

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 115 Session of 2011

INTRODUCED BY GREENLEAF, TARTAGLIONE, KITCHEN, ORIE, WASHINGTON,
BROWNE, FONTANA, ERICKSON, M. WHITE, McILHINNEY AND BOSCOLA,
JANUARY 12, 2011

REFERRED TO PUBLIC HEALTH AND WELFARE, JANUARY 12, 2011

AN ACT

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

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

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

13 ARTICLE III-A

14 Assisted Outpatient Treatment

15 Section 301-A. Definitions.

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

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

1 "Assisted outpatient treatment." Any of the following
2 categories of outpatient services which have been ordered by the
3 court pursuant to section 305-A:

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

6 (2) Medication.

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

9 (4) Individual or group therapy.

10 (5) Day or partial programming activities.

11 (6) Educational and vocational training or activities.

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

16 (8) Supervision of living arrangements.

17 (9) Any other services within an individualized
18 treatment plan developed pursuant to Article I prescribed to
19 treat the person's mental illness and to assist the person in
20 living and functioning in the community, or to attempt to
21 prevent a relapse or deterioration that may reasonably be
22 predicted to result in suicide or the need for
23 hospitalization.

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

1 "Director." The director of a hospital licensed or operated
2 by the Department of Public Welfare which operates, directs and
3 supervises an assisted outpatient treatment program, or the
4 county administrator which operates, directs and supervises an
5 assisted outpatient treatment program.

6 "Program coordinator." An individual appointed under section
7 302-A(a) who is responsible for the oversight and monitoring of
8 assisted outpatient treatment programs.

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

13 Section 302-A. Program coordinators to be appointed.

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

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

25 (1) That each assisted outpatient receives the treatment
26 provided for in the court order issued pursuant to section
27 305-A.

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

30 (3) That a case manager or assertive community treatment

1 team is designated for each assisted outpatient.

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

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

9 (c) Standards to be developed.--The Secretary of Public
10 Welfare shall develop standards designed to ensure that case
11 managers or assertive community treatment teams have appropriate
12 training and have clinically manageable caseloads designed to
13 provide effective case management or other care coordination
14 services for persons subject to a court order under section
15 305-A.

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

25 Section 303-A. Duties of county administrators.

26 Each county administrator shall be responsible for the filing
27 of petitions for assisted outpatient treatment pursuant to
28 section 305-A, for the receipt and investigation of reports of
29 persons who are alleged to be in need of that treatment and for
30 coordinating the delivery of court-ordered services with program

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

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

11 (a) General duties.--

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

21 (i) A copy of the court order.

22 (ii) A copy of the written treatment plan.

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

27 (iv) The identity of providers of services.

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

30 (2) The directors of assisted outpatient treatment

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

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

14 (1) The names of individuals served by the program.

15 (2) The percentage of petitions for assisted outpatient
16 treatment that are granted by the court.

17 (3) Any change in status of assisted outpatients,
18 including, but not limited to, the number of individuals who
19 have failed to comply with court-ordered assisted outpatient
20 treatment.

21 (4) A description of material changes in written
22 treatment plans of assisted outpatients.

23 (5) Any change in case managers.

24 (6) A description of the categories of services which
25 have been ordered by the court.

26 (7) Living arrangements of individuals served by the
27 program including the number, if any, who are homeless.

28 (8) Any other information as required by the Secretary
29 of Public Welfare.

30 (9) Any recommendations to improve the program Statewide

or locally.

Section 305-A. Assisted outpatient treatment program.

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

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

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

1 hospitalized or imprisoned immediately preceding the
2 filing of the petition; or

3 (ii) resulted in one or more acts of serious violent
4 behavior toward self or others or threats of, or attempts
5 at, serious physical harm to self or others within the
6 preceding 48 months, not including any period in which
7 the person was hospitalized or imprisoned immediately
8 preceding the filing of the petition.

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

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

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

20 (c) Petition to the court.--

21 (1) A petition for an order authorizing assisted
22 outpatient treatment may be filed in the court of common
23 pleas of the county in which the subject of the petition is
24 present or reasonably believed to be present. A petition to
25 obtain an order authorizing assisted outpatient treatment may
26 be initiated only by the following persons:

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

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

1 of the petition;

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

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

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

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

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

14 (2) The petition shall state:

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

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

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

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

27 (i) The physician has personally examined the person
28 who is the subject of the petition not more than ten days
29 prior to the submission of the petition, recommends
30 assisted outpatient treatment for the subject of the

1 petition and is willing and able to testify at the
2 hearing on the petition.

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

13 (d) Right to counsel.--The subject of the petition shall
14 have the right to be represented by counsel at all stages of a
15 proceeding commenced under this section. The subject of the
16 petition shall be represented either by counsel of his selection
17 or, if unrepresented and unable to afford counsel as determined
18 by the court, by court-appointed counsel.

