

3280

2013-2014 Regular Sessions

I N S E N A T E

January 31, 2013

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to authorizing nurse practitioners to admit a patient to an inpatient mental health unit on a voluntary or involuntary basis

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 1.03 of the mental hygiene law is amended by adding
2 a new subdivision 9-a to read as follows:
3 9-A. "NURSE PRACTITIONER" MEANS A CERTIFIED NURSE PRACTITIONER ACTING
4 WITHIN HIS OR HER LAWFUL SCOPE OF PRACTICE PURSUANT TO SECTION
5 SIXTY-NINE HUNDRED TWO OF THE EDUCATION LAW.
6 S 2. The section heading, the opening paragraph of subdivision (a) and
7 subdivision (b) of section 9.05 of the mental hygiene law, such section
8 as renumbered by chapter 978 of the laws of 1977, are amended to read as
9 follows:
10 Examining physicians and NURSE PRACTITIONERS AND medical certificates.
11 A person is disqualified from acting as an examining physician OR
12 NURSE PRACTITIONER in the following cases:
13 (b) A certificate, as required by this article, must show that the
14 person is mentally ill and shall be based on an examination of the
15 person alleged to be mentally ill made within ten days prior to the date
16 of admission. The date of the certificate shall be the date of such
17 examination. All certificates shall contain the facts and circumstances
18 upon which the judgment of the physicians OR NURSE PRACTITIONERS is
19 based and shall show that the condition of the person examined is such
20 that he OR SHE needs involuntary care and treatment in a hospital and
21 such other information as the commissioner may by regulation require.
22 S 3. Subdivisions (a), (d), (e) and (i) of section 9.27 of the mental
23 hygiene law, subdivision (i) as amended by chapter 847 of the laws of

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 1987 and such section as renumbered by chapter 978 of the laws of 1977,
2 are amended to read as follows:

3 (a) The director of a hospital may receive and retain therein as a
4 patient any person alleged to be mentally ill and in need of involuntary
5 care and treatment upon [the] TWO certificates [of two examining physi-
6 cians], EACH COMPLETED BY AN EXAMINING PHYSICIAN OR A NURSE
7 PRACTITIONER, accompanied by an application for the admission of such
8 person. The examination may be conducted jointly but each examining
9 physician OR NURSE PRACTITIONER shall execute a separate certificate.

10 (d) Before an examining physician OR NURSE PRACTITIONER completes the
11 certificate of examination of a person for involuntary care and treat-
12 ment, he OR SHE shall consider alternative forms of care and treatment
13 that might be adequate to provide for the person's needs without requir-
14 ing involuntary hospitalization. If the examining physician OR NURSE
15 PRACTITIONER knows that the person he OR SHE is examining for involun-
16 tary care and treatment has been under prior treatment, he OR SHE shall,
17 insofar as possible, consult with the physician or psychologist furnish-
18 ing such prior treatment prior to completing his OR HER certificate.
19 Nothing in this section shall prohibit or invalidate any involuntary
20 admission made in accordance with the provisions of this chapter.

21 (e) The director of the hospital where such person is brought shall
22 cause such person to be examined forthwith by a physician, OTHER THAN AN
23 EXAMINING PHYSICIAN WHOSE CERTIFICATE ACCOMPANIED THE APPLICATION, who
24 shall be a member of the psychiatric staff of such hospital [other than
25 the original examining physicians whose certificate or certificates
26 accompanied the application and, if]. IF such person is found to be in
27 need of involuntary care and treatment, he OR SHE may be admitted there-
28 to as a patient as herein provided.

29 (i) After an application for the admission of a person has been
30 completed [and both physicians have examined such person and separately
31 certified either], AND TWO SEPARATE CERTIFICATES, EACH COMPLETED BY AN
32 EXAMINING PHYSICIAN OR A NURSE PRACTITIONER, SHOW that he or she is
33 mentally ill and in need of involuntary care and treatment in a hospi-
34 tal, ANY EXAMINING physician OR NURSE PRACTITIONER MAKING SUCH A CERTIF-
35 ICATION is authorized to request peace officers, when acting pursuant to
36 their special duties, or police officers, who are members of an author-
37 ized police department or force or of a sheriff's department, to take
38 into custody and transport such person to a hospital for determination
39 by the director whether such person qualifies for admission pursuant to
40 this section. Upon the request of [either] ANY EXAMINING physician OR
41 NURSE PRACTITIONER MAKING SUCH A CERTIFICATION, an ambulance service, as
42 defined by subdivision two of section three thousand one of the public
43 health law, is authorized to transport such person to a hospital for
44 determination by the director whether such person qualifies for admis-
45 sion pursuant to this section.

