

11650

I N A S S E M B L Y

July 6, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Ortiz,
Colton) -- read once and referred to the Committee on Higher Education

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 ASSEM-
BLY, 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.
5 S 2. The section heading, the opening paragraph of subdivision (a) and
6 subdivision (b) of section 9.05 of the mental hygiene law, such section
7 as renumbered by chapter 978 and the laws of 1977, are amended to read
8 as follows:
9 Examining physicians and NURSE PRACTITIONERS AND medical certificates.
10 A person is disqualified from acting as an examining physician OR
11 NURSE PRACTITIONER in the following cases:
12 (b) A certificate, as required by this article, must show that the
13 person is mentally ill and shall be based on an examination of the
14 person alleged to be mentally ill made within ten days prior to the date
15 of admission. The date of the certificate shall be the date of such
16 examination. All certificates shall contain the facts and circumstances
17 upon which the judgment of the physicians OR NURSE PRACTITIONER is based
18 and shall show that the condition of the person examined is such that he
19 OR SHE needs involuntary care and treatment in a hospital and such other
20 information as the commissioner may by regulation require.
21 S 3. Subdivision (a) of section 9.27 of the mental hygiene law, such
22 section as renumbered by chapter 978 of the laws of 1977, is amended to
23 read as follows:
24 (a) The director of a hospital may receive and retain therein as a
25 patient any person alleged to be mentally ill and in need of involuntary
26 care and treatment upon the certificates of two examining physicians OR
27 NURSE PRACTITIONERS, accompanied by an application for the admission of
28 such person. The examination may be conducted jointly but each examining
29 physician OR NURSE PRACTITIONER shall execute a separate certificate.

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

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1 S 4. Subdivisions (b) and (c) of section 9.40 of the mental hygiene
2 law, as added by chapter 723 of the laws of 1989, are amended to read as
3 follows:

4 (b) The director shall cause examination of such persons to be initi-
5 ated by a staff physician OR NURSE PRACTITIONER of the program as soon
6 as practicable and in any event within six hours after the person is
7 received into the program's emergency room. Such person may be retained
8 for observation, care and treatment and further examination for up to
9 twenty-four hours if, at the conclusion of such examination, such physi-
10 cian OR NURSE PRACTITIONER determines that such person may have a mental
11 illness for which immediate observation, care and treatment in a compre-
12 hensive psychiatric emergency program is appropriate, and which is like-
13 ly to result in serious harm to the person or others.

14 (c) No person shall be involuntarily retained in accordance with this
15 section for more than twenty-four hours, unless (i) within that time the
16 determination of the examining staff physician OR NURSE PRACTITIONER has
17 been confirmed after examination by another physician OR NURSE PRACTI-
18 TIONER who is a member of the psychiatric staff of the program and (ii)
19 the person is admitted to an extended observation bed, as such term is
20 defined in section 31.27 of this chapter. At the time of admission to an
21 extended observation bed, such person shall be served with written
22 notice of his status and rights as a patient under this section. Such
23 notice shall contain the patient's name. The notice shall be provided to
24 the same persons and in the manner as if provided pursuant to subdivi-
25 sion (a) of section 9.39 of this article. Written requests for court
26 hearings on the question of need for immediate observation, care and
27 treatment shall be made, and court hearings shall be scheduled and held,
28 in the manner provided pursuant to subdivision (a) of section 9.39 of
29 this article, provided however, if a person is removed or admitted to a
30 hospital pursuant to subdivision (e) or (f) of this section the director
31 of such hospital shall be substituted for the director of the comprehen-
32 sive psychiatric emergency program in all legal proceedings regarding
33 the continued retention of the person.

34 S 5. Section 9.55 of the mental hygiene law, as amended by chapter 598
35 of the laws of 1994, is amended to read as follows:

36 S 9.55 Emergency admissions for immediate observation, care and treat-
37 ment; powers of qualified psychiatrists OR NURSE PRACTITION-
38 ERS.

