.3d 362, 774 N.Y.S.2d 472, 806 N.E.2d 480. Constitutional Law 255(5); Mental Health 51.15

Judicial finding of incapacity, prior to implementation of assisted outpatient treatment plan (AOT) on behalf of mentally-ill person, was not warranted, in order to protect a mentally-ill person's due process and equal protection rights; AOT law required that assisted outpatients be invited to participate in developing their own treatment plan, court was required to find by clear and convincing evidence that patient needed AOT in order to prevent relapse or deterioration which was likely to cause serious harm to patient or other persons, and legislature made findings that such persons needed that kind of care. In re K. L. (2 Dept. 2003) 302 A.D.2d 388, 755 N.Y.S.2d 93, affirmed 1 N.Y.3d 362, 774 N.Y.S.2d 472, 806 N.E.2d 480. Constitutional Law 242.1(5); Constitutional Law 255(5); Mental Health 51.15

Kendra's Law, governing issuance of order authorizing assisted outpatient mental health treatment, did not unconstitutionally violate patients' fundamental state constitutional due process right to choose course of their own medical treatment, despite fact that it did not require finding of incapacity prior to ordering patient to follow course of medical treatment; statute contemplated treatment of patients no longer in need of forcible administration of medication, treatment plan was not subject to approval unless hearing court was satisfied that patient, patient's representative, or both had meaningful opportunity to participate in plan's development, and statute authorized involuntary detention only upon showing that patient was, in essence, dangerous to self or others. In re Urcuyo, 2000, 185 Misc.2d 836, 714 N.Y.S.2d 862. Constitutional Law 255(5); Mental Health 32

That portion of Kendra's Law, governing assisted outpatient mental health treatment, which provided for 72-hour detention for observation upon a patient's refusal to comply with treatment plan, was narrowly tailored to comport with requirements of due process as embodied in involuntary care and treatment statute, where patient's refusal to comply with treatment plan would indicate that patient's judgment was impaired to extent rendering him or her unable to understand need for care and treatment, thereby posing substantial threat of physical harm to self or others. In re Urcuyo, 2000, 185 Misc.2d 836, 714 N.Y.S.2d 862. Constitutional Law 255(5); Mental Health 32

Kendra's Law, governing assisted outpatient mental health services, did not violate equal protection rights of psychiatric outpatients subject to assisted outpatient treatment plans, where such patients were not deprived of any fundamental constitutional right, different treatment for such patients, as opposed to alleged incapacitated persons (AIPs) and involuntarily committed psychiatric patients, was warranted, and state interest in taking measures to prevent patients refusing to follow treatment plan, and thereby posing high risk to themselves or others, from becoming danger to community and themselves was compelling. In re Urcuyo, 2000, 185 Misc.2d 836, 714 N.Y.S.2d 862. Constitutional Law 242.1(5); Mental Health 32

For purposes of equal protection analysis, that portion of Kendra's Law permitting temporary involuntary commitment of persons failing to comply with an assisted outpatient mental health treatment plan did not abridge psychiatric outpatients' fundamental constitutional due process right to determine course of their own treatment, and did not entitle them to same procedural review of commitment decisions as that afforded individuals subject to guardianship proceedings and involuntary psychiatric inpatients. In re Urcuyo, 2000, 185 Misc.2d 836, 714 N.Y.S.2d 862. Constitutional Law 255(5); Mental Health 32

Psychiatric outpatients subject to assisted outpatient treatment plans under Kendra's Law were not similarly situated, for purposes of equal protection analysis, with alleged incapacitated persons (AIPs) and involuntary psychiatric inpatients; subjects of assisted outpatient treatment orders lived in the community and had history of dangerousness to self or others, satisfactorily demonstrated to court upon clear and convincing evidence, and were likely to decompensate and become dangerous again upon failure to follow their treatment plans. In re Urcuyo, 2000, 185 Misc.2d 836, 714 N.Y.S.2d 862. Constitutional Law 242.1(5); Mental Health 32

