

8137

I N S E N A T E

June 13, 2016

Introduced by Sens. ORTT, CARLUCCI -- (at request of the Governor) --
read twice and ordered printed, and when printed to be committed to
the Committee on Rules

AN ACT to amend the insurance law and the public health law, in relation to utilization review program standards (Part A); to amend the insurance law, in relation to providing coverage for immediate access to a five day emergency supply of certain medication; to amend the social services law and the public health law, in relation to prohibiting prior authorization for a prescription for buprenorphine for opioid addiction detoxification or maintenance treatment (Part B); to amend the mental hygiene law, in relation to the heroin and opioid addiction wraparound demonstration services program; and to amend chapter 32 of the laws of 2014, amending the mental hygiene law relating to the heroin and opioid addiction wraparound services demonstration program, in relation to the effectiveness thereof (Part C); and to amend the mental hygiene law, in relation to emergency services for persons intoxicated, impaired, or incapacitated by alcohol and/or substances (Part D)

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

1 Section 1. This act enacts into law major components of legislation
2 related to the treatment of heroin and opioid addictions. Each component
3 is wholly contained within a Part identified as Parts A through D. The
4 effective date for each particular provision contained within such Part
5 is set forth in the last section of such Part. Any provision in any
6 section contained within a Part, including the effective date of the
7 Part, which makes a reference to a section "of this act", when used in
8 connection with that particular component, shall be deemed to mean and
9 refer to the corresponding section of the Part in which it is found.
10 Section three of this act sets forth the general effective date of this
11 act.

12

PART A

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

LBD12085-01-6

1 Section 1. Paragraph 9 of subsection (a) of section 4902 of the insur-
2 ance law, as added by chapter 41 of the laws of 2014, is amended to read
3 as follows:

4 (9) When conducting utilization review for purposes of determining
5 health care coverage for substance use disorder treatment, a utilization
6 review agent shall utilize [recognized] evidence-based and peer reviewed
7 clinical review [criteria] TOOLS DESIGNATED BY THE OFFICE OF ALCOHOLISM
8 AND SUBSTANCE ABUSE SERVICES that [is] ARE appropriate to the age of the
9 patient and [is deemed appropriate and approved for such use by the
10 commissioner of the office of alcoholism and substance abuse services in
11 consultation with the commissioner of health and the superintendent.

12 The office of alcoholism and substance abuse services in consultation
13 with the commissioner of health and the superintendent shall approve a
14 recognized evidence-based and peer reviewed clinical review criteria, in
15 addition to any other approved evidence-based and peer reviewed clinical
16 review criteria] CONSISTENT WITH THE TREATMENT SERVICE LEVELS WITHIN THE
17 OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES SYSTEM. ALL APPROVED
18 TOOLS SHALL HAVE INTER RATER RELIABILITY TESTING COMPLETED BY DECEMBER
19 THIRTY-FIRST, TWO THOUSAND SIXTEEN.

20 S 2. Paragraph (i) of subdivision 1 of section 4902 of the public
21 health law, as added by chapter 41 of the laws of 2014, is amended to
22 read as follows:

23 (i) When conducting utilization review for purposes of determining
24 health care coverage for substance use disorder treatment, a utilization
25 review agent shall utilize [recognized] evidence-based and peer reviewed
26 clinical review [criteria] TOOLS DESIGNATED BY THE OFFICE OF ALCOHOLISM
27 AND SUBSTANCE ABUSE SERVICES that [is] ARE appropriate to the age of the
28 patient and [is deemed appropriate and approved for such use by the
29 commissioner of the office of alcoholism and substance abuse services in
30 consultation with the commissioner and the superintendent of financial
31 services.

32 The office of alcoholism and substance abuse services in consultation
33 with the commissioner and the superintendent of financial services shall
34 approve a recognized evidence-based and peer reviewed clinical review
35 criteria, in addition to any other approved evidence-based and peer
36 reviewed clinical review criteria] CONSISTENT WITH THE TREATMENT SERVICE
37 LEVELS WITHIN THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES
38 SYSTEM. ALL APPROVED TOOLS SHALL HAVE INTER RATER RELIABILITY TESTING
39 COMPLETED BY DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN.

