

4525

2011-2012 Regular Sessions

I N S E N A T E

April 11, 2011

Introduced by Sen. McDONALD -- 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.
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

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

LBD03971-01-1

1 NURSE PRACTITIONERS, accompanied by an application for the admission of
2 such person. The examination may be conducted jointly but each examining
3 physician OR NURSE PRACTITIONER shall execute a separate certificate.

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

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

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

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

39 S 9.55 Emergency admissions for immediate observation, care and treat-
40 ment; powers of qualified psychiatrists OR NURSE PRACTITION-
41 ERS.

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

1 psychiatrist OR NURSE PRACTITIONER an ambulance service, as defined by
2 subdivision two of section three thousand one of the public health law,
3 is authorized to transport any such person. Such person may then be
4 admitted to a hospital in accordance with the provisions of section 9.39
5 of this article or to a comprehensive psychiatric emergency program in
6 accordance with the provisions of section 9.40 of this article.

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

9 S 9.55 Emergency admissions for immediate observation, care and treat-
10 ment; powers of qualified psychiatrists OR NURSE PRACTITION-
11 ERS.

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

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

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

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

1 as defined by subdivision two of section three thousand one of the
2 public health law, is authorized to take into custody and transport any
3 such person. Such person may then be admitted to a hospital in accord-
4 ance with the provisions of section 9.39 of this article or to a compre-
5 hensive psychiatric emergency program in accordance with the provisions
6 of section 9.40 of this article.

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

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

12 A physician OR NURSE PRACTITIONER who has examined a person in an
13 emergency room or provided emergency medical services at a general
14 hospital, as defined in article twenty-eight of the public health law,
15 which does not have an inpatient psychiatric service, shall be author-
16 ized to request that the director of the hospital, or his OR HER desig-
17 nee, direct the removal of such person to a hospital approved by the
18 commissioner pursuant to subdivision (a) of section 9.39 of this arti-
19 cle, if the physician OR NURSE PRACTITIONER determines upon examination
20 of such person that such person appears to have a mental illness for
21 which immediate care and treatment in a hospital is appropriate and
22 which is likely to result in serious harm to himself OR HERSELF or
23 others, as defined in section 9.39 of this article. Upon the request of
24 the physician OR NURSE PRACTITIONER, the director of the hospital or his
25 OR HER designee, is authorized to direct peace officers, when acting
26 pursuant to their special duties, or police officers, who are members of
27 an authorized police department or force or of a sheriff's department to
28 take into custody and transport any such person. Upon the request of an
29 emergency room physician, A NURSE PRACTITIONER, or the director of the
30 hospital, or his OR HER designee, an ambulance service, as defined by
31 subdivision two of section three thousand one of the public health law,
32 is authorized to take into custody and transport any such person. Such
33 person may then be admitted in accordance with the provisions of section
34 9.39 of this article.

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

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

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

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

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

1 physician OR NURSE PRACTITIONER is willing and able to examine the
2 subject of the petition and testify at the hearing on the petition.

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

10 (h) Hearing. (1) Upon receipt of the petition, the court shall fix the
11 date for a hearing. Such date shall be no later than three days from the
12 date such petition is received by the court, excluding Saturdays,
13 Sundays and holidays. Adjournments shall be permitted only for good
14 cause shown. In granting adjournments, the court shall consider the need
15 for further examination by a physician OR NURSE PRACTITIONER or the
16 potential need to provide assisted outpatient treatment expeditiously.
17 The court shall cause the subject of the petition, any other person
18 receiving notice pursuant to subdivision (f) of this section, the peti-
19 tioner, the physician OR NURSE PRACTITIONER whose affirmation or affida-
20 vit accompanied the petition, and such other persons as the court may
21 determine to be advised of such date. Upon such date, or upon such other
22 date to which the proceeding may be adjourned, the court shall hear
23 testimony and, if it be deemed advisable and the subject of the petition
24 is available, examine the subject of the petition in or out of court. If
25 the subject of the petition does not appear at the hearing, and appro-
26 priate attempts to elicit the attendance of the subject have failed, the
27 court may conduct the hearing in the subject's absence. In such case,
28 the court shall set forth the factual basis for conducting the hearing
29 without the presence of the subject of the petition.