39 A qualified psychiatrist OR NURSE PRACTITIONER shall have the power to
40 direct the removal of any person, whose treatment for a mental illness
41 he or she is either supervising or providing in a facility licensed or
42 operated by the office of mental health which does not have an inpatient
43 psychiatric service, to a hospital approved by the commissioner pursuant
44 to subdivision (a) of section 9.39 of this article or to a comprehensive
45 psychiatric emergency program, if he or she determines upon examination
46 of such person that such person appears to have a mental illness for
47 which immediate observation, care and treatment in a hospital is appro-
48 priate and which is likely to result in serious harm to himself or
49 herself or others. Upon the request of such qualified psychiatrist OR
50 NURSE PRACTITIONER, peace officers, when acting pursuant to their
51 special duties, or police officers, who are members of an authorized
52 police department or force or of a sheriff's department shall take into
53 custody and transport any such person. Upon the request of a qualified
54 psychiatrist OR NURSE PRACTITIONER an ambulance service, as defined by
55 subdivision two of section three thousand one of the public health law,
56 is authorized to transport any such person. Such person may then be

1 admitted to a hospital in accordance with the provisions of section 9.39
2 of this article or to a comprehensive psychiatric emergency program in
3 accordance with the provisions of section 9.40 of this article.

4 S 6. Section 9.55 of the mental hygiene law, as amended by chapter 847
5 of the laws of 1987, is amended to read as follows:

6 S 9.55 Emergency admissions for immediate observation, care and treat-
7 ment; powers of qualified psychiatrists OR NURSE PRACTITION-
8 ERS.

9 A qualified psychiatrist OR NURSE PRACTITIONER shall have the power to
10 direct the removal of any person, whose treatment for a mental illness
11 he OR SHE is either supervising or providing in a facility licensed or
12 operated by the office of mental health which does not have an inpatient
13 psychiatric service, to a hospital approved by the commissioner pursuant
14 to subdivision (a) of section 9.39 of this article, if he OR SHE deter-
15 mines upon examination of such person that such person appears to have a
16 mental illness for which immediate observation, care and treatment in a
17 hospital is appropriate and which is likely to result in serious harm to
18 himself OR HERSELF or others, as defined in section 9.39 of this arti-
19 cle. Upon the request of such qualified psychiatrist OR NURSE PRACTI-
20 TIONER, peace officers, when acting pursuant to their special duties, or
21 police officers, who are members of an authorized police department or
22 force or of a sheriff's department shall take into custody and transport
23 any such person. Upon the request of a qualified psychiatrist OR NURSE
24 PRACTITIONER an ambulance service, as defined by subdivision two of
25 section three thousand one of the public health law, is authorized to
26 transport any such person. Such person may then be admitted in accord-
27 ance with the provisions of section 9.39 of this article.

28 S 7. Section 9.57 of the mental hygiene law, as amended by chapter 598
29 of the laws of 1994, is amended to read as follows:

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

33 A physician OR NURSE PRACTITIONER who has examined a person in an
34 emergency room or provided emergency medical services at a general
35 hospital, as defined in article twenty-eight of the public health law,
36 which does not have an inpatient psychiatric service, or a physician OR
37 NURSE PRACTITIONER who has examined a person in a comprehensive psychi-
38 atric emergency program shall be authorized to request that the director
39 of the program or hospital, or the director's designee, direct the
40 removal of such person to a hospital approved by the commissioner pursu-
41 ant to subdivision (a) of section 9.39 of this article or to a compre-
42 hensive psychiatric emergency program, if the physician OR NURSE PRACTI-
43 TIONER determines upon examination of such person that such person
44 appears to have a mental illness for which immediate care and treatment
45 in a hospital is appropriate and which is likely to result in serious
46 harm to himself or others. Upon the request of the physician OR NURSE
47 PRACTITIONER, the director of the program or hospital or the director's
48 designee, is authorized to direct peace officers, when acting pursuant
49 to their special duties, or police officers, who are members of an
50 authorized police department or force or of a sheriff's department to
51 take into custody and transport any such person. Upon the request of an
52 emergency room physician, A NURSE PRACTITIONER, or the director of the
53 program or hospital, or the director's designee, an ambulance service,
54 as defined by subdivision two of section three thousand one of the
55 public health law, is authorized to take into custody and transport any
56 such person. Such person may then be admitted to a hospital in accord-

1 ance with the provisions of section 9.39 of this article or to a compre-
2 hensive psychiatric emergency program in accordance with the provisions
3 of section 9.40 of this article.