For purposes of equal protection analysis of Kendra's Law, governing assisted outpatient mental health treatment, state had compelling interest in taking measures to prevent patients refusing to follow an assisted outpatient mental health treatment plan, and thereby posing high risk to themselves or others, from becoming danger to community and themselves, justifying 72-hour detention of such individuals for observation without prior finding by clear and convincing evidence of patient's inability to make his own treatment decisions. In re Urcuyo, 2000, 185 Misc.2d 836, 714 N.Y.S.2d 862. Constitutional Law 242.1(5); Mental Health 32

2. Construction and application

Kendra's Law did not provide exclusive remedy to patient following his discharge from psychiatric hospital to correctional facility; Kendra's Law applies to releasing patients to the community at large. In re Smith, 2002, 195 Misc.2d 854, 763 N.Y.S.2d 200, affirmed 306 A.D.2d 814, 760 N.Y.S.2d 711. Mental Health 51.15

3. Construction with federal law

Proposed assisted outpatient treatment plan for mental illness could designate representative payee of outpatient's Supplemental Security Income (SSI) but final determination of who payee would be remained within province of Social Security Administration. In re Macgilvray, 2003, 196 Misc.2d 469, 765 N.Y.S.2d 433. Social Security And Public Welfare 140.85

Court-ordered assisted outpatient treatment plan for mental illness which includes state designated representative payee for outpatient's Supplemental Security Income (SSI) should reflect that designation of representative payee is subject to final approval of Social Security Administration. In re Macgilvray, 2003, 196 Misc.2d 469, 765 N.Y.S.2d 433. Social Security And Public Welfare 140.85

In court-ordered assisted outpatient treatment plan for mental illness, any failure to clarify that state designated representative payee for outpatient's Supplemental Security Income (SSI) benefits was subject to final approval of Social Security Administration would not have rendered order or treatment plan defective. In re Macgilvray, 2003, 196 Misc.2d 469, 765 N.Y.S.2d 433. Social Security And Public Welfare 140.85

4. Purpose

“Kendra's Law,” which authorizes the court to order psychiatric patients to participate in an assisted outpatient treatment (AOT) program as a condition of release from an inpatient program, is intended to insure that the patient

residing in the community receives the treatment that will, inter alia, prevent him becoming a danger to himself or others. In re Manhattan Psychiatric Center (1 Dept. 2001) 285 A.D.2d 189, 728 N.Y.S.2d 37, issued 2001 WL 845139. Mental Health 51.15

Kendra's Law was enacted to enable mentally ill people to live in the community without the danger of relapse caused by their failure to accept supervision and treatment. In re Smith, 2002, 195 Misc.2d 854, 763 N.Y.S.2d 200, affirmed 306 A.D.2d 814, 760 N.Y.S.2d 711. Mental Health 51.15

Clear purpose and effect of provision of Kendra's Law allowing the petitioner to look back 36 months from the date of admission of the hospitalization immediately preceding the filing of the petition for assisted outpatient treatment (AOT) is to not exclude some patients' with multiple psychiatric hospitalizations, who are precisely the class of patients Kendra's Law was drafted to help, simply because they are currently hospitalized. In re Application of Dailey, 2000, 185 Misc.2d 506, 713 N.Y.S.2d 660. Mental Health 51.15

5. Director of community services

Hospital's operating an outpatient mental health treatment program does not absolve a county director of community services' statutory responsibility for operation of such a program; while a hospital may operate such a program, the hospital does not have the same duties as the director of community services unless it enters into a contractual agreement with the director of community to fulfill same. In re Arden Hill Hosp., 2000, 183 Misc.2d 546, 703 N.Y.S.2d 902. Mental Health 79

Statutory scheme governing mandatory outpatient mental health services for certain mentally ill persons does not impose financial liability upon the director of assisted outpatient treatment programs; rather, under statute, it is solely the director of community services who is charged with the obligation of providing the services either directly, or by coordination with the services of the department, or by contract. In re Arden Hill Hosp., 2000, 183 Misc.2d 546, 703 N.Y.S.2d 902. Mental Health 78.1

6. Costs of treatment

County was responsible for costs of mentally ill person's mandatory outpatient mental health services, which were not covered by insurance, Medicaid, or otherwise, pursuant to duties imposed on the county director of community services under Kendra's Law, a statutory scheme to provide mandatory outpatient mental health services for the mentally ill persons who without routine care and treatment could relapse and become violent or suicidal, or require hospitalization. In re Arden Hill Hosp., 2000, 183 Misc.2d 546, 703 N.Y.S.2d 902. Mental Health 79