46 S 4. Subdivisions (a), (b) and (c) of section 9.37 of the mental
47 hygiene law, subdivision (a) as amended by chapter 723 of the laws of
48 1989, subdivision (c) as amended by chapter 230 of the laws of 2004 and
49 such section as renumbered by chapter 978 of the laws of 1977, are
50 amended to read as follows:

51 (a) The director of a hospital, upon application by a director of
52 community services or an examining physician duly designated by him or
53 her, may receive and care for in such hospital as a patient any person
54 who, in the opinion of the director of community services or the direc-
55 tor's designee, has a mental illness for which immediate inpatient care

1 and treatment in a hospital is appropriate and which is likely to result
2 in serious harm to himself or herself or others.

3 The need for immediate hospitalization shall be confirmed by a staff
4 physician OR NURSE PRACTITIONER of the hospital prior to admission.
5 Within seventy-two hours, excluding Sunday and holidays, after such
6 admission, if such patient is to be retained for care and treatment
7 beyond such time and he or she does not agree to remain in such hospital
8 as a voluntary patient, the certificate of another examining physician
9 OR NURSE PRACTITIONER who is a member of the psychiatric staff of the
10 hospital that the patient is in need of involuntary care and treatment
11 shall be filed with the hospital. From the time of his or her admission
12 under this section the retention of such patient for care and treatment
13 shall be subject to the provisions for notice, hearing, review, and
14 judicial approval of continued retention or transfer and continued
15 retention provided by this article for the admission and retention of
16 involuntary patients, provided that, for the purposes of such
17 provisions, the date of admission of the patient shall be deemed to be
18 the date when the patient was first received in the hospital under this
19 section.

20 (b) The application for admission of a patient pursuant to this
21 section shall be based upon a personal examination by a director of
22 community services or his OR HER designee. It shall be in writing and
23 shall be filed with the director of such hospital at the time of the
24 patient's reception, together with a statement in a form prescribed by
25 the commissioner giving such information as he OR SHE may deem appropri-
26 ate.

27 (c) Notwithstanding the provisions of subdivision (b) of this section,
28 in counties with a population of less than two hundred thousand, a
29 director of community services who is a licensed psychologist pursuant
30 to article one hundred fifty-three of the education law or a licensed
31 clinical social worker pursuant to article one hundred fifty-four of the
32 education law but who is not a physician may apply for the admission of
33 a patient pursuant to this section without a medical examination by a
34 designated physician, if a hospital approved by the commissioner pursu-
35 ant to section 9.39 of this article is not located within thirty miles
36 of the patient, and the director of community services has made a
37 reasonable effort to locate a designated examining physician but such a
38 designee is not immediately available and the director of community
39 services, after personal observation of the person, reasonably believes
40 that he OR SHE may have a mental illness which is likely to result in
41 serious harm to himself OR HERSELF or others and inpatient care and
42 treatment of such person in a hospital may be appropriate. In the event
43 of an application pursuant to this subdivision, a STAFF physician OR
44 NURSE PRACTITIONER of the receiving hospital shall examine the patient
45 and shall not admit the patient unless he or she determines that the
46 patient has a mental illness for which immediate inpatient care and
47 treatment in a hospital is appropriate and which is likely to result in
48 serious harm to himself OR HERSELF or others. If the patient is admit-
49 ted, the need for hospitalization shall be confirmed by another staff
50 physician OR NURSE PRACTITIONER within twenty-four hours. An application
51 pursuant to this subdivision shall be in writing and shall be filed with
52 the director of such hospital at the time of the patient's reception,
53 together with a statement in a form prescribed by the commissioner
54 giving such information as he OR SHE may deem appropriate, including a
55 statement of the efforts made by the director of community services to

1 locate a designated examining physician prior to making an application
2 pursuant to this subdivision.