40 S 3. Any utilization review agent utilizing evidence-based and peer
41 reviewed clinical review criteria approved by the office of alcoholism
42 and substance abuse services on or before the effective date of this act
43 shall have until December 31, 2016 to have their review tools redesi-
44 gnated by the office of alcoholism and substance abuse services pursuant
45 to paragraph 9 of subsection (a) of section 4902 of the insurance law.

46 S 4. This act shall take effect immediately and shall apply to poli-
47 cies and contracts issued, renewed, modified, altered or amended on and
48 after January 1, 2017.

49 PART B

50 Section 1. Subsection (i) of section 3216 of the insurance law is
51 amended by adding a new paragraph 31-a to read as follows:

52 (31-A) (A) EVERY POLICY THAT PROVIDES MEDICAL, MAJOR MEDICAL OR SIMI-
53 LAR COMPREHENSIVE-TYPE COVERAGE AND PROVIDES COVERAGE FOR PRESCRIPTION
54 DRUGS FOR MEDICATION FOR THE TREATMENT OF A SUBSTANCE USE DISORDER SHALL

1 INCLUDE IMMEDIATE ACCESS, WITHOUT PRIOR AUTHORIZATION, TO A FIVE DAY
2 EMERGENCY SUPPLY OF PRESCRIBED MEDICATIONS COVERED UNDER THE POLICY FOR
3 THE TREATMENT OF SUBSTANCE USE DISORDER WHERE AN EMERGENCY CONDITION
4 EXISTS, INCLUDING A PRESCRIBED DRUG OR MEDICATION ASSOCIATED WITH THE
5 MANAGEMENT OF OPIOID WITHDRAWAL AND/OR STABILIZATION, EXCEPT WHERE
6 OTHERWISE PROHIBITED BY LAW. FURTHER, COVERAGE OF AN EMERGENCY SUPPLY
7 SHALL INCLUDE MEDICATION FOR OPIOID OVERDOSE REVERSAL OTHERWISE COVERED
8 UNDER THE POLICY PRESCRIBED TO AN INDIVIDUAL COVERED BY THE POLICY.

9 (B) FOR PURPOSES OF THIS PARAGRAPH, AN "EMERGENCY CONDITION" MEANS A
10 SUBSTANCE USE DISORDER CONDITION THAT MANIFESTS ITSELF BY ACUTE SYMPTOMS
11 OF SUFFICIENT SEVERITY, INCLUDING SEVERE PAIN OR THE EXPECTATION OF
12 SEVERE PAIN, SUCH THAT A PRUDENT LAYPERSON, POSSESSING AN AVERAGE KNOW-
13 LEDGE OF MEDICINE AND HEALTH, COULD REASONABLY EXPECT THE ABSENCE OF
14 IMMEDIATE MEDICAL ATTENTION TO RESULT IN:

15 (I) PLACING THE HEALTH OF THE PERSON AFFLICTED WITH SUCH CONDITION IN
16 SERIOUS JEOPARDY, OR IN THE CASE OF A BEHAVIORAL CONDITION, PLACING THE
17 HEALTH OF SUCH PERSON OR OTHERS IN SERIOUS JEOPARDY;

18 (II) SERIOUS IMPAIRMENT TO SUCH PERSON'S BODILY FUNCTIONS;

19 (III) SERIOUS DYSFUNCTION OF ANY BODILY ORGAN OR PART OF SUCH PERSON;

20 (IV) SERIOUS DISFIGUREMENT OF SUCH PERSON; OR

21 (V) A CONDITION DESCRIBED IN CLAUSE (I), (II), OR (III) OF SECTION
22 1867(E)(1)(A) OF THE SOCIAL SECURITY ACT.

