

3019

2011-2012 Regular Sessions

I N S E N A T E

February 7, 2011

Introduced by Sen. HUNTLEY -- 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 powers with respect to the property of patients

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

1 Section 1. Section 29.23 of the mental hygiene law, as amended by
2 section 1 of part A of chapter 111 of the laws of 2010, is amended to
3 read as follows:
4 S 29.23 Powers with respect to property of persons receiving services.
5 (A) The commissioner may authorize the directors of department facilities,
6 to receive or obtain funds or other personal property, excepting
7 jewelry, due or belonging to a person receiving services from such
8 facility who has no guardian authorized to receive such funds or property,
9 up to an amount or value not exceeding [twenty-five thousand
10 dollars] THE MEDICAL ASSISTANCE RESOURCE EXCLUSION FOR A SINGLE PERSON
11 AS DESCRIBED IN SUBDIVISION TWO OF SECTION THREE HUNDRED SIXTY-SIX OF
12 THE SOCIAL SERVICES LAW; and also from a guardian upon his discharge
13 when the final order so provides where the balance remaining in the
14 hands of such guardian does not exceed such amount. Such personal property,
15 excepting jewelry, other than moneys shall be retained by the
16 director for the benefit of the person for whom received until sold as
17 hereinafter provided. Such funds and the proceeds of the sale of other
18 personal property so received shall be placed to the credit of the
19 person for whom received and disbursed on the order of the director, to
20 provide, in the first instance, for luxuries, comforts, and necessities
21 for such person, including burial expenses and such director shall be
22 authorized to seek to place, to the extent permissible by law, funds in
23 excess of the appropriate eligibility level for government benefits,
24 into a qualifying Medicaid exception trust, including a special needs
25 trust, or similar device. The director of a department facility shall
26 ensure that the treatment team meet with, and determine the current and
27 future personal needs of, the person receiving services. For purposes of

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

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1 this section, a treatment team is one that is responsible for the
2 following, including but not limited to, clinical assessments, treatment
3 plan development, any necessary discharge planning, and personal expend-
4 iture planning. The commissioner may authorize directors, on behalf of
5 any such person, to give receipts, execute releases and other documents
6 required by law or court order, to endorse checks and drafts, and to
7 convert personal property excepting jewelry into money by sale for an
8 adequate consideration, and to execute bills of sale or to permit such
9 person to do so, in order that the proceeds may be deposited to the
10 credit of such person in accordance with the provisions of this section.

11 (B) Whenever, under the provisions of this section, the commissioner
12 shall authorize the director of a facility in the department to receive
13 moneys or other personal property excluding jewelry belonging to a
14 person which are on deposit in any bank or other institution or which
15 are due to the person from any person or agency, such bank, institution,
16 person, or agency shall, upon the written request of the director,
17 forthwith turn over to such director from such moneys or personal prop-
18 erty the amount or value hereinbefore specified. Any moneys received by
19 the director of such facility shall be deposited by him in such bank or
20 trust company as shall be designated by the comptroller, except that the
21 commissioner may, in his discretion, invest so much thereof as he may
22 deem advisable in bonds issued by the United States government or any of
23 its agencies.

24 (C) Moneys belonging to a person received by the director of such
25 facility pursuant to law shall be received by him in his official capac-
26 ity as such director and such receipt shall be deemed an exercise or
27 performance by him of a power and duty duly conferred by this section.
28 In the event that a director of a department facility receives a wind-
29 fall payment on behalf of a person which, in combination with other
30 funds held on behalf of such person, would cause such person to become
31 ineligible for government benefits, such director shall, to the extent
32 permissible by law, apply the funds in excess of the appropriate eligi-
33 bility level to the person's personal needs or seek to place such excess
34 funds into a qualifying Medicaid exception trust, including a special
35 needs trust, or similar device. For purposes of this section, a windfall
36 payment shall mean a one-time payment such as a gift, an inheritance,
37 lottery winnings, or court-ordered judgment or settlement.

38 (D) This section shall not apply to any federal or state benefits
39 received by the director as representative payee, which benefits shall
40 be handled in accordance with section 33.07 of this title and regu-
41 lations promulgated thereunder.