3 S 5. Subdivision (a) of section 9.37 of the mental hygiene law, such
4 section as renumbered by chapter 978 of the laws of 1977, is amended to
5 read as follows:

6 (a) The director of a hospital, upon application by a director of
7 community services or an examining physician duly designated by him OR
8 HER, may receive and care for in such hospital as a patient any person
9 who, in the opinion of the director of community services or his OR HER
10 designee, has a mental illness for which immediate inpatient care and
11 treatment in a hospital is appropriate and which is likely to result in
12 serious harm to himself OR HERSELF or TO others[; "likelihood of serious
13 harm" shall mean:

14 1. substantial risk of physical harm to himself as manifested by
15 threats of or attempts at suicide or serious bodily harm or other
16 conduct demonstrating that he is dangerous to himself, or

17 2. a substantial risk of physical harm to other persons as manifested
18 by homicidal or other violent behavior by which others are placed in
19 reasonable fear or serious physical harm].

20 The need for immediate hospitalization shall be confirmed by a staff
21 physician OR NURSE PRACTITIONER of the hospital prior to admission.
22 Within seventy-two hours, excluding Sunday and holidays, after such
23 admission, if such patient is to be retained for care and treatment
24 beyond such time and he OR SHE does not agree to remain in such hospital
25 as a voluntary patient, the certificate of another examining physician
26 OR NURSE PRACTITIONER who is a member of the psychiatric staff of the
27 hospital that the patient is in need of involuntary care and treatment
28 shall be filed with the hospital. From the time of his OR HER admission
29 under this section the retention of such patient for care and treatment
30 shall be subject to the provisions for notice, hearing, review, and
31 judicial approval of continued retention or transfer and continued
32 retention provided by this article for the admission and retention of
33 involuntary patients, provided that, for the purposes of such
34 provisions, the date of admission of the patient shall be deemed to be
35 the date when the patient was first received in the hospital under this
36 section.

37 S 6. Subdivisions (b) and (c) of section 9.40 of the mental hygiene
38 law, as added by chapter 723 of the laws of 1989, are amended to read as
39 follows:

40 (b) The director shall cause examination of such persons to be initi-
41 ated by a staff physician OR NURSE PRACTITIONER of the program as soon
42 as practicable [and in any event within], BUT NO LONGER THAN six hours
43 after the person is received into the program's emergency room. Such
44 person may be retained for observation, care and treatment, and further
45 examination for up to twenty-four hours if, at the conclusion of such
46 examination, such physician OR NURSE PRACTITIONER determines that such
47 person may have a mental illness for which immediate observation, care
48 and treatment in a comprehensive psychiatric emergency program is appro-
49 priate, and which is likely to result in serious harm to the person or
50 others.

51 (c) No person shall be involuntarily retained in accordance with this
52 section for more than twenty-four hours, unless (i) within that time the
53 determination of the INITIAL examining staff physician OR NURSE PRACTI-
54 TIONER has been confirmed after examination by another physician OR
55 NURSE PRACTITIONER who is a member of the psychiatric staff of the
56 program and (ii) the person is admitted to an extended observation bed,

1 as such term is defined in section 31.27 of this chapter. At the time of
2 admission to an extended observation bed, such person shall be served
3 with written notice of his OR HER status and rights as a patient under
4 this section. Such notice shall contain the patient's name. The notice
5 shall be provided to the same persons and in the manner as if provided
6 pursuant to subdivision (a) of section 9.39 of this article. Written
7 requests for court hearings on the question of need for immediate obser-
8 vation, care and treatment shall be made, and court hearings shall be
9 scheduled and held, in the manner provided pursuant to subdivision (a)
10 of section 9.39 of this article, provided however, if a person is
11 removed or admitted to a hospital pursuant to subdivision (e) or (f) of
12 this section the director of such hospital shall be substituted for the
13 director of the comprehensive psychiatric emergency program in all legal
14 proceedings regarding the continued retention of the person.

15 S 7. Section 9.55 of the mental hygiene law, as amended by chapter 598
16 of the laws of 1994, is amended to read as follows:

17 S 9.55 Emergency admissions for immediate observation, care and treat-
18 ment; powers of qualified psychiatrists OR NURSE PRACTITIONERS.