4 S 8. Section 9.57 of the mental hygiene law, as amended by chapter 847
5 of the laws of 1987, is amended to read as follows:

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

9 A physician OR NURSE PRACTITIONER who has examined a person in an
10 emergency room or provided emergency medical services at a general
11 hospital, as defined in article twenty-eight of the public health law,
12 which does not have an inpatient psychiatric service, shall be author-
13 ized to request that the director of the hospital, or his OR HER desig-
14 nee, direct the removal of such person to a hospital approved by the
15 commissioner pursuant to subdivision (a) of section 9.39 of this arti-
16 cle, if the physician OR NURSE PRACTITIONER determines upon examination
17 of such person that such person appears to have a mental illness for
18 which immediate care and treatment in a hospital is appropriate and
19 which is likely to result in serious harm to himself OR HERSELF or
20 others, as defined in section 9.39 of this article. Upon the request of
21 the physician OR NURSE PRACTITIONER, the director of the hospital or his
22 OR HER designee, is authorized to direct peace officers, when acting
23 pursuant to their special duties, or police officers, who are members of
24 an authorized police department or force or of a sheriff's department to
25 take into custody and transport any such person. Upon the request of an
26 emergency room physician, A NURSE PRACTITIONER, or the director of the
27 hospital, or his OR HER designee, an ambulance service, as defined by
28 subdivision two of section three thousand one of the public health law,
29 is authorized to take into custody and transport any such person. Such
30 person may then be admitted in accordance with the provisions of section
31 9.39 of this article.

32 S 9. Subparagraph (v) of paragraph 1 and paragraphs 3 and 4 of subdi-
33 vision (e) and subdivisions (h), (i), (k) and (n) of section 9.60 of the
34 mental hygiene law, as amended and paragraph 4 of subdivision (e) as
35 added by chapter 158 of the laws of 2005, are amended to read as
36 follows:

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

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

43 (i) such physician OR NURSE PRACTITIONER has personally examined the
44 subject of the petition no more than ten days prior to the submission of
45 the petition, recommends assisted outpatient treatment for the subject
46 of the petition, and is willing and able to testify at the hearing on
47 the petition; or

48 (ii) no more than ten days prior to the filing of the petition, such
49 physician OR NURSE PRACTITIONER or his or her designee has made appro-
50 priate attempts but has not been successful in eliciting the cooperation
51 of the subject of the petition to submit to an examination, such physi-
52 cian OR NURSE PRACTITIONER has reason to suspect that the subject of the
53 petition meets the criteria for assisted outpatient treatment, and such
54 physician OR NURSE PRACTITIONER is willing and able to examine the
55 subject of the petition and testify at the hearing on the petition.

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

(h) Hearing. (1) Upon receipt of the petition, the court shall fix the date for a hearing. Such date shall be no later than three days from the date such petition is received by the court, excluding Saturdays, Sundays and holidays. Adjournments shall be permitted only for good cause shown. In granting adjournments, the court shall consider the need for further examination by a physician OR NURSE PRACTITIONER or the potential need to provide assisted outpatient treatment expeditiously. The court shall cause the subject of the petition, any other person receiving notice pursuant to subdivision (f) of this section, the petitioner, the physician OR NURSE PRACTITIONER whose affirmation or affidavit accompanied the petition, and such other persons as the court may determine to be advised of such date. Upon such date, or upon such other date to which the proceeding may be adjourned, the court shall hear testimony and, if it be deemed advisable and the subject of the petition is available, examine the subject of the petition in or out of court. If the subject of the petition does not appear at the hearing, and appropriate attempts to elicit the attendance of the subject have failed, the court may conduct the hearing in the subject's absence. In such case, the court shall set forth the factual basis for conducting the hearing without the presence of the subject of the petition.

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

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

1 (4) A physician OR NURSE PRACTITIONER who testifies pursuant to para-
2 graph two of this subdivision shall state: (i) the facts which support
3 the allegation that the subject meets each of the criteria for assisted
4 outpatient treatment, (ii) that the treatment is the least restrictive
5 alternative, (iii) the recommended assisted outpatient treatment, and
6 (iv) the rationale for the recommended assisted outpatient treatment. If
7 the recommended assisted outpatient treatment includes medication, such
8 physician's OR NURSE PRACTITIONER'S testimony shall describe the types
9 or classes of medication which should be authorized, shall describe the
10 beneficial and detrimental physical and mental effects of such medica-
11 tion, and shall recommend whether such medication should be self-admin-
12 istered or administered by authorized personnel.