If a mentally ill person for whom mandatory outpatient mental health services are sought has financial resources, whether it be through employment or funds established by trust or the proceeds of a lawsuit, that person should be responsible for the costs of his or her own treatment and for the costs of obtaining that treatment. In re Arden Hill Hosp., 2000, 183 Misc.2d 546, 703 N.Y.S.2d 902. Mental Health 73

In those instances where a petitioner seeking mandatory outpatient mental health services for a mentally ill person has an obligation by law to support the respondent, such as a spouse or a parent of a respondent who is under the age of 21 years, then the petitioner may be responsible for the cost of treatment; however, this obligation does not arise because that person is the petitioner, but arises because these persons have a legal responsibility imposed by law independent of statutes authorizing the ordering of such mandatory services. In re Arden Hill Hosp., 2000, 183 Misc.2d 546, 703 N.Y.S.2d 902. Mental Health 74.1

If the Department of Social Services files petition seeking mandatory outpatient mental health services for a

mentally ill person, and the respondent was a recipient of aid, the Department is responsible for the costs to ensure that the respondent obtained the needed treatment; this duty does not arise as a result of statute authorizing the ordering of such mandatory services but by the operation of other laws. In re Arden Hill Hosp., 2000, 183 Misc.2d 546, 703 N.Y.S.2d 902. Mental Health 78.1

Mentally ill persons determined to be an assisted outpatient, under Kendra's Law, a statutory scheme governing mandatory outpatient mental health services for certain mentally ill persons, are entitled to receive the needed outpatient treatment, and the costs of same, not otherwise covered in another manner, are to be borne by the local government through the duties imposed by statutes on the county director of community services. In re Arden Hill Hosp., 2000, 183 Misc.2d 546, 703 N.Y.S.2d 902. Mental Health 79

7. Pleadings

Failure of a pleading to comply with the statutory sufficiency requirements contained in "Kendra's Law," for an order authorizing assisted outpatient treatment for patient, is a nonwaivable jurisdictional defect. In re Sullivan, 2000, 185 Misc.2d 39, 710 N.Y.S.2d 853. Mental Health 51.15

Allegations which are nothing more than broad, simple, conclusory statements are insufficient to state a claim under "Kendra's Law" for an order authorizing assisted outpatient treatment for patient. In re Sullivan, 2000, 185 Misc.2d 39, 710 N.Y.S.2d 853. Mental Health 51.15

The specificity in pleading required under "Kendra's Law" for an order authorizing assisted outpatient treatment is not to be taken lightly; the sufficiency requirements are not simply technical pleading requirements. In re Sullivan, 2000, 185 Misc.2d 39, 710 N.Y.S.2d 853. Mental Health 51.15

8. Affirmation or affidavit of physician

Doctor's supplemental affirmation, in which he stated that patient was arrested and charged with assaulting strangers and was incarcerated, that patient was transferred to mental observation unit on two occasions and that patient did not comply with medications throughout his stay at prison resulting in violent behavior, did not cure jurisdictional defect of initial pleadings seeking an order authorizing assisted outpatient treatment for patient; affirmation did not state that allegations were based upon doctor's personal knowledge and did not identify source of information. In re Sullivan, 2000, 185 Misc.2d 39, 710 N.Y.S.2d 853. Mental Health 51.15

Doctor's statements in his affirmation, without any supporting documentation or specification, that patient had "long history of noncompliance with aftercare followup and medications which ha[d] led to physically violent behavior resulting in hospitalizations and criminal incarcerations" and that patient had "history of lack of compliance with treatment that ha[d] resulted in one or more acts of serious violent behavior toward self or others," were insufficient to satisfy pleading requirements under "Kendra's Law" for an order authorizing assisted outpatient treatment for patient. In re Sullivan, 2000, 185 Misc.2d 39, 710 N.Y.S.2d 853. Mental Health 51.15