19 A qualified psychiatrist OR NURSE PRACTITIONER shall have the power to
20 direct the removal of any person[,] whose treatment for a mental illness
21 he or she is either supervising or providing in a facility licensed or
22 operated by the office of mental health, which does not have an inpa-
23 tient psychiatric service, to a hospital approved by the commissioner
24 pursuant to subdivision (a) of section 9.39 of this article or to a
25 comprehensive psychiatric emergency program, if he or she determines
26 upon examination of such person that such person appears to have a
27 mental illness for which immediate observation, care and treatment in a
28 hospital is appropriate and which is likely to result in serious harm
29 [to himself or herself or others] AS DEFINED IN SECTION 9.01 OF THIS
30 ARTICLE. Upon the request of such qualified psychiatrist OR NURSE PRAC-
31 TITIONER, peace officers, when acting pursuant to their special duties,
32 or police officers[,] who are members of an authorized police department
33 or force or of a sheriff's department shall take into custody and trans-
34 port any such person. Upon the request of a qualified psychiatrist OR
35 NURSE PRACTITIONER an ambulance service, as defined by subdivision two
36 of section three thousand one of the public health law, is authorized to
37 transport any such person. Such person may then be admitted to a hospi-
38 tal in accordance with the provisions of section 9.39 of this article or
39 to a comprehensive psychiatric emergency program in accordance with the
40 provisions of section 9.40 of this article.

41 S 8. Section 9.55 of the mental hygiene law, as amended by chapter 847
42 of the laws of 1987, is amended to read as follows:

43 S 9.55 Emergency admissions for immediate observation, care and treat-
44 ment; powers of qualified psychiatrists OR NURSE PRACTITIONERS.

45 A qualified psychiatrist OR NURSE PRACTITIONER shall have the power to
46 direct the removal of any person[,] whose treatment for a mental illness
47 he OR SHE is either supervising or providing in a facility licensed or
48 operated by the office of mental health, which does not have an inpa-
49 tient psychiatric service, to a hospital approved by the commissioner
50 pursuant to subdivision (a) of section 9.39 of this article, OR TO A
51 COMPREHENSIVE PSYCHIATRIC EMERGENCY PROGRAM if he OR SHE determines upon
52 examination of such person that such person appears to have a mental
53 illness for which immediate observation, care and treatment in a hospi-
54 tal is appropriate and which is likely to result in serious harm [to
55 himself or others], as defined in section [9.39] 9.01 of this article.
56 Upon the request of such qualified psychiatrist OR NURSE PRACTITIONER,

1 peace officers, when acting pursuant to their special duties, or police
2 officers[,] who are members of an authorized police department or force
3 or of a sheriff's department shall take into custody and transport any
4 such person. Upon the request of a qualified psychiatrist OR NURSE PRAC-
5 TITIONER an ambulance service, as defined by subdivision two of section
6 three thousand one of the public health law, is authorized to transport
7 any such person. Such person may then be admitted in accordance with the
8 provisions of section 9.39 of this article.

9 S 9. Section 9.57 of the mental hygiene law, as amended by chapter 598
10 of the laws of 1994, is amended to read as follows:

11 S 9.57 Emergency admissions for immediate observation, care and treat-
12 ment; powers of emergency room physicians OR NURSE PRACTI-
13 TIONERS.

14 A physician OR NURSE PRACTITIONER who has examined a person in an
15 emergency room or provided emergency medical services at a general
16 hospital, as defined in article twenty-eight of the public health law,
17 which does not have an inpatient psychiatric service, or a physician OR
18 NURSE PRACTITIONER who has examined a person in a comprehensive psychi-
19 atric emergency program shall be authorized to request that the director
20 of the program or hospital, or the director's designee, direct the
21 removal of such person to a hospital approved by the commissioner pursu-
22 ant to subdivision (a) of section 9.39 of this article or to a compre-
23 hensive psychiatric emergency program, if the physician OR NURSE PRACTI-
24 TIONER determines upon examination of such person that such person
25 appears to have a mental illness for which immediate care and treatment
26 in a hospital is appropriate and which is likely to result in serious
27 harm [to himself or others] AS DEFINED IN SECTION 9.01 OF THIS ARTICLE.
28 Upon the request of the physician OR NURSE PRACTITIONER, the director of
29 the program or hospital or the director's designee, is authorized to
30 direct peace officers, when acting pursuant to their special duties, or
31 police officers[,] who are members of an authorized police department or
32 force or of a sheriff's department to take into custody and transport
33 any such person. Upon the request of an emergency room physician, A
34 NURSE PRACTITIONER, or the director of the program or hospital, or the
35 director's designee, an ambulance service, as defined by subdivision two
36 of section three thousand one of the public health law, is authorized to
37 take into custody and transport any such person. Such person may then be
38 admitted to a hospital in accordance with the provisions of section 9.39
39 of this article or to a comprehensive psychiatric emergency program in
40 accordance with the provisions of section 9.40 of this article.