23 (C) COVERAGE PROVIDED UNDER THIS PARAGRAPH MAY BE SUBJECT TO COPAY-
24 MENTS, COINSURANCE, AND ANNUAL DEDUCTIBLES THAT ARE CONSISTENT WITH
25 THOSE IMPOSED ON OTHER BENEFITS WITHIN THE POLICY; PROVIDED, HOWEVER, NO
26 POLICY SHALL IMPOSE AN ADDITIONAL COPAYMENT OR COINSURANCE ON AN INSURED
27 WHO RECEIVED AN EMERGENCY SUPPLY OF MEDICATION AND THEN RECEIVED UP TO A
28 THIRTY DAY SUPPLY OF THE SAME MEDICATION IN THE SAME THIRTY DAY PERIOD
29 IN WHICH THE EMERGENCY SUPPLY OF MEDICATION WAS DISPENSED. THIS SUBPARA-
30 GRAPH SHALL NOT PRECLUDE THE IMPOSITION OF A COPAYMENT OR COINSURANCE ON
31 THE INITIAL EMERGENCY SUPPLY OF MEDICATION IN AN AMOUNT THAT IS LESS
32 THAN THE COPAYMENT OR COINSURANCE OTHERWISE APPLICABLE TO A THIRTY DAY
33 SUPPLY OF SUCH MEDICATION, PROVIDED THAT THE TOTAL SUM OF THE COPAYMENTS
34 OR COINSURANCE FOR AN ENTIRE THIRTY DAY SUPPLY OF THE MEDICATION DOES
35 NOT EXCEED THE COPAYMENT OR COINSURANCE OTHERWISE APPLICABLE TO A THIRTY
36 DAY SUPPLY OF SUCH MEDICATION.

37 S 2. Subsection (1) of section 3221 of the insurance law is amended by
38 adding two new paragraphs 7-a and 7-b to read as follows:

39 (7-A) EVERY POLICY THAT PROVIDES MEDICAL, MAJOR MEDICAL OR SIMILAR
40 COMPREHENSIVE-TYPE LARGE GROUP COVERAGE SHALL PROVIDE COVERAGE FOR MEDI-
41 CATION FOR THE DETOXIFICATION OR MAINTENANCE TREATMENT OF A SUBSTANCE
42 USE DISORDER APPROVED BY THE FOOD AND DRUG ADMINISTRATION FOR THE DETOX-
43 IFICATION OR MAINTENANCE TREATMENT OF SUBSTANCE USE DISORDER.

44 (7-B) (A) EVERY POLICY THAT PROVIDES MEDICAL, MAJOR MEDICAL OR SIMILAR
45 COMPREHENSIVE-TYPE COVERAGE AND PROVIDES COVERAGE FOR PRESCRIPTION DRUGS
46 FOR MEDICATION FOR THE TREATMENT OF A SUBSTANCE USE DISORDER SHALL
47 INCLUDE IMMEDIATE ACCESS, WITHOUT PRIOR AUTHORIZATION, TO A FIVE DAY
48 EMERGENCY SUPPLY OF PRESCRIBED MEDICATIONS COVERED UNDER THE POLICY FOR
49 THE TREATMENT OF SUBSTANCE USE DISORDER WHERE AN EMERGENCY CONDITION
50 EXISTS, INCLUDING A PRESCRIBED DRUG OR MEDICATION ASSOCIATED WITH THE
51 MANAGEMENT OF OPIOID WITHDRAWAL AND/OR STABILIZATION, EXCEPT WHERE
52 OTHERWISE PROHIBITED BY LAW. FURTHER, COVERAGE OF AN EMERGENCY SUPPLY
53 SHALL INCLUDE MEDICATION FOR OPIOID OVERDOSE REVERSAL OTHERWISE COVERED
54 UNDER THE POLICY PRESCRIBED TO AN INDIVIDUAL COVERED BY THE POLICY.