Physician-patient evidentiary privilege did not prevent mental patient's treating psychiatrist from submitting an affidavit or giving testimony in support of a petition filed under "Kendra's Law," seeking order directing patient to attend assisted outpatient treatment (AOT) on his discharge, where treating psychiatrist was not the petitioner. In re Sullivan, 2000, 184 Misc.2d 666, 710 N.Y.S.2d 804. Witnesses 208(2)

9. Involuntary detention and observation

Physician's clinical judgment based on statutory criteria, that assisted outpatient had documented history of

noncompliance with treatment for mental illness that led to his or her previous hospitalization, recent acts of violence, or threatening behavior, and that there were reasonable grounds to believe that assisted outpatient might need involuntary care and treatment, was sufficient under search and seizure provisions of federal and New York constitutions to justify removal and detention of noncomplying assisted outpatient for 72-hour psychiatric evaluation. In re K. L. (2 Dept. 2003) 302 A.D.2d 388, 755 N.Y.S.2d 93, affirmed 1 N.Y.3d 362, 774 N.Y.S.2d 472, 806 N.E.2d 480. Mental Health 51.15

Director of hospital's department of psychiatry failed to produce clear and convincing evidence that patient diagnosed with chronic paranoid schizophrenia and cannabis abuse would not participate in a recommended treatment in the absence of a court order, as required for court-ordered assisted outpatient treatment pursuant to Kendra's Law; record showed that the patient had willingly and voluntarily participated for nearly three-months in the very treatment program that was proposed to be ordered. In re Sullivan, 2004, 4 Misc.3d 705, 781 N.Y.S.2d 563. Mental Health 51.15

That portion of Kendra's Law, governing assisted outpatient mental health treatment, providing for detention and observation of patients refusing to comply with treatment plans did not improperly authorize summary arrest upon non-compliance. In re Urcuyo, 2000, 185 Misc.2d 836, 714 N.Y.S.2d 862. Mental Health 51.15

For purposes of state constitutional due process analysis, 72-hour evaluation period authorized by Kendra's Law, governing assisted outpatient mental health treatment, upon a patient's failure to comply with treatment plan, was reasonable response to failure to comply with treatment, balanced against compelling state interests involved; initial issuance of order required court to determine, based on clear and convincing evidence, that patient's failure to comply with treatment plan would likely cause patient to become dangerous to self or others, and state had legitimate interest under parens patriae powers in caring for patient under those circumstances, as well as police power to protect community. In re Urcuyo, 2000, 185 Misc.2d 836, 714 N.Y.S.2d 862. Constitutional Law 255(5); Mental Health 32

10. Burden of proof

To obtain an assisted outpatient treatment order pursuant to Kendra's Law, the petitioner must prove at a court hearing, by clear and convincing evidence, that the patient meets each of the criteria enumerated in the Mental Hygiene law. In re Sullivan, 2004, 4 Misc.3d 705, 781 N.Y.S.2d 563. Mental Health 51.15; Mental Health 51.20

In order to obtain order under Kendra's Law authorizing assisted outpatient mental health treatment, petitioner must show, by clear and convincing evidence, that: patient has history of non-compliance with treatment that has led to at least two hospitalizations or one or more acts of serious violent behavior or threats of or attempts at, serious physical harm; patient is not likely to voluntarily comply with treatment in absence of order; in view of this history, patient is in need of assisted outpatient treatment to prevent relapse or deterioration likely to result in serious harm to patient or others; and assisted outpatient treatment is least restrictive alternative. In re Urcuyo, 2000, 185 Misc.2d 836, 714 N.Y.S.2d 862. Mental Health 51.15

11. Hearing

If the trier of fact finds that mental health commissioner did not prove, at the initial hearing on assisted outpatient treatment (AOT) plan, by clear and convincing evidence all of the criteria for issuance of order authorizing AOT, the only option for the Supreme Court is to dismiss the petition as the least restrictive alternative. Cohen v. Anne C., 2001, 190 Misc.2d 53, 732 N.Y.S.2d 534, vacated 301 A.D.2d 446, 753 N.Y.S.2d 500. Mental Health 51.15