41 S 10. Section 9.57 of the mental hygiene law, as amended by chapter
42 847 of the laws of 1987, is amended to read as follows:

43 S 9.57 Emergency admissions for immediate observation, care and treat-
44 ment; powers of emergency room physicians OR NURSE PRACTI-
45 TIONERS.

46 A physician OR NURSE PRACTITIONER who has examined a person in an
47 emergency room or provided emergency medical services at a general
48 hospital, as defined in article twenty-eight of the public health law,
49 which does not have an inpatient psychiatric service, shall be author-
50 ized to request that the director of the hospital, or his OR HER desig-
51 nee, direct the removal of such person to a hospital approved by the
52 commissioner pursuant to subdivision (a) of section 9.39 of this arti-
53 cle, if the physician OR NURSE PRACTITIONER determines upon examination
54 of such person that such person appears to have a mental illness for
55 which immediate care and treatment in a hospital is appropriate and
56 which is likely to result in serious harm [to himself or others], as

1 defined in section [9.39] 9.01 of this article. Upon the request of the
2 physician OR NURSE PRACTITIONER, the director of the hospital or his OR
3 HER designee, is authorized to direct peace officers, when acting pursu-
4 ant to their special duties, or police officers, who are members of an
5 authorized police department or force or of a sheriff's department to
6 take into custody and transport any such person. Upon the request of an
7 emergency room physician, A NURSE PRACTITIONER, or the director of the
8 hospital, or his OR HER designee, an ambulance service, as defined by
9 subdivision two of section three thousand one of the public health law,
10 is authorized to take into custody and transport any such person. Such
11 person may then be admitted in accordance with the provisions of section
12 9.39 of this article.

13 S 11. Subparagraph (v) of paragraph 1 and paragraphs 3 and 4 of subdi-
14 vision (e) and subdivisions (h), (i), (k) and (n) of section 9.60 of the
15 mental hygiene law, as amended and paragraph 4 of subdivision (e) as
16 added by chapter 158 of the laws of 2005, are amended to read as
17 follows:

18 (v) a qualified psychiatrist OR NURSE PRACTITIONER who is either
19 supervising the treatment of or treating the subject of the petition for
20 a mental illness; or

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

24 (i) such physician OR NURSE PRACTITIONER has personally examined the
25 subject of the petition no more than ten days prior to the submission of
26 the petition, recommends assisted outpatient treatment for the subject
27 of the petition, and is willing and able to testify at the hearing on
28 the petition; or

29 (ii) no more than ten days prior to the filing of the petition, such
30 physician OR NURSE PRACTITIONER, or his or her designee, has made appro-
31 priate attempts but has not been successful in eliciting the cooperation
32 of the subject of the petition to submit to an examination, such physi-
33 cian OR NURSE PRACTITIONER has reason to suspect that the subject of the
34 petition meets the criteria for assisted outpatient treatment, and such
35 physician OR NURSE PRACTITIONER is willing and able to examine the
36 subject of the petition and testify at the hearing on the petition.

37 (4) In counties with a population of less than seventy-five thousand,
38 the affirmation or affidavit required by paragraph three of this subdivi-
39 sion may be made by a physician OR NURSE PRACTITIONER who is an
40 employee of the office. The office is authorized to make available, at
41 no cost to the county, a qualified physician OR NURSE PRACTITIONER for
42 the purpose of making such affirmation or affidavit consistent with the
43 provisions of such paragraph.