42 S 2. Section 29.23 of the mental hygiene law is amended to read as
43 follows:

44 S 29.23 Powers with respect to property of patients.

45 (A) The commissioner may authorize the directors of department facili-
46 ties, to receive or obtain funds or other personal property, excepting
47 jewelry, due or belonging to a patient who has no committee, up to an
48 amount or value not exceeding [five thousand dollars] THE MEDICAL
49 ASSISTANCE RESOURCE EXCLUSION FOR A SINGLE PERSON AS DESCRIBED IN SUBDI-
50 VISION TWO OF SECTION THREE HUNDRED SIXTY-SIX OF THE SOCIAL SERVICES
51 LAW; and also from a committee upon his discharge when the final order
52 so provides where the balance remaining in the hands of such committee
53 does not exceed such amount. Such personal property, excepting jewelry,
54 other than moneys shall be retained by the director for the benefit of
55 the patient for whom received until sold as hereinafter provided. Such
56 funds and the proceeds of the sale of other personal property so

1 received shall be placed to the credit of the patient for whom received
2 and disbursed on the order of the director, to provide, in the first
3 instance, for luxuries, comforts, and necessities for such patient,
4 including burial expenses, and, if funds are thereafter available, for
5 the support of such patient. The commissioner may authorize directors,
6 on behalf of any such patient, to give receipts, execute releases and
7 other documents required by law or court order, to endorse checks and
8 drafts, and to convert personal property excepting jewelry into money by
9 sale for an adequate consideration, and to execute bills of sale or to
10 permit such patient to do so, in order that the proceeds may be deposit-
11 ed to the credit of such patient in accordance with the provisions of
12 this section.

13 (B) Whenever, under the provisions of this section, the commissioner
14 shall authorize the director of a facility in the department to receive
15 moneys or other personal property excluding jewelry belonging to a
16 patient which are on deposit in any bank or other institution or which
17 are due to the person from any person or agency, such bank, institution,
18 person, or agency shall, upon the written request of the director,
19 forthwith turn over to such director from such moneys or personal prop-
20 erty the amount or value hereinbefore specified. Any moneys received by
21 the director of such facility shall be deposited by him in such bank or
22 trust company as shall be designated by the comptroller, except that the
23 commissioner may, in his discretion, invest so much thereof as he may
24 deem advisable in bonds issued by the United States government or any of
25 its agencies.

26 (C) Moneys belonging to a patient received by the director of such
27 facility pursuant to law shall be received by him in his official capac-
28 ity as such director and such receipt shall be deemed an exercise or
29 performance by him of a power and duty duly conferred by this section.

30 S 3. Subdivisions (a) and (b) of section 33.07 of the mental hygiene
31 law, such section as renumbered by chapter 978 of the laws of 1977, are
32 amended and a new subdivision (e-1) is added to read as follows:

33 (a) A patient's right to retain his personal belongings upon admission
34 to a MENTAL HYGIENE facility shall be respected. The director, subject
35 to the regulations of the commissioner, may take temporary custody of
36 the patient's personal property upon the person of the patient.
37 Personal property which is retained for the patient's protection shall
38 be used for the support and benefit of the patient if deemed desirable.
39 Otherwise, it is to be conserved for his benefit. If a patient is trans-
40 ferred to another facility, his personal belongings shall be transferred
41 with him. Gifts received by a patient in a facility shall be handled in
42 the same manner.

43 (b) The director of a [department] MENTAL HYGIENE facility shall have
44 the power to take temporary and immediate custody of the personal prop-
45 erty of a patient which is in the possession of other persons upon
46 giving a receipt therefor to the person having possession thereof.

47 (E-1) THE COMMISSIONER MAY AUTHORIZE DIRECTORS OF MENTAL HYGIENE
48 FACILITIES, ON BEHALF OF A PATIENT, TO GIVE RECEIPTS AND EXECUTE
49 RELEASES AND OTHER DOCUMENTS REQUIRED BY LAW OR COURT ORDER.

50 S 4. This act shall take effect immediately; provided that the amend-
51 ments to section 29.23 of the mental hygiene law made by section one of
52 this act shall be subject to the expiration and reversion of such
53 section pursuant to section 3 of part A of chapter 111 of the laws of
54 2010, as amended, when upon such date the provisions of section two of
55 this act shall take effect.