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

16 (i) Written treatment plan. (1) The court shall not order assisted
17 outpatient treatment unless a physician OR NURSE PRACTITIONER appointed
18 by the appropriate director, in consultation with such director, devel-
19 ops and provides to the court a proposed written treatment plan. The
20 written treatment plan shall include case management services or asser-
21 tive community treatment team services to provide care coordination. The
22 written treatment plan also shall include all categories of services, as
23 set forth in paragraph one of subdivision (a) of this section, which
24 such physician OR NURSE PRACTITIONER recommends that the subject of the
25 petition receive. All service providers shall be notified regarding
26 their inclusion in the written treatment plan. If the written treatment
27 plan includes medication, it shall state whether such medication should
28 be self-administered or administered by authorized personnel, and shall
29 specify type and dosage range of medication most likely to provide maxi-
30 mum benefit for the subject. If the written treatment plan includes
31 alcohol or substance abuse counseling and treatment, such plan may
32 include a provision requiring relevant testing for either alcohol or
33 illegal substances provided the physician's OR NURSE PRACTITIONER'S
34 clinical basis for recommending such plan provides sufficient facts for
35 the court to find (i) that such person has a history of alcohol or
36 substance abuse that is clinically related to the mental illness; and
37 (ii) that such testing is necessary to prevent a relapse or deteri-
38 oration which would be likely to result in serious harm to the person or
39 others. If a director is the petitioner, the written treatment plan
40 shall be provided to the court no later than the date of the hearing on
41 the petition. If a person other than a director is the petitioner, such
42 plan shall be provided to the court no later than the date set by the
43 court pursuant to paragraph three of subdivision (j) of this section.

44 (2) The physician OR NURSE PRACTITIONER appointed to develop the writ-
45 ten treatment plan shall provide the following persons with an opportu-
46 nity to actively participate in the development of such plan: the
47 subject of the petition; the treating physician OR NURSE PRACTITIONER,
48 if any; and upon the request of the subject of the petition, an individ-
49 ual significant to the subject including any relative, close friend or
50 individual otherwise concerned with the welfare of the subject. If the
51 subject of the petition has executed a health care proxy, the appointed
52 physician OR NURSE PRACTITIONER shall consider any directions included
53 in such proxy in developing the written treatment plan.

54 (3) The court shall not order assisted outpatient treatment unless a
55 physician OR NURSE PRACTITIONER appearing on behalf of a director testi-
56 fies to explain the written proposed treatment plan. Such physician OR

1 NURSE PRACTITIONER shall state the categories of assisted outpatient
2 treatment recommended, the rationale for each such category, facts which
3 establish that such treatment is the least restrictive alternative, and,
4 if the recommended assisted outpatient treatment plan includes medica-
5 tion, such physician OR NURSE PRACTITIONER shall state the types or
6 classes of medication recommended, the beneficial and detrimental phys-
7 ical and mental effects of such medication, and whether such medication
8 should be self-administered or administered by an authorized profes-
9 sional. If the subject of the petition has executed a health care proxy,
10 such physician OR NURSE PRACTITIONER shall state the consideration given
11 to any directions included in such proxy in developing the written
12 treatment plan. If a director is the petitioner, testimony pursuant to
13 this paragraph shall be given at the hearing on the petition. If a
14 person other than a director is the petitioner, such testimony shall be
15 given on the date set by the court pursuant to paragraph three of subdivi-
16 sion (j) of this section.

17 (k) Petition for additional periods of treatment. Within thirty days
18 prior to the expiration of an order of assisted outpatient treatment,
19 the appropriate director or the current petitioner, if the current peti-
20 tion was filed pursuant to subparagraph (i) or (ii) of paragraph one of
21 subdivision (e) of this section, and the current petitioner retains his
22 or her original status pursuant to the applicable subparagraph, may
23 petition the court to order continued assisted outpatient treatment for
24 a period not to exceed one year from the expiration date of the current
25 order. If the court's disposition of such petition does not occur prior
26 to the expiration date of the current order, the current order shall
27 remain in effect until such disposition. The procedures for obtaining
28 any order pursuant to this subdivision shall be in accordance with the
29 provisions of the foregoing subdivisions of this section; provided that
30 the time restrictions included in paragraph four of subdivision (c) of
31 this section shall not be applicable. The notice provisions set forth in
32 paragraph six of subdivision (j) of this section shall be applicable.
33 Any court order requiring periodic blood tests or urinalysis for the
34 presence of alcohol or illegal drugs shall be subject to review after
35 six months by the physician OR NURSE PRACTITIONER who developed the
36 written treatment plan or another physician OR NURSE PRACTITIONER desig-
37 nated by the director, and such physician OR NURSE PRACTITIONER shall be
38 authorized to terminate such blood tests or urinalysis without further
39 action by the court.