44 (h) Hearing. (1) Upon receipt of the petition, the court shall fix the
45 date for a hearing. Such date shall be no later than three days from the
46 date such petition is received by the court, excluding Saturdays,
47 Sundays and holidays. Adjournments shall be permitted only for good
48 cause shown. In granting adjournments, the court shall consider the need
49 for further examination by a physician OR NURSE PRACTITIONER or the
50 potential need to provide assisted outpatient treatment expeditiously.
51 The court shall cause the subject of the petition, any other person
52 receiving notice pursuant to subdivision (f) of this section, the peti-
53 tioner, the physician OR NURSE PRACTITIONER whose affirmation or affida-
54 vit accompanied the petition, and such other persons as the court may
55 determine to be advised of such date. Upon such date, or upon such other
56 date to which the proceeding may be adjourned, the court shall hear

1 testimony and, if it be deemed advisable and the subject of the petition
2 is available, examine the subject of the petition in or out of court. If
3 the subject of the petition does not appear at the hearing, and appro-
4 priate attempts to elicit the attendance of the subject have failed, the
5 court may conduct the hearing in the subject's absence. In such case,
6 the court shall set forth the factual basis for conducting the hearing
7 without the presence of the subject of the petition.

8 (2) The court shall not order assisted outpatient treatment unless an
9 examining physician OR NURSE PRACTITIONER, who recommends assisted
10 outpatient treatment and has personally examined the subject of the
11 petition no more than ten days before the filing of the petition, testi-
12 fies in person at the hearing. Such physician OR NURSE PRACTITIONER
13 shall state the facts and clinical determinations which support the
14 allegation that the subject of the petition meets each of the criteria
15 for assisted outpatient treatment.

16 (3) If the subject of the petition has refused to be examined by a
17 physician OR NURSE PRACTITIONER, the court may request the subject to
18 consent to an examination by a physician OR NURSE PRACTITIONER appointed
19 by the court. If the subject of the petition does not consent and the
20 court finds reasonable cause to believe that the allegations in the
21 petition are true, the court may order peace officers, acting pursuant
22 to their special duties, or police officers who are members of an
23 authorized police department or force, or of a sheriff's department to
24 take the subject of the petition into custody and transport him or her
25 to a hospital for examination by a physician. Retention of the subject
26 of the petition under such order shall not exceed twenty-four hours. The
27 examination of the subject of the petition may be performed by the
28 physician OR NURSE PRACTITIONER whose affirmation or affidavit accompa-
29 nied the petition pursuant to paragraph three of subdivision (e) of this
30 section, if such physician OR NURSE PRACTITIONER is privileged by such
31 hospital or otherwise authorized by such hospital to do so. If such
32 examination is performed by another physician OR NURSE PRACTITIONER, the
33 examining physician OR NURSE PRACTITIONER may consult with the physician
34 OR NURSE PRACTITIONER whose affirmation or affidavit accompanied the
35 petition as to whether the subject meets the criteria for assisted
36 outpatient treatment.

37 (4) A physician OR NURSE PRACTITIONER who testifies pursuant to para-
38 graph two of this subdivision shall state: (i) the facts which support
39 the allegation that the subject meets each of the criteria for assisted
40 outpatient treatment, (ii) that the treatment is the least restrictive
41 alternative, (iii) the recommended assisted outpatient treatment, and
42 (iv) the rationale for the recommended assisted outpatient treatment. If
43 the recommended assisted outpatient treatment includes medication, such
44 physician's OR NURSE PRACTITIONER'S testimony shall describe the types
45 or classes of medication which should be authorized, shall describe the
46 beneficial and detrimental physical and mental effects of such medica-
47 tion, and shall recommend whether such medication should be self-admin-
48 istered or administered by authorized personnel.

49 (5) The subject of the petition shall be afforded an opportunity to
50 present evidence, to call witnesses on his or her behalf, and to cross-
51 examine adverse witnesses.

52 (i) Written treatment plan. (1) The court shall not order assisted
53 outpatient treatment unless a physician OR NURSE PRACTITIONER appointed
54 by the appropriate director, in consultation with such director, devel-
55 ops and provides to the court a proposed written treatment plan. The
56 written treatment plan shall include case management services or asser-

