

STATE OF NEW YORK

7724

2021-2022 Regular Sessions

IN ASSEMBLY

May 20, 2021

Introduced by M. of A. MEEKS -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law and the public health law, in relation to providing a mental hygiene legal service to certain patients or residents of residential health care facilities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision (a) of section 47.01 of the mental hygiene law,
2 as amended by chapter 658 of the laws of 2019, is amended to read as
3 follows:

4 (a) There shall be a mental hygiene legal service of the state in each
5 judicial department. The service shall provide legal services, assist-
6 ance and advocacy to patients or residents of a facility as defined in
7 section 1.03 of this chapter, patients or residents of residential
8 healthcare facilities licensed and operating pursuant to article twen-
9 ty-eight of the public health law who have been admitted directly from a
10 facility as defined in section 1.03 of this chapter and who have a seri-
11 ous mental illness as defined in section 1.03 of this chapter [~~and are~~
12 ~~receiving services related to such illness~~], or any other place or
13 facility which is required to have an operating certificate pursuant to
14 article sixteen or thirty-one of this chapter, and to persons alleged to
15 be in need of care and treatment in such facilities or places, and to
16 persons entitled to such legal assistance as provided by article ten of
17 this chapter. The head of such service in each judicial department and
18 such assistants and such staff as may be necessary shall be appointed
19 and may be removed by the presiding justice of the appellate division of
20 the judicial department. Appointments and transfers to the service shall
21 comply with the provisions of the civil service law. Standards for qual-
22 ifications of the personnel in the service shall be established by the
23 presiding justice of the appellate division of the judicial department.

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

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1 The presiding justice of the appellate division of the judicial depart-
2 ment shall promulgate such rules or regulations as may be necessary to
3 effectuate the purposes of this article.

4 § 2. Section 47.03 of the mental hygiene law, as added by chapter 789
5 of the laws of 1985, subdivision (c) as amended by chapter 408 of the
6 laws of 1999, subdivisions (d) and (e) as amended and subdivision (f) as
7 added by chapter 7 of the laws of 2007, is amended to read as follows:

8 § 47.03 Functions, powers and duties of the service.

9 The mental hygiene legal service in each judicial department of the
10 state shall perform the following duties:

11 (a) To study and review the admission and retention of all patients or
12 residents which shall include a review of the willingness of the patient
13 or resident to remain in his or her status and the determination of the
14 facility director as to suitability of such status, as provided for by
15 this chapter;

16 (b) To inform patients or residents and, in proper cases, others
17 interested in such persons' welfare of procedures for admission and
18 retention and of the patients' or residents' right to have judicial
19 hearing and review, to be represented by legal counsel, and to seek
20 independent medical opinion;

21 (c) To provide legal services ~~[and]~~, assistance and advocacy to
22 patients or residents and their families related to the admission,
23 retention, and care and treatment of such persons, to provide legal
24 services and assistance to subjects of a petition or patients subject to
25 section 9.60 of this chapter, and to inform patients or residents, their
26 families and, in proper cases, others interested in the patients' or
27 residents' welfare of the availability of other legal resources which
28 may be of assistance in matters not directly related to the admission,
29 retention, and care and treatment of such patients or residents;

30 (d) To provide legal services, assistance and advocacy to patients or
31 residents of residential health care facilities licensed or operating
32 pursuant to article twenty-eight of the public health law who have been
33 admitted directly from a facility as defined in section 1.03 of this
34 chapter and who have a serious mental illness as defined in section 1.03
35 of this chapter;

36 (e) To be granted access at any and all times to any facility or place
37 or part thereof described in subdivision (a) of section 47.01 of this
38 article, and to all books, records and data pertaining to any such
39 facility or place deemed necessary for carrying out its functions,
40 powers and duties. The mental hygiene legal service may require from the
41 officers or employees of such facility or place any information deemed
42 necessary for the purpose of carrying out the service's functions,
43 powers and duties. Information, books, records or data which are confi-
44 dential and any limitations on the release thereof imposed by law upon
45 the party furnishing the information, books, records or data shall apply
46 to the service. Provided, however, whenever federal regulations
47 restrict, or as a condition of federal aid require that a facility
48 restrict the release of information contained in the clinical record of
49 a patient or client, or restrict disclosure of the identity of a patient
50 or access to that patient, to a greater extent than is allowed under
51 this section, the provisions of such federal law or federal regulation
52 shall be controlling;

53 ~~(e)~~ (f) To initiate and take any legal action deemed necessary to
54 safeguard the right of any patient or resident of a facility as defined
55 in section 1.03 of this chapter, or patients or residents of residential
56 health care facilities licensed and operating pursuant to article twen-

1 ty-eight of the public health law who have been admitted to such resi-
2 dential health care facility directly from a facility as defined in
3 section 1.03 of this chapter and who have a serious mental illness as
4 defined in section 1.03 of this chapter to protection from abuse or
5 mistreatment, which may include investigation into any such allegations
6 of abuse or mistreatment of any such patient or resident; and

7 ~~[(f)]~~ (g) To provide legal services and assistance in accordance with
8 article ten of this chapter.

