

Revised: September 28, 2020

Assisted Outpatient Treatment (AOT) Frequently Asked Questions

1. a.) How should counties proceed in obtaining new Assisted Outpatient Treatment (AOT) orders?

The Chief Administrative Judge of the New York Courts issued an Order dated March 22, 2020, indicating that applications for new Mental Hygiene AOT petitions are considered “Essential Applications.” Accordingly, these petitions should be accepted for filing by a county clerk or a court; this applies to both paper and electronic filings.

b.) How should counties proceed relating to the extension of an existing AOT order? Newly filed applications for extending an existing AOT order are also considered “Essential Applications” pursuant to AO 78 as referenced above in A1 and should be accepted for filing. Additionally, Administrative Order 75 issued by the Chief Administrative Judge, dated March 20, 2020, provides that any AOT order set to expire on or after March 20, 2020, and for which a petition for an extension of the order has been or will be filed, will be extended under the same terms and conditions until the date the matter is re-calendared.

Administrative Order 75 states, “Pursuant to a delegation of authority to me by Chief Judge of the State of New York in response to the 2020 coronavirus public health emergency in this State, I hereby direct that, effective immediately until further order, any assisted outpatient treatment (AOT) plan order issued pursuant to section 9.60 of the Mental Hygiene Law by any Supreme or County Court in the Unified Court System that is due to expire on or after the date of this order, and in which a petition for an extension of the order has been filed or will be filed, shall be extended under the same terms and conditions until the date the matter is re-calendared unless, the order is sooner terminated or modified by a judge or justice of the court that issued the order.”

*** Also of note here is that the Governor’s Executive Order 202.8, dated March 7, 2020, as extended to October 23rd, 2020 by Executive Order 202.65, suspends all statutes of limitations regarding time sensitivity. This would affect 9.60(e)(3)(i)(ii) concerning a petition being filed no more than ten days past the date of the examination by physician as well as 9.60 (h)(1) regarding the requirement that the hearing be within three days of the petition being filed.

2. What if the county has shut down the court system and will not accept any filings? Counties should proceed in the usual manner as practicable or within designated alternative practices, including conducting interviews and discussing treatment plans, including MHLS in the interview process, and filing papers where courts have a mechanism available during this period. The county should then wait for a hearing to be scheduled. Local AOT programs should continue operations to track and monitor existing orders; and develop procedures to initiate new referrals to the best of the operating capacity of the county during this crisis.

3. What are the procedures for monitoring for care coordination?

ACT teams, Health Home Care Managers and other care management programs continue to provide monitoring for individuals receiving AOT during the COVID-19 disaster emergency. OMH has allowed for increased flexibility including the use of telemental health for ACT teams and other licensed, funded or designated programs and services during this time. See the OMH website for full detail: <https://omh.ny.gov/omhweb/guidance/>

The State Department of Health (DOH) also issued a memorandum dated March 14, 2020, “Face to Face Requirements Waived for Health Home Care Management, Unless Medically Necessary” allowing care management agencies to bill at the usual rate when providing services via telephonic or telehealth contact.

As AOT recipients are participating in involuntary monitoring for clinical reasons, face-to-face interventions for AOT care coordination should be provided where clinically indicated, and consistent with infection control procedures as outlined by DOH and the CDC. Exceptions to traditional AOT monitoring, due to health risk concerns for the recipient and/or service workers, should be made in consultation with the Local Government Unit (LGU).

4. Can AOT Evaluations be conducted via video teleconference or other teleconference technology that is secure?

OMH issued guidance on the use of telehealth for OMH licensed or designated programs impacted by the COVID crisis. The expanded definitions allow all New York jurisdictions to conduct AOT business via telemental health methods where medically necessary. Documentation should reflect the contact in detail, and the rationale for the use of such methods.

5. Can individuals’ medications be changed from Intramuscular to Oral packaged medications to reduce the need for face to face contact at the provider-recipient level?

Changes to treatment plans should always be made with clinical considerations to safety and need. Any type of service delivery should only be reduced/modified in the case of medical necessity. Clinical decisions such as these should be made on a case by case basis. Programs should keep their offices open and have enough staff on-site to continue to provide treatment such as administration of injectable medications. OMH is strongly against transitioning individuals from long acting injectable medications to oral formulations if there is a risk that the individual cannot adhere to treatment, may decompensate, and need hospitalization. This would significantly increase the risk to that individual. Outpatient programs should transfer as many contacts as possible to telemental health, but must maintain capacity to continue care of individuals who cannot tolerate virtual visits, administer long acting antipsychotics, or obtain samples for laboratory testing to ensure high quality care for recipients. Clinic physicians and nurses are also authorized to visit individuals in their homes to administer injectable medications.

6. Can physician testimony be done via videoconferencing in the court system?

There is nothing in statute that prohibits video testimony. However, the facility, the county, and the court must be in agreement and must have the technology to allow the video testimony to be done remotely and securely.

7. What can be done when a hospital issues policy restricting visitors? How can AOT workers obtain original signatures?

County AOT personnel should develop emergency procedures in conjunction with leadership from local hospitals within their jurisdictions to ensure the continuation of service delivery and monitoring activities.

8. Must petitions be filed with original signatures? In the event that a doctor is working remotely, would an electronic signature suffice?

Courts can allow electronic signatures. However, you must check with the Supreme Court in your county and verify whether they will accept affidavits and petitions with electronic signatures. You can also ask whether they will accept the entire petition to be filed electronically.

9. Section 9.60 of NYS mental hygiene law provides that an AOT petition must be filed no later than ten days past the date of the examination, and the hearing must be scheduled no later than three days at the court with receipt of said petition. How does a county where court has been adjourned/closed until a later date meet these requirements?

Per the Governor's Executive Order 202.8, dated March 7, 2020, as extended to October 23rd, 2020 by Executive Order 202.65, and the additional Administrative Order of the Chief Administrative Judge dated March 22, 2020, the time period within which petitions must be filed is extended to April 19, 2020, and then runs from that date forward. There may be an opportunity for the county attorney, MHLS and judges in localities where problems are occurring to agree to alternative procedures and timeframes.

10. What is the procedure for when an individual with an active AOT (Assisted Outpatient Treatment) order wishes to leave their current living environment in order to protect a COVID-19 vulnerable person living in that home and their new residence happens to be in a new county?

Where geographically possible and in coordination with the individual, the county servicing the recipient should maintain the relationship and oversight of the individual, while notifying the new county of residence. If continuing to provide services to the individual is not possible, the county should follow the OMH County Transfer Guidance to ensure the individual receives all necessary services. Guidance is available here: <https://my.omh.ny.gov/analyticsRes1/files/aot/AOTCountyTransfersGuidanceFinal.pdf>

ⁱ It is important to keep in mind that the pandemic situation continues to evolve and is rapidly changing. It is essential that all affected parties regularly review guidance provided by:

- The New York State Department of Health (NYS DOH) website <https://health.ny.gov/diseases/communicable/coronavirus>
- The Centers for Disease Control and Prevention website <https://www.cdc.gov/coronavirus/2019-ncov/index.html>