55 (B) FOR PURPOSES OF THIS PARAGRAPH, AN "EMERGENCY CONDITION" MEANS A
56 SUBSTANCE USE DISORDER CONDITION THAT MANIFESTS ITSELF BY ACUTE SYMPTOMS

1 OF SUFFICIENT SEVERITY, INCLUDING SEVERE PAIN OR THE EXPECTATION OF
2 SEVERE PAIN, SUCH THAT A PRUDENT LAYPERSON, POSSESSING AN AVERAGE KNOW-
3 LEDGE OF MEDICINE AND HEALTH, COULD REASONABLY EXPECT THE ABSENCE OF
4 IMMEDIATE MEDICAL ATTENTION TO RESULT IN:

5 (I) PLACING THE HEALTH OF THE PERSON AFFLICTED WITH SUCH CONDITION IN
6 SERIOUS JEOPARDY, OR IN THE CASE OF A BEHAVIORAL CONDITION, PLACING THE
7 HEALTH OF SUCH PERSON OR OTHERS IN SERIOUS JEOPARDY;

8 (II) SERIOUS IMPAIRMENT TO SUCH PERSON'S BODILY FUNCTIONS;

9 (III) SERIOUS DYSFUNCTION OF ANY BODILY ORGAN OR PART OF SUCH PERSON;

10 (IV) SERIOUS DISFIGUREMENT OF SUCH PERSON; OR

11 (V) A CONDITION DESCRIBED IN CLAUSE (I), (II), OR (III) OF SECTION
12 1867(E)(1)(A) OF THE SOCIAL SECURITY ACT.

13 (C) COVERAGE PROVIDED UNDER THIS PARAGRAPH MAY BE SUBJECT TO COPAY-
14 MENTS, COINSURANCE, AND ANNUAL DEDUCTIBLES THAT ARE CONSISTENT WITH
15 THOSE IMPOSED ON OTHER BENEFITS WITHIN THE POLICY; PROVIDED, HOWEVER, NO
16 POLICY SHALL IMPOSE AN ADDITIONAL COPAYMENT OR COINSURANCE ON AN INSURED
17 WHO RECEIVED AN EMERGENCY SUPPLY OF MEDICATION AND THEN RECEIVED UP TO A
18 THIRTY DAY SUPPLY OF THE SAME MEDICATION IN THE SAME THIRTY DAY PERIOD
19 IN WHICH THE EMERGENCY SUPPLY OF MEDICATION WAS DISPENSED. THIS SUBPARA-
20 GRAPH SHALL NOT PRECLUDE THE IMPOSITION OF A COPAYMENT OR COINSURANCE ON
21 THE INITIAL EMERGENCY SUPPLY OF MEDICATION IN AN AMOUNT THAT IS LESS
22 THAN THE COPAYMENT OR COINSURANCE OTHERWISE APPLICABLE TO A THIRTY DAY
23 SUPPLY OF SUCH MEDICATION, PROVIDED THAT THE TOTAL SUM OF THE COPAYMENTS
24 OR COINSURANCE FOR AN ENTIRE THIRTY DAY SUPPLY OF THE MEDICATION DOES
25 NOT EXCEED THE COPAYMENT OR COINSURANCE OTHERWISE APPLICABLE TO A THIRTY
26 DAY SUPPLY OF SUCH MEDICATION.

27 S 3. Section 4303 of the insurance law is amended by adding two new
28 subsections (l-1) and (l-2) to read as follows:

29 (L-1) EVERY CONTRACT THAT PROVIDES MEDICAL, MAJOR MEDICAL, OR SIMILAR
30 COMPREHENSIVE-TYPE LARGE GROUP COVERAGE SHALL PROVIDE COVERAGE FOR MEDI-
31 CATION FOR THE DETOXIFICATION OR MAINTENANCE TREATMENT OF A SUBSTANCE
32 USE DISORDER APPROVED BY THE FOOD AND DRUG ADMINISTRATION FOR THE DETOX-
33 IFICATION OR MAINTENANCE TREATMENT OF SUBSTANCE USE DISORDER.