9 § 3. Subdivision (c) of section 47.03 of the mental hygiene law, as
10 added by chapter 789 of the laws of 1985, is amended to read as follows:

11 (c) To provide legal services ~~[and]~~, assistance and advocacy to
12 patients or residents and their families related to the admission,
13 retention, and care and treatment of such persons, and to inform
14 patients or residents, their families and, in proper cases, others
15 interested in the patients' or residents' welfare of the availability of
16 other legal resources which may be of assistance in matters not directly
17 related to the admission, retention, and care and treatment of such
18 patients or residents;

19 § 4. Section 29.13 of the mental hygiene law, as added by chapter 332
20 of the laws of 1976, subdivision (b) as amended by chapter 135 of the
21 laws of 1993, is amended to read as follows:

22 § 29.13 Treatment plans.

23 (a) Subject to the regulations of the commissioner, the director of
24 each departmental facility shall require the development of a written
25 treatment plan to assure adequate care and treatment for each patient.

26 (b) The written treatment plan shall include, but not be limited to, a
27 statement of treatment goals; appropriate programs, treatment or thera-
28 pies to be undertaken to meet such goals; and a specific timetable for
29 assessment of patient programs as well as for periodic mental and phys-
30 ical reexaminations. In causing such a plan to be prepared or when such
31 a plan is to be revised, the patient shall be advised of whatever
32 services may be available to him or her through the mental hygiene legal
33 service, including advocacy services, and the following persons shall be
34 interviewed and provided an opportunity to actively participate in such
35 preparation or revision: the patient; an authorized representative of
36 the patient, to include the mental hygiene legal service, and the parent
37 or parents if the patient is a minor, unless such minor sixteen years of
38 age or older objects to the participation of the parent or parents and
39 there has been a clinical determination by a physician indicating that
40 the involvement of the parent or parents is not clinically appropriate
41 and such determination is documented in the record; upon the request of
42 the patient sixteen years of age or older, a significant individual to
43 the patient including the mental hygiene legal service and any relative,
44 close friend or individual otherwise concerned with the welfare of the
45 patient, other than an employee of the facility.

46 § 5. Section 29.15 of the mental hygiene law is amended by adding a
47 new subdivision (o) to read as follows:

48 (o) It shall be the responsibility of the director of any department
49 facility or the chief administrator of any facility providing inpatient
50 services subject to licensure by the office of mental health to notify
51 the mental hygiene legal service when a patient who has a serious mental
52 illness, as defined in section 1.03 of this chapter, and is receiving
53 services related to such illness is about to be discharged to a residen-
54 tial health care facility licensed and operating pursuant to article
55 twenty-eight of the public health law and to provide the mental hygiene

1 legal service with the written service plan developed for such person as
2 required under subdivision (f) of this section.

3 § 6. Subdivision 3 of section 2803-c of the public health law is
4 amended by adding a new paragraph r to read as follows:

5 r. In accordance with subdivision (a) of section 47.01 of the mental
6 hygiene law, no facility shall restrict or prohibit the mental hygiene
7 legal service operating pursuant to article forty-seven of the mental
8 hygiene law from access to patients or their records who have been
9 admitted to the facility directly from a facility as defined by section
10 1.03 of the mental hygiene law and who have a serious mental illness.
11 Disclosure of records to the mental hygiene legal service shall not give
12 rise to any claims against the facility, its staff, or the patient's
13 physician based solely on the fact of such disclosure pursuant to statu-
14 tory authorization.

15 § 7. This act shall take effect immediately; provided, however, that
16 the amendments to subdivision (c) of section 47.03 of the mental hygiene
17 law made by section two of this act shall not affect the repeal of such
18 subdivision pursuant to section 18 of chapter 408 of the laws of 1999,
19 as amended, when upon such date the provisions of section three of this
20 act shall take effect. Effective immediately, the addition, amendment
21 and/or repeal of any rule or regulation necessary for the implementation
22 of this act on its effective date are authorized and directed to be made
23 and completed on or before such effective date.