



New York State Assisted Outpatient Treatment Guidance for Physicians

In 1999, New York State created statutory framework – also known as “Kendra’s Law” – for court-ordered Assisted Outpatient treatment (AOT). The law is named after a young writer named Kendra Webdale who was pushed in front of an oncoming train in a New York City subway station by a young man with a history of being diagnosed with schizophrenia, disengagement with outpatient care, and episodes of high-risk behavior.

The purpose of AOT is to ensure that certain individuals living with mental illness, who have a history of not engaging in treatment resulting in episodes of instability and behavior that is dangerous to themselves or others, receive the assistance needed to effectively participate in outpatient treatment. The AOT court order includes a court-approved treatment plan with an identified case manager and may contain additional services and medications. This guidance is intended to assist physicians through the New York State AOT process, in which physicians play a crucial role.

The primary body of law that governs AOT is [Article 9.60 of the Mental Hygiene Law](#). Regulations issued by the New York State Office of Mental Health (OMH) may govern some of the programs that comprise an AOT treatment plan; these regulations are primarily found in [Title 14 of the New York Codes, Rules, and Regulations](#). Decisions by the State Court of Appeals can also impact the implementation of AOT.

While physicians may initiate a petition, in most cases, the County Director of Community Services or their designee or the Director of a hospital acts as the “petitioner” (for a complete list of possible petitioners please follow the link to the statute) and is responsible for having their attorney file the petition in the local county or supreme court within 10 days of an evaluation completed by the physician, if an evaluation can be completed. If the evaluation of the individual does not occur prior to filing of the petition due to lack of cooperation by the individual, the court can also order the individual to be brought to a hospital so that the evaluation can take place. The examining physician MUST also testify at the hearing.

The Physician serves three key roles in the AOT process:

1. Examination of the individual and development of the treatment plan.
2. Providing clinical testimony affirming that AOT criteria is met and answering any questions the Court may have; and
3. Removals for individuals that are not complying with the AOT court order.

Examination of the Individual and development of the treatment plan

In many ways, conducting an AOT examination is no different than any other psychiatric evaluation. It can occur in any location typically used for treatment. The evaluation should include the individual’s:

- History of Present Illness
- Psychiatric Review of Symptoms
- Psychiatric History
- Medical and Surgical History
- Developmental and Social History
- Detailed Mental Status Exam

The physician should also conduct a detailed review of (if available) the individual’s medical records and obtain collateral information from any healthcare proxies, family members, and any other



practitioners involved in the individual's care. This information will be gathered by the petitioner for the evaluating/testifying physician to review. Pursuant to authority under State Law, NYS Mental Hygiene Legal Services (MHLS) counsel may be present during the physician examination; however, the MHLS attorney is not authorized to participate in the exam, including directing the individual's responses in any way or answer questions on their behalf.

The examination must occur no more than ten days prior to the submission of the petition. The evaluation report should also include:

- A statement of the individual's (or proxy's) preferences for services;
- a risk assessment for suicide, violence, and acute service utilization;
- an inventory of mental health services that were attempted or recommended but failed to stabilize the individual;
- a determination that the criteria for AOT have been met (see below);
- a diagnostic formulation;
- rationale as to why AOT is needed;
- a treatment plan for proposed services and medications. In addition to the individual, the treatment plan should also be developed in partnership with the local government unit (local department of mental health) to ensure appropriate and available services are included in the order. The treatment plan should be in the least restrictive level of care that is safe and effective; a lower level or less intensive level of care is appropriate only if it is safe and just as effective as treatment at a higher level or service intensity and;
- If indicated, the physician will also complete the medication worksheet, which lists out the court-ordered medications and their contingencies, as well as the substance abuse worksheet, which details recommended court ordered substance-use stipulations.

After performing the examination, the physician will complete an affirmation or affidavit stating that they have examined the individual, they are recommending AOT, and they are willing to testify at the hearing. If the individual is unwilling or uncooperative with examination attempts, the physician's affirmation or affidavit will describe with adequate detail to inform the Court, the efforts taken to secure the examination, the individual's lack of cooperation, that the physician has reason to suspect the individual meets the criteria for AOT, and that the physician is willing to testify at the hearing.

Summary of AOT Criteria (please see [statute for legal description](#)):

- Individual is at least 18 years-old;
- Individual is suffering from a mental illness;
- Individual is unlikely to safely live in the community without appropriate support, based on clinical determination; and
- Has a history of lack of engagement with treatment for mental illness that has either:
 - Been a significant factor in necessitating hospitalization or mental health treatment in a forensic setting at least twice within the last 36 months (not including any period in which person was hospitalized); or
 - Resulted in one or more acts of serious violence towards self or others, threats of violence, or attempts at serious physical harm to self or others within last 48 months, not including any period in which the person was incarcerated or hospitalized; or
 - Resulted in a substantial increase in symptoms of mental illness in an individual who's prior AOT order expired within the last six months to the extent that it interferes with one or more major life activities as determined by the County Director of Community Services



- Individual is unlikely to voluntarily participate in outpatient treatment;
- Individual's history and current presentation suggests that AOT will prevent a relapse or further deterioration; and
- Individual is likely to benefit from AOT.

Clinical Testimony

Upon receipt of the petition, the Court is required to set a hearing date within 3 business days, although adjournments can be granted for good cause. Depending on the platform used, in person or via videoconference, physicians are asked to testify and discuss their treatment plans and conclusions in detail.¹ They will first be called by the petitioner, but a MHLS attorney or the individual's legal representative can also ask questions (a.k.a. cross-examination) and advocate for a dismissal or changes to the treatment plan on the individual's behalf. The statute specifically provides that the court shall not order AOT unless the physician testifies in person or by videoconference at the hearing.

The examining physician must testify at the hearing and must state the facts and rationale as provided for in the petition. The physician should be prepared to discuss:

- Why the individual meets criteria for AOT;
- Why the individual needs AOT;
- The services and medications included in the treatment plan. The doctor must describe the specific proposed medications, the beneficial and detrimental effects of such medications, and shall recommend whether such medication should be self-administered or administered by authorized personnel; and
- The conclusion that such treatment is the least restrictive while still safe and effective.

The petitioner's attorney will likely reach out before the hearing to go over the questions, give advice on how to present complex medical jargon in terms that the court can understand, and answer any of the physician's questions. The individual may also testify and be questioned by both lawyers.

Removals due to non-compliance with the court order

After the court order has been granted, if the individual has failed or refused to comply with any aspect of the court-ordered treatment plan, and efforts were made to assist compliance, and the treating physician believes that the person may be in need of psychiatric inpatient care, the physician may request the Director of Community Services, his/her designee, or other physician designated under §9.37 of the MHL, to arrange for the transport of the person to a hospital. If requested, peace officers or police officers must take the individual into custody and transport them to the hospital. The individual may be held at the hospital emergency department or comprehensive psychiatric emergency program (CPEP) for up to 72 hours for care, observation, and treatment and to permit a psychiatrist to determine whether they meet criteria for an emergency or involuntary hold. At any point during the 72 hours, should a determination be made that the individual does not meet criteria, that individual must be released.

Further information can also be found on OMH's AOT portal: <https://my.omh.ny.gov/bi/aot>

¹ The platform for trial is determined by the judge/court and may vary from in-person, to virtual depending on the individual circumstances.