Patient could be ordered to participate in outpatient treatment by a physician, without being afforded a hearing, based on patient's refusal to consent to an examination; county director of community services' application to require assisted outpatient treatment was made by way of an order to show cause which sufficiently set forth the grounds which established reasonable cause to believe that petition was true, patient was given ample opportunity to be heard at oral argument with respect to petition, and patient planned to submit written opposition to petition. In re Longo, 2000, 186 Misc.2d 188, 715 N.Y.S.2d 833. Mental Health 51.1

12. Hospitalizations

Mental Hygiene Law provision requiring, to obtain an order authorizing assisted outpatient treatment, that patient have a history of lack of compliance with treatment for mental illness that has at least twice within the last thirty-six months been a significant factor in necessitating hospitalization (Kendra's Law) excludes the time-period during which a person was hospitalized immediately preceding the filing of the petition for assisted outpatient treatment, from the calculation of the 36-month period during which there must have been at least two hospitalizations due to noncompliance with treatment; such interpretation ensures that a petitioner is not curtailed from seeking an order for assisted outpatient treatment by a person's lengthy hospitalization immediately preceding the filing of the petition. In re South Beach Psychiatric Center (2 Dept. 2001) 284 A.D.2d 541, 727 N.Y.S.2d 149. Mental Health 51.5

Acts of noncompliance leading to hospitalization immediately preceding filing of petition seeking order authorizing assisted outpatient treatment (AOT), and that hospitalization itself, could be used in meeting statutory criteria that there were two hospitalizations within a relevant 36 months which had been caused by a lack of compliance with treatment for mental illness. In re Application of Dailey, 2000, 185 Misc.2d 506, 713 N.Y.S.2d 660. Mental Health 51.15

13. Violent acts

Clear and convincing evidence established that psychiatric patient had history of noncompliance with treatment, resulting in one or more acts, attempts or threats of “serious violent behavior” by patient in preceding 48 months, and thus that patient needed assisted outpatient treatment; evidence showed patient had history of “cheeking” his medication whenever he could during his three-year hospitalization, of showing no medication in his blood on testing, of boasting that he would not take medication when he was free, of decompensating when he was not medicated, and of becoming paranoid and violent when he decompensated. In re Weinstock (2 Dept. 2001) 288 A.D.2d 480, 733 N.Y.S.2d 243. Mental Health 51.15

Violent act that psychiatric patient committed during his present hospitalization could be used to establish that assisted outpatient treatment was needed based on one or more acts, attempts or threats of “serious violent behavior” by patient towards self or others. In re Weinstock (2 Dept. 2001) 288 A.D.2d 480, 733 N.Y.S.2d 243. Mental Health 51.15

Psychiatric treatment center failed to prove by clear and convincing evidence that patient's assault of doctor, that occurred one week after patient was admitted to hospital and patient refused medication, warranted assisted outpatient treatment (AOT) order, since assault was not causally related to patient's failure to comply with prior outpatient treatment plan. In re Weinstock, 2002, 191 Misc.2d 143, 742 N.Y.S.2d 477. Mental Health 51.15

A patient should not qualify for an assisted outpatient treatment (AOT) order if, while in an acute state, he refuses treatment upon first admission to the hospital and commits an act of violence. In re Weinstock, 2002, 191 Misc.2d 143, 742 N.Y.S.2d 477. Mental Health 51.15

Violent act occurring during patient's present psychiatric hospitalization could be used to satisfy Kendra's Law's criterion of “one or more acts of serious violent behavior toward self and other.” In re Weinstock, 2001, 187 Misc.2d

384, 723 N.Y.S.2d 617. Mental Health 51.15

14. Noncooperation

Patient's challenge to requirement in proposed assisted outpatient treatment plan for mental illness that state designated payee manage patient's Supplemental Security Income (SSI) benefits would not amount to noncooperation authorizing his involuntary detention in psychiatric facility. In re Macgilvray, 2003, 196 Misc.2d 469, 765 N.Y.S.2d 433. Mental Health 51.5

15. Discretion of court

Court could properly consider only whether psychiatric hospital had proved that patient could be ordered to obtain assisted outpatient treatment (AOT) after his release; court could not consider whether psychiatric patient should be released from psychiatric hospital, under Mental Hygiene Law provision governing court ordered AOT, when considering hospital's petition for an AOT order. In re Manhattan Psychiatric Center (1 Dept. 2001) 285 A.D.2d 189, 728 N.Y.S.2d 37, issued 2001 WL 845139. Mental Health 51.15