40 (n) Failure to comply with assisted outpatient treatment. Where in the
41 clinical judgment of a physician OR NURSE PRACTITIONER, (i) the assisted
42 outpatient, has failed or refused to comply with the assisted outpatient
43 treatment, (ii) efforts were made to solicit compliance, and (iii) such
44 assisted outpatient may be in need of involuntary admission to a hospi-
45 tal pursuant to section 9.27 of this article or immediate observation,
46 care and treatment pursuant to section 9.39 or 9.40 of this article,
47 such physician OR NURSE PRACTITIONER may request the director of commu-
48 nity services, the director's designee, or any physician OR NURSE PRAC-
49 TITIONER designated by the director of community services pursuant to
50 section 9.37 of this article, to direct the removal of such assisted
51 outpatient to an appropriate hospital for an examination to determine if
52 such person has a mental illness for which hospitalization is necessary
53 pursuant to section 9.27, 9.39 or 9.40 of this article. Furthermore, if
54 such assisted outpatient refuses to take medications as required by the
55 court order, or he or she refuses to take, or fails a blood test, urina-
56 lysis, or alcohol or drug test as required by the court order, such

1 physician OR NURSE PRACTITIONER may consider such refusal or failure
2 when determining whether the assisted outpatient is in need of an exam-
3 ination to determine whether he or she has a mental illness for which
4 hospitalization is necessary. Upon the request of such physician OR
5 NURSE PRACTITIONER, the director, the director's designee, or any physi-
6 cian OR NURSE PRACTITIONER designated pursuant to section 9.37 of this
7 article, may direct peace officers, acting pursuant to their special
8 duties, or police officers who are members of an authorized police
9 department or force or of a sheriff's department to take the assisted
10 outpatient into custody and transport him or her to the hospital operat-
11 ing the assisted outpatient treatment program or to any hospital author-
12 ized by the director of community services to receive such persons. Such
13 law enforcement officials shall carry out such directive. Upon the
14 request of such physician OR NURSE PRACTITIONER, the director, the
15 director's designee, or any physician OR NURSE PRACTITIONER designated
16 pursuant to section 9.37 of this article, an ambulance service, as
17 defined by subdivision two of section three thousand one of the public
18 health law, or an approved mobile crisis outreach team as defined in
19 section 9.58 of this article shall be authorized to take into custody
20 and transport any such person to the hospital operating the assisted
21 outpatient treatment program, or to any other hospital authorized by the
22 director of community services to receive such persons. Any director of
23 community services, or designee, shall be authorized to direct the
24 removal of an assisted outpatient who is present in his or her county to
25 an appropriate hospital, in accordance with the provisions of this
26 subdivision, based upon a determination of the appropriate director of
27 community services directing the removal of such assisted outpatient
28 pursuant to this subdivision. Such person may be retained for observa-
29 tion, care and treatment and further examination in the hospital for up
30 to seventy-two hours to permit a physician OR NURSE PRACTITIONER to
31 determine whether such person has a mental illness and is in need of
32 involuntary care and treatment in a hospital pursuant to the provisions
33 of this article. Any continued involuntary retention in such hospital
34 beyond the initial seventy-two hour period shall be in accordance with
35 the provisions of this article relating to the involuntary admission and
36 retention of a person. If at any time during the seventy-two hour period
37 the person is determined not to meet the involuntary admission and
38 retention provisions of this article, and does not agree to stay in the
39 hospital as a voluntary or informal patient, he or she must be released.
40 Failure to comply with an order of assisted outpatient treatment shall
41 not be grounds for involuntary civil commitment or a finding of contempt
42 of court.

43 S 10. This act shall take effect immediately; provided, however, that

44 1. The amendments to subdivisions (b) and (c) of section 9.40 of the
45 mental hygiene law made by section four of this act shall not affect the
46 repeal of such section and shall be deemed repealed therewith;

47 2. The amendments to sections 9.55 and 9.57 of the mental hygiene law
48 made by sections five and seven of this act shall be subject to the
49 expiration and reversion of such sections pursuant to section 21 of
50 chapter 723 of the laws of 1989, as amended, when upon such date the
51 provisions of sections six and eight of this act shall take effect;

52 3. The amendments to section 9.60 of the mental hygiene law made by
53 section nine of this act shall not affect the repeal of such section and
54 shall be deemed repealed therewith.