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

38 (3) If the subject of the petition has refused to be examined by a
39 physician OR NURSE PRACTITIONER, the court may request the subject to
40 consent to an examination by a physician OR NURSE PRACTITIONER appointed
41 by the court. If the subject of the petition does not consent and the
42 court finds reasonable cause to believe that the allegations in the
43 petition are true, the court may order peace officers, acting pursuant
44 to their special duties, or police officers who are members of an
45 authorized police department or force, or of a sheriff's department to
46 take the subject of the petition into custody and transport him or her
47 to a hospital for examination by a physician. Retention of the subject
48 of the petition under such order shall not exceed twenty-four hours. The
49 examination of the subject of the petition may be performed by the
50 physician OR NURSE PRACTITIONER whose affirmation or affidavit accompa-
51 nied the petition pursuant to paragraph three of subdivision (e) of this
52 section, if such physician OR NURSE PRACTITIONER is privileged by such
53 hospital or otherwise authorized by such hospital to do so. If such
54 examination is performed by another physician OR NURSE PRACTITIONER, the
55 examining physician OR NURSE PRACTITIONER may consult with the physician
56 OR NURSE PRACTITIONER whose affirmation or affidavit accompanied the

petition as to whether the subject meets the criteria for assisted outpatient treatment.

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

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

(i) Written treatment plan. (1) The court shall not order assisted outpatient treatment unless a physician OR NURSE PRACTITIONER appointed by the appropriate director, in consultation with such director, develops and provides to the court a proposed written treatment plan. The written treatment plan shall include case management services or assertive community treatment team services to provide care coordination. The written treatment plan also shall include all categories of services, as set forth in paragraph one of subdivision (a) of this section, which such physician OR NURSE PRACTITIONER recommends that the subject of the petition receive. All service providers shall be notified regarding their inclusion in the written treatment plan. If the written treatment plan includes medication, it shall state whether such medication should be self-administered or administered by authorized personnel, and shall specify type and dosage range of medication most likely to provide maximum benefit for the subject. If the written treatment plan includes alcohol or substance abuse counseling and treatment, such plan may include a provision requiring relevant testing for either alcohol or illegal substances provided the physician's OR NURSE PRACTITIONER'S clinical basis for recommending such plan provides sufficient facts for the court to find (i) that such person has a history of alcohol or substance abuse that is clinically related to the mental illness; and (ii) that such testing is necessary to prevent a relapse or deterioration which would be likely to result in serious harm to the person or others. If a director is the petitioner, the written treatment plan shall be provided to the court no later than the date of the hearing on the petition. If a person other than a director is the petitioner, such plan shall be provided to the court no later than the date set by the court pursuant to paragraph three of subdivision (j) of this section.

(2) The physician OR NURSE PRACTITIONER appointed to develop the written treatment plan shall provide the following persons with an opportunity to actively participate in the development of such plan: the subject of the petition; the treating physician OR NURSE PRACTITIONER, if any; and upon the request of the subject of the petition, an individual significant to the subject including any relative, close friend or individual otherwise concerned with the welfare of the subject. If the subject of the petition has executed a health care proxy, the appointed physician OR NURSE PRACTITIONER shall consider any directions included in such proxy in developing the written treatment plan.

1 (3) The court shall not order assisted outpatient treatment unless a
2 physician OR NURSE PRACTITIONER appearing on behalf of a director testi-
3 fies to explain the written proposed treatment plan. Such physician OR
4 NURSE PRACTITIONER shall state the categories of assisted outpatient
5 treatment recommended, the rationale for each such category, facts which
6 establish that such treatment is the least restrictive alternative, and,
7 if the recommended assisted outpatient treatment plan includes medica-
8 tion, such physician OR NURSE PRACTITIONER shall state the types or
9 classes of medication recommended, the beneficial and detrimental phys-
10 ical and mental effects of such medication, and whether such medication
11 should be self-administered or administered by an authorized profes-
12 sional. If the subject of the petition has executed a health care proxy,
13 such physician OR NURSE PRACTITIONER shall state the consideration given
14 to any directions included in such proxy in developing the written
15 treatment plan. If a director is the petitioner, testimony pursuant to
16 this paragraph shall be given at the hearing on the petition. If a
17 person other than a director is the petitioner, such testimony shall be
18 given on the date set by the court pursuant to paragraph three of subdi-
19 vision (j) of this section.

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

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

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

46 S 10. This act shall take effect immediately; provided, however, that
47 1. The amendments to subdivisions (b) and (c) of section 9.40 of the
48 mental hygiene law made by section four of this act shall not affect the
49 repeal of such section and shall be deemed repealed therewith;
50 2. The amendments to sections 9.55 and 9.57 of the mental hygiene law
51 made by sections five and seven of this act shall be subject to the
52 expiration and reversion of such sections pursuant to section 21 of
53 chapter 723 of the laws of 1989, as amended, when upon such date the
54 provisions of sections six and eight of this act shall take effect;

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