The court's role in an assisted outpatient treatment (AOT) proceeding is limited to determining whether or not the petitioner has proved that it is justified in seeking to restrict the patient's liberty to the extent of ordering him to obtain outpatient treatment; if the hospital has not so proved, then the court may not restrict the patient's liberty even to that extent, and must dismiss the petition. In re Manhattan Psychiatric Center (1 Dept. 2001) 285 A.D.2d 189, 728 N.Y.S.2d 37, issued 2001 WL 845139. Mental Health 51.15

No measure of discretion would be sufficient to permit a court to bar the release of a hospitalized patient, or, by extrapolation, to order the involuntary admission of an unhospitalized person, as an alternative to ordering assisted outpatient treatment (AOT), because Kendra's Law, which authorizes a court to order such treatment, does not place that decision before the court. In re Manhattan Psychiatric Center (1 Dept. 2001) 285 A.D.2d 189, 728 N.Y.S.2d 37, issued 2001 WL 845139. Mental Health 51.15; Mental Health 59.1

A court may decide not to order assisted outpatient treatment (AOT) for a person who meets the criteria set forth in the Mental Hygiene Law authorizing the court to order such treatment, but it may not decide to order AOT for a person who does not meet the criteria. In re Manhattan Psychiatric Center (1 Dept. 2001) 285 A.D.2d 189, 728 N.Y.S.2d 37, issued 2001 WL 845139. Mental Health 51.15

For a person residing in the community, for whom a petition for assisted outpatient treatment (AOT) has been filed, the alternative to dismissal of a petition because the criteria for AOT have not been met is not admission to a hospital but continued residence in the community without a court order to obtain treatment. In re Manhattan Psychiatric Center (1 Dept. 2001) 285 A.D.2d 189, 728 N.Y.S.2d 37, issued 2001 WL 845139. Mental Health 51.15

Requirement that the petition for assisted outpatient treatment (AOT) of a psychiatric patient state facts supporting the belief that the patient meets the requirements of the statute authorizing a court to order AOT is not an invitation to the court to consider the issue of dangerousness in respect of a decision to release the patient. In re Manhattan Psychiatric Center (1 Dept. 2001) 285 A.D.2d 189, 728 N.Y.S.2d 37, issued 2001 WL 845139. Mental Health 51.15

The question for the court hearing a petition for assisted outpatient treatment (AOT) is not whether the patient should be released, but whether he should be released with or without an AOT order, i.e., whether the hospital has shown, inter alia, that the patient cannot be left to his own devices and must be assisted in obtaining outpatient

treatment after he is released. In re Manhattan Psychiatric Center (1 Dept. 2001) 285 A.D.2d 189, 728 N.Y.S.2d 37, issued 2001 WL 845139. Mental Health 51.15

16. Least restrictive treatment

Proposed outpatient treatment of patient's Axis I diagnosis of schizophrenia was the least restrictive treatment appropriate and feasible for his diagnosis, and thus the Supreme Court was required to order the proposed Assisted Outpatient Treatment (AOT) plan; patient was at substantial risk to decompensate from his schizophrenia without the proposed plan, and the medication and limited supervision provided in the plan would assist in stabilizing patient. In re Endress, 2001, 189 Misc.2d 446, 732 N.Y.S.2d 549. Mental Health 51.15

17. Community residents

A person who is already residing in the community can be the subject of a petition for assisted outpatient treatment (AOT). In re Manhattan Psychiatric Center (1 Dept. 2001) 285 A.D.2d 189, 728 N.Y.S.2d 37, issued 2001 WL 845139. Mental Health 51.15

18. Jury review

The jury had to use a clear and convincing standard to evaluate whether involuntarily committed patient appealing the extension of an assisted outpatient treatment (AOT) plan met burden of proof that criteria for an AOT were not met, in proceeding under Kendra's Law authorizing a jury to review a judicial order extending patient's AOT. Cohen v. Anne C., 2001, 190 Misc.2d 53, 732 N.Y.S.2d 534, vacated 301 A.D.2d 446, 753 N.Y.S.2d 500. Mental Health 51.15