34 (L-2) (1) EVERY CONTRACT THAT PROVIDES MEDICAL, MAJOR MEDICAL OR SIMI-
35 LAR COMPREHENSIVE-TYPE COVERAGE AND PROVIDES COVERAGE FOR PRESCRIPTION
36 DRUGS FOR MEDICATION FOR THE TREATMENT OF A SUBSTANCE USE DISORDER SHALL
37 INCLUDE IMMEDIATE ACCESS, WITHOUT PRIOR AUTHORIZATION, TO A FIVE DAY
38 EMERGENCY SUPPLY OF PRESCRIBED MEDICATIONS COVERED UNDER THE CONTRACT
39 FOR THE TREATMENT OF SUBSTANCE USE DISORDER WHERE AN EMERGENCY CONDITION
40 EXISTS, INCLUDING A PRESCRIBED DRUG OR MEDICATION ASSOCIATED WITH THE
41 MANAGEMENT OF OPIOID WITHDRAWAL AND/OR STABILIZATION, EXCEPT WHERE
42 OTHERWISE PROHIBITED BY LAW. FURTHER, COVERAGE OF AN EMERGENCY SUPPLY
43 SHALL INCLUDE MEDICATION FOR OPIOID OVERDOSE REVERSAL OTHERWISE COVERED
44 UNDER THE CONTRACT PRESCRIBED TO AN INDIVIDUAL COVERED BY THE CONTRACT.

45 (2) FOR PURPOSES OF THIS PARAGRAPH, AN "EMERGENCY CONDITION" MEANS A
46 SUBSTANCE USE DISORDER CONDITION THAT MANIFESTS ITSELF BY ACUTE SYMPTOMS
47 OF SUFFICIENT SEVERITY, INCLUDING SEVERE PAIN OR THE EXPECTATION OF
48 SEVERE PAIN, SUCH THAT A PRUDENT LAYPERSON, POSSESSING AN AVERAGE KNOW-
49 LEDGE OF MEDICINE AND HEALTH, COULD REASONABLY EXPECT THE ABSENCE OF
50 IMMEDIATE MEDICAL ATTENTION TO RESULT IN:

51 (I) PLACING THE HEALTH OF THE PERSON AFFLICTED WITH SUCH CONDITION IN
52 SERIOUS JEOPARDY, OR IN THE CASE OF A BEHAVIORAL CONDITION, PLACING THE
53 HEALTH OF SUCH PERSON OR OTHERS IN SERIOUS JEOPARDY;

54 (II) SERIOUS IMPAIRMENT TO SUCH PERSON'S BODILY FUNCTIONS;

55 (III) SERIOUS DYSFUNCTION OF ANY BODILY ORGAN OR PART OF SUCH PERSON;

56 (IV) SERIOUS DISFIGUREMENT OF SUCH PERSON; OR

1 (V) A CONDITION DESCRIBED IN CLAUSE (I), (II) OR (III) OF SECTION
2 1867(E)(1)(A) OF THE SOCIAL SECURITY ACT.

3 (3) COVERAGE PROVIDED UNDER THIS SUBSECTION MAY BE SUBJECT TO COPAY-
4 MENTS, COINSURANCE, AND ANNUAL DEDUCTIBLES THAT ARE CONSISTENT WITH
5 THOSE IMPOSED ON OTHER BENEFITS WITHIN THE CONTRACT; PROVIDED, HOWEVER,
6 NO CONTRACT SHALL IMPOSE AN ADDITIONAL COPAYMENT OR COINSURANCE ON AN
7 INSURED WHO RECEIVED AN EMERGENCY SUPPLY OF MEDICATION AND THEN RECEIVED
8 UP TO A THIRTY DAY SUPPLY OF THE SAME MEDICATION IN THE SAME THIRTY DAY
9 PERIOD IN WHICH THE EMERGENCY SUPPLY OF MEDICATION WAS DISPENSED. THIS
10 PARAGRAPH SHALL NOT PRECLUDE THE IMPOSITION OF A COPAYMENT OR COINSU-
11 RANCE ON THE INITIAL LIMITED SUPPLY OF MEDICATION IN AN AMOUNT THAT IS
12 LESS THAN THE COPAYMENT OR COINSURANCE OTHERWISE APPLICABLE TO A THIRTY
13 DAY SUPPLY OF SUCH MEDICATION, PROVIDED THAT THE TOTAL SUM OF THE COPAY-
14 MENTS OR COINSURANCE FOR AN ENTIRE THIRTY DAY SUPPLY OF THE MEDICATION
15 DOES NOT EXCEED THE COPAYMENT OR COINSURANCE OTHERWISE APPLICABLE TO A
16 THIRTY DAY SUPPLY OF SUCH MEDICATION.