1 tive community treatment team services to provide care coordination. The
2 written treatment plan also shall include all categories of services, as
3 set forth in paragraph one of subdivision (a) of this section, which
4 such physician OR NURSE PRACTITIONER recommends that the subject of the
5 petition receive. All service providers shall be notified regarding
6 their inclusion in the written treatment plan. If the written treatment
7 plan includes medication, it shall state whether such medication should
8 be self-administered or administered by authorized personnel, and shall
9 specify type and dosage range of medication most likely to provide maxi-
10 mum benefit for the subject. If the written treatment plan includes
11 alcohol or substance abuse counseling and treatment, such plan may
12 include a provision requiring relevant testing for either alcohol or
13 illegal substances provided the physician's OR NURSE PRACTITIONER'S
14 clinical basis for recommending such plan provides sufficient facts for
15 the court to find (i) that such person has a history of alcohol or
16 substance abuse that is clinically related to the mental illness; and
17 (ii) that such testing is necessary to prevent a relapse or deteri-
18 oration which would be likely to result in serious harm to the person or
19 others. If a director is the petitioner, the written treatment plan
20 shall be provided to the court no later than the date of the hearing on
21 the petition. If a person other than a director is the petitioner, such
22 plan shall be provided to the court no later than the date set by the
23 court pursuant to paragraph three of subdivision (j) of this section.

24 (2) The physician OR NURSE PRACTITIONER appointed to develop the writ-
25 ten treatment plan shall provide the following persons with an opportu-
26 nity to actively participate in the development of such plan: the
27 subject of the petition; the treating physician OR NURSE PRACTITIONER,
28 if any; and upon the request of the subject of the petition, an individ-
29 ual significant to the subject including any relative, close friend or
30 individual otherwise concerned with the welfare of the subject. If the
31 subject of the petition has executed a health care proxy, the appointed
32 physician OR NURSE PRACTITIONER shall consider any directions included
33 in such proxy in developing the written treatment plan.

34 (3) The court shall not order assisted outpatient treatment unless a
35 physician OR NURSE PRACTITIONER appearing on behalf of a director testi-
36 fies to explain the written proposed treatment plan. Such physician OR
37 NURSE PRACTITIONER shall state the categories of assisted outpatient
38 treatment recommended, the rationale for each such category, facts which
39 establish that such treatment is the least restrictive alternative, and,
40 if the recommended assisted outpatient treatment plan includes medica-
41 tion, such physician OR NURSE PRACTITIONER shall state the types or
42 classes of medication recommended, the beneficial and detrimental phys-
43 ical and mental effects of such medication, and whether such medication
44 should be self-administered or administered by an authorized profes-
45 sional. If the subject of the petition has executed a health care proxy,
46 such physician OR NURSE PRACTITIONER shall state the consideration given
47 to any directions included in such proxy in developing the written
48 treatment plan. If a director is the petitioner, testimony pursuant to
49 this paragraph shall be given at the hearing on the petition. If a
50 person other than a director is the petitioner, such testimony shall be
51 given on the date set by the court pursuant to paragraph three of subdivi-
52 sion (j) of this section.

53 (k) Petition for additional periods of treatment. Within thirty days
54 prior to the expiration of an order of assisted outpatient treatment,
55 the appropriate director or the current petitioner, if the current peti-
56 tion was filed pursuant to subparagraph (i) or (ii) of paragraph one of

1 subdivision (e) of this section, and the current petitioner retains his
2 or her original status pursuant to the applicable subparagraph, may
3 petition the court to order continued assisted outpatient treatment for
4 a period not to exceed one year from the expiration date of the current
5 order. If the court's disposition of such petition does not occur prior
6 to the expiration date of the current order, the current order shall
7 remain in effect until such disposition. The procedures for obtaining
8 any order pursuant to this subdivision shall be in accordance with the
9 provisions of the foregoing subdivisions of this section; provided that
10 the time restrictions included in paragraph four of subdivision (c) of
11 this section shall not be applicable. The notice provisions set forth in
12 paragraph six of subdivision (j) of this section shall be applicable.
13 Any court order requiring periodic blood tests or urinalysis for the
14 presence of alcohol or illegal drugs shall be subject to review after
15 six months by the physician OR NURSE PRACTITIONER who developed the
16 written treatment plan or another physician OR NURSE PRACTITIONER desig-
17 nated by the director, and such physician OR NURSE PRACTITIONER shall be
18 authorized to terminate such blood tests or urinalysis without further
19 action by the court.