19 (e) Hearing.--

20 (1) Upon receipt by the court of the petition submitted
21 pursuant to subsection (c), the court shall fix the date for
22 a hearing at a time not later than three days from the date
23 the petition is received by the court, excluding Saturdays,
24 Sundays and holidays. Adjournments shall be permitted only
25 for good cause shown. In granting adjournments, the court
26 shall consider the need for further examination by a
27 physician or the potential need to provide assisted
28 outpatient treatment expeditiously.

29 (2) The court shall cause the subject of the petition,
30 the petitioner, the physician whose affirmation or affidavit

1 accompanied the petition, the appropriate director, and such
2 other persons as the court may determine to be advised. The
3 subject of the petition shall have the opportunity to
4 provide, in writing, names and parties to be notified of the
5 hearing which shall be considered by the court.

6 (3) Upon the date for the hearing, or upon such other
7 date to which the proceeding may be adjourned, the court
8 shall hear testimony and, if it be deemed advisable and the
9 subject of the petition is available, examine the subject
10 alleged to be in need of assisted outpatient treatment in or
11 out of court.

12 (4) If the subject of the petition does not appear at
13 the hearing, and appropriate attempts to elicit the
14 attendance of the subject have failed, the court may conduct
15 the hearing in the subject's absence. If the hearing is
16 conducted without the subject of the petition present, the
17 court shall set forth the factual basis for conducting the
18 hearing without the presence of the subject of the petition.

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

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

1 subject of the petition into custody and transport him to a
2 hospital for examination by a physician. Retention of the
3 subject of the petition under the order shall not exceed 24
4 hours.

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

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

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

1 (f) Written individualized treatment plan.--

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

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

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

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

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

29 (iv) In developing the plan, the physician shall
30 provide the following persons with an opportunity to

1 actively participate in the development of the plan: the
2 subject of the petition; the treating physician; and upon
3 the request of the patient, an individual significant to
4 the patient including any relative, close friend or
5 individual otherwise concerned with the welfare of the
6 patient. If the petitioner is a director, the plan shall
7 be provided to the court no later than the date of the
8 hearing on the petition.

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

12 (i) The categories of assisted outpatient treatment
13 recommended.

14 (ii) The rationale for each category.

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

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

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

25 (g) Disposition.--

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

30 (2) If after hearing all relevant evidence, the court

1 finds by clear and convincing evidence that the subject of
2 the petition meets the criteria for assisted outpatient
3 treatment and there is no appropriate and feasible less
4 restrictive alternative, the court shall be authorized to
5 order the subject to receive assisted outpatient treatment
6 for an initial period not to exceed six months. In fashioning
7 the order, the court shall specifically make findings by
8 clear and convincing evidence that the proposed treatment is
9 the least restrictive treatment appropriate and feasible for
10 the subject. The order shall state the categories of assisted
11 outpatient treatment which the subject is to receive. The
12 court may not order treatment that has not been recommended
13 by the examining physician and included in the written
14 treatment plan for assisted outpatient treatment as required
15 by subsection (f).

16 (3) If after hearing all relevant evidence the court
17 finds by clear and convincing evidence that the subject of
18 the petition meets the criteria for assisted outpatient
19 treatment, and the court has yet to be provided with a
20 written individualized treatment plan and testimony pursuant
21 to subsection (f), the court shall order the county
22 administrator to provide the court with the plan and
23 testimony no later than the third day, excluding Saturdays,
24 Sundays and holidays, immediately following the date of the
25 order. Upon receiving the plan and testimony, the court may
26 order assisted outpatient treatment as provided in paragraph
27 (2).

28 (4) A court may order the patient to self-administer
29 psychotropic drugs or accept the administration of the drugs
30 by authorized personnel as part of an assisted outpatient

1 treatment program. The order may specify the type and dosage
2 range of psychotropic drugs and the order shall be effective
3 for the duration of the assisted outpatient treatment.

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

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

25 (h) Applications for additional periods of treatment.--If
26 the director determines that the condition of the patient
27 requires further assisted outpatient treatment, the director
28 shall apply prior to the expiration of the period of assisted
29 outpatient treatment ordered by the court for a second or
30 subsequent order authorizing continued assisted outpatient

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

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

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

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

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

1 section 302 or 303, the physician may request the
2 director of community services, the director's designee
3 or any physician designated by the director of community
4 services to bring the assisted outpatient to an
5 appropriate hospital for an examination to determine if
6 the assisted outpatient has a mental illness for which
7 hospitalization is necessary.

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

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

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

30 (ii) The patient may be retained for observation,

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

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

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

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

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

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

27 (n) Educational materials.--The Department of Public
28 Welfare, in consultation with the county administrator, shall
29 prepare educational and training materials on the use of this
30 section, which shall be made available to county providers of

1 services, judges, court personnel, law enforcement officials and
2 the general public.

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