When reviewing an order extending assisted outpatient treatment (AOT) plan under Kendra's Law section authorizing a jury review of a judicially ordered extension, the jury may not consider new evidence, such as a court ordered psychiatric evaluation. Cohen v. Anne C., 2001, 190 Misc.2d 53, 732 N.Y.S.2d 534, vacated 301 A.D.2d 446, 753 N.Y.S.2d 500. Mental Health 51.15

Under Kendra's Law provision governing the appeal of an assisted outpatient treatment (AOT) plan, a person may appeal the judicially ordered extension of an AOT plan before a jury, and the right to a jury is limited to the determination of mental illness and the need for retention. Cohen v. Anne C., 2001, 190 Misc.2d 53, 732 N.Y.S.2d 534, vacated 301 A.D.2d 446, 753 N.Y.S.2d 500. Mental Health 51.15

If Supreme Court were to find a jury's verdict on review of an order authorizing an extension of an assisted outpatient treatment (AOT) plan against the weight of credible evidence, the court would be compelled to order a new jury appeal, or review, on the issue of the need for AOT or the need to extend an existing order for AOT. Cohen v. Anne C., 2001, 190 Misc.2d 53, 732 N.Y.S.2d 534, vacated 301 A.D.2d 446, 753 N.Y.S.2d 500. Mental Health 51.15

An action brought under Kendra's Law provision governing appeal of an order requiring or extending an order for assisted outpatient treatment (AOT) plan is an appeal as delineated in civil practice article governing appeals generally with the rare, statutorily created, exception that the appeal can be heard before a State Supreme Court jury. Cohen v. Anne C., 2001, 190 Misc.2d 53, 732 N.Y.S.2d 534, vacated 301 A.D.2d 446, 753 N.Y.S.2d 500. Mental Health 51.15

19. Review, generally

Order continuing assisted outpatient treatment (AOT), pursuant to Kendra's law, was an inappropriately rendered advisory opinion and would be vacated in exercise of discretion; underlying AOT order had expired at time order continuing AOT had issued, making case moot. Cohen v. Anne C. (1 Dept. 2003) 301 A.D.2d 446, 753 N.Y.S.2d 500. Mental Health 51.20

Appeal of order continuing assisted outpatient treatment (AOT), issued pursuant to Kendra's Law, would be dismissed as academic, where underlying AOT order had expired at time order continuing AOT had issued. Cohen v. Anne C. (1 Dept. 2003) 301 A.D.2d 446, 753 N.Y.S.2d 500. Mental Health 51.20

Psychiatric patient's appeal of denial of assisted outpatient treatment (AOT) order could be considered on appeal, although the issue was moot as result of court's subsequent grant of petition for AOT, since the issues raised were likely to be repeated, involved a phenomenon that typically evaded review, and implicated substantial and novel issues. In re Manhattan Psychiatric Center (1 Dept. 2001) 285 A.D.2d 189, 728 N.Y.S.2d 37, issued 2001 WL 845139. Appeal And Error 781(1)

Involuntarily committed patient who sought appeal or review of order extending for one year the duration of her assisted outpatient treatment (AOT) plan was the appellant, for purposes of section of Kendra's Law which authorized review of orders extending AOT. Cohen v. Anne C., 2001, 190 Misc.2d 53, 732 N.Y.S.2d 534, vacated 301 A.D.2d 446, 753 N.Y.S.2d 500. Mental Health 51.15

Supreme Court could consider only whether to order Assisted Outpatient Treatment (AOT) plan as the least restrictive treatment appropriate and feasible for patient's diagnosis, pursuant to Kendra's Law, and thus could not grant motion to withdraw petition for approval of AOT, although patient had not received any treatment for his Axis II anti-social personality diagnosis and no treatment for the diagnosis was proposed in the AOT. In re Endress, 2001, 189 Misc.2d 446, 732 N.Y.S.2d 549. Mental Health 51.15

McKinney's Mental Hygiene Law § 9.60, NY MENT HYG § 9.60

Current through L.2008, chapters 1 to 117.

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