17 S 4. Section 364-j of the social services law is amended by adding a
18 new subdivision 26-b to read as follows:

19 26-B. MANAGED CARE PROVIDERS SHALL NOT REQUIRE PRIOR AUTHORIZATION FOR
20 AN INITIAL OR RENEWAL PRESCRIPTION FOR BUPRENORPHINE OR INJECTABLE
21 NALTREXONE FOR DETOXIFICATION OR MAINTENANCE TREATMENT OF OPIOID
22 ADDICTION UNLESS THE PRESCRIPTION IS FOR A NON-PREFERRED OR NON-FORMU-
23 LARY FORM OF THE DRUG OR AS OTHERWISE REQUIRED BY SECTION 1927(K)(6) OF
24 THE SOCIAL SECURITY ACT.

25 S 5. Section 273 of the public health law is amended by adding a new
26 subdivision 10 to read as follows:

27 10. PRIOR AUTHORIZATION SHALL NOT BE REQUIRED FOR AN INITIAL OR
28 RENEWAL PRESCRIPTION FOR BUPRENORPHINE OR INJECTABLE NALTREXONE FOR
29 DETOXIFICATION OR MAINTENANCE TREATMENT OF OPIOID ADDICTION UNLESS THE
30 PRESCRIPTION IS FOR A NON-PREFERRED OR NON-FORMULARY FORM OF SUCH DRUG
31 AS OTHERWISE REQUIRED BY SECTION 1927(K)(6) OF THE SOCIAL SECURITY ACT.

32 S 6. This act shall take effect immediately; provided, sections one,
33 two, and three of this act shall take effect on the first of January
34 next succeeding the date on which it shall have become a law and shall
35 apply to policies and contracts issued, renewed, modified, altered or
36 amended on and after such date; and provided further that the amendments
37 to section 364-j of the social services law made by section four of this
38 act shall not affect the repeal of such section and shall be deemed to
39 be repealed therewith.

40

PART C

41 Section 1. Section 19.18-a of the mental hygiene law, as added by
42 chapter 32 of the laws of 2014, is amended to read as follows:

43 S 19.18-a Heroin and opioid addiction wraparound services demonstration
44 program.

45 1. The commissioner, in consultation with the department of health
46 shall develop a heroin and opioid addiction wraparound services demon-
47 stration program. This program shall provide wraparound services to
48 adolescent and adult patients during treatment, INCLUDING, BUT NOT
49 LIMITED TO, INPATIENT AND OUTPATIENT TREATMENT, and shall be available
50 to such patients for a clinically appropriate period for up to nine
51 months after completion of such treatment program. The commissioner
52 shall identify and establish where the wraparound services demonstration
53 program will be provided.

54 2. Wraparound services shall include;

- 1 (a) Case management services which address:
2 (i) Educational resources;
3 (ii) Legal services;
4 (iii) Financial services;
5 (iv) Social services;
6 (v) Family services; and
7 (vi) Childcare services;
8 (b) Peer supports, including peer to peer support groups;
9 (c) Employment support; and
10 (d) Transportation assistance.

11 3. Not later than [two years after the effective date of this section]
12 JUNE 30, 2018, the commissioner shall provide the governor, the tempo-
13 rary president of the senate, the speaker of the assembly, the chair of
14 the senate standing committee on alcoholism and drug abuse and the chair
15 of the assembly committee on alcoholism and drug abuse with a written
16 evaluation of the demonstration program. Such evaluation shall, AT A
17 MINIMUM, address the overall effectiveness of this demonstration program
18 [and], IDENTIFY BEST PRACTICES FOR WRAPAROUND SERVICES PROVIDED UNDER
19 THIS DEMONSTRATION PROGRAM, AND ANY ADDITIONAL WRAPAROUND SERVICES THAT
20 MAY BE APPROPRIATE WITHIN EACH TYPE OF PROGRAM OPERATED, REGULATED,
21 FUNDED, OR APPROVED BY THE OFFICE AND ADDRESS whether continuation or
22 expansion of this demonstration program is recommended. THE WRITTEN
23 EVALUATION SHALL BE MADE AVAILABLE ON THE OFFICE'S WEBSITE.