20 (n) Failure to comply with assisted outpatient treatment. Where in the
21 clinical judgment of a physician OR NURSE PRACTITIONER, (i) the assisted
22 outpatient, has failed or refused to comply with the assisted outpatient
23 treatment, (ii) efforts were made to solicit compliance, and (iii) such
24 assisted outpatient may be in need of involuntary admission to a hospi-
25 tal pursuant to section 9.27 of this article or immediate observation,
26 care and treatment pursuant to section 9.39 or 9.40 of this article,
27 such physician OR NURSE PRACTITIONER may request the director of commu-
28 nity services, the director's designee, or any physician OR NURSE PRAC-
29 TITIONER designated by the director of community services pursuant to
30 section 9.37 of this article, to direct the removal of such assisted
31 outpatient to an appropriate hospital for an examination to determine if
32 such person has a mental illness for which hospitalization is necessary
33 pursuant to section 9.27, 9.39 or 9.40 of this article. Furthermore, if
34 such assisted outpatient refuses to take medications as required by the
35 court order, or he or she refuses to take, or fails a blood test, urina-
36 lysis, or alcohol or drug test as required by the court order, such
37 physician OR NURSE PRACTITIONER may consider such refusal or failure
38 when determining whether the assisted outpatient is in need of an exam-
39 ination to determine whether he or she has a mental illness for which
40 hospitalization is necessary. Upon the request of such physician OR
41 NURSE PRACTITIONER, the director, the director's designee, or any physi-
42 cian OR NURSE PRACTITIONER designated pursuant to section 9.37 of this
43 article, may direct peace officers, acting pursuant to their special
44 duties, or police officers who are members of an authorized police
45 department or force or of a sheriff's department to take the assisted
46 outpatient into custody and transport him or her to the hospital operat-
47 ing the assisted outpatient treatment program or to any hospital author-
48 ized by the director of community services to receive such persons. Such
49 law enforcement officials shall carry out such directive. Upon the
50 request of such physician OR NURSE PRACTITIONER, the director, the
51 director's designee, or any physician OR NURSE PRACTITIONER designated
52 pursuant to section 9.37 of this article, an ambulance service, as
53 defined by subdivision two of section three thousand one of the public
54 health law, or an approved mobile crisis outreach team as defined in
55 section 9.58 of this article shall be authorized to take into custody
56 and transport any such person to the hospital operating the assisted

1 outpatient treatment program, or to any other hospital authorized by the
2 director of community services to receive such persons. Any director of
3 community services, or designee, shall be authorized to direct the
4 removal of an assisted outpatient who is present in his or her county to
5 an appropriate hospital, in accordance with the provisions of this
6 subdivision, based upon a determination of the appropriate director of
7 community services directing the removal of such assisted outpatient
8 pursuant to this subdivision. Such person may be retained for observa-
9 tion, care and treatment and further examination in the hospital for up
10 to seventy-two hours to permit a physician OR NURSE PRACTITIONER to
11 determine whether such person has a mental illness and is in need of
12 involuntary care and treatment in a hospital pursuant to the provisions
13 of this article. Any continued involuntary retention in such hospital
14 beyond the initial seventy-two hour period shall be in accordance with
15 the provisions of this article relating to the involuntary admission and
16 retention of a person. If at any time during the seventy-two hour period
17 the person is determined not to meet the involuntary admission and
18 retention provisions of this article, and does not agree to stay in the
19 hospital as a voluntary or informal patient, he or she must be released.
20 Failure to comply with an order of assisted outpatient treatment shall
21 not be grounds for involuntary civil commitment or a finding of contempt
22 of court.

23 S 12. This act shall take effect immediately; provided, however, that:

24 a. The amendments to subdivision (a) of section 9.37 of the mental
25 hygiene law made by section four of this act shall be subject to the
26 expiration and reversion of such subdivision pursuant to section 21 of
27 chapter 723 of the laws of 1989, as amended, when upon such date the
28 provisions of section five of this act shall take effect;

29 b. The amendments to subdivisions (b) and (c) of section 9.40 of the
30 mental hygiene law made by section six of this act shall not affect the
31 repeal of such section and shall be deemed repealed therewith;

32 c. The amendments to sections 9.55 and 9.57 of the mental hygiene law
33 made by sections seven and nine of this act shall be subject to the
34 expiration and reversion of such sections pursuant to section 21 of
35 chapter 723 of the laws of 1989, as amended, when upon such date the
36 provisions of sections eight and ten of this act shall take effect; and

37 d. The amendments to section 9.60 of the mental hygiene law made by
38 section eleven of this act shall not affect the repeal of such section
39 and shall be deemed repealed therewith.