24 S 2. Section 2 of chapter 32 of the laws of 2014, amending the mental
25 hygiene law relating to the heroin and opioid addiction wraparound
26 services demonstration program, is amended to read as follows:

27 S 2. This act shall take effect immediately and shall expire and be
28 deemed repealed [three years after such effective date] MARCH 31, 2019.

29 S 3. This act shall take effect immediately; provided, however, that
30 the amendments to section 19.18-a of the mental hygiene law made by
31 section one of this act shall not affect the repeal of such section and
32 shall be deemed repealed therewith.

33 PART D

34 Section 1. Section 22.09 of the mental hygiene law, as added by chap-
35 ter 558 of the laws of 1999, is amended to read as follows:

36 S 22.09 Emergency services for persons intoxicated, impaired, or inca-
37 pacitated by alcohol and/or substances.

38 (a) As used in this article:

39 1. "Intoxicated or impaired person" means a person whose mental or
40 physical functioning is substantially impaired as a result of the pres-
41 ence of alcohol and/or substances in his or her body.

42 2. "Incapacitated" means that a person, as a result of the use of
43 alcohol and/or substances, is unconscious or has his or her judgment
44 otherwise so impaired that he or she is incapable of realizing and
45 making a rational decision with respect to his or her need for treat-
46 ment.

47 3. "Likelihood to result in harm" or "likely to result in harm" means
48 (i) a substantial risk of physical harm to the person as manifested by
49 threats of or attempts at suicide or serious bodily harm or other
50 conduct demonstrating that the person is dangerous to himself or
51 herself, or (ii) a substantial risk of physical harm to other persons as
52 manifested by homicidal or other violent behavior by which others are
53 placed in reasonable fear of serious physical harm.

1 4. ["Hospital" means a general hospital as defined in article twenty-
2 eight of the public health law] "EMERGENCY SERVICES" MEANS IMMEDIATE
3 PHYSICAL EXAMINATION, ASSESSMENT, CARE AND TREATMENT OF AN INCAPACITATED
4 PERSON FOR THE PURPOSE OF CONFIRMING THAT THE PERSON IS, AND CONTINUES
5 TO BE, INCAPACITATED BY ALCOHOL AND/OR SUBSTANCES TO THE DEGREE THAT
6 THERE IS A LIKELIHOOD TO RESULT IN HARM TO THE PERSON OR OTHERS.

7 5. "TREATMENT FACILITY" MEANS A FACILITY DESIGNATED BY THE COMMISSIONER-
8 ER WHICH MAY ONLY INCLUDE A GENERAL HOSPITAL AS DEFINED IN ARTICLE TWEN-
9 TY-EIGHT OF THE PUBLIC HEALTH LAW, OR A MEDICALLY MANAGED OR MEDICALLY
10 SUPERVISED WITHDRAWAL, INPATIENT REHABILITATION, OR RESIDENTIAL STABILI-
11 ZATION TREATMENT PROGRAM THAT HAS BEEN CERTIFIED BY THE COMMISSIONER TO
12 HAVE APPROPRIATE MEDICAL STAFF AVAILABLE ON-SITE AT ALL TIMES TO PROVIDE
13 EMERGENCY SERVICES AND CONTINUED EVALUATION OF CAPACITY OF INDIVIDUALS
14 RETAINED UNDER THIS SECTION.

15 (b) 1. An intoxicated or impaired person may come voluntarily for
16 emergency [treatment] SERVICES to a chemical dependence program or
17 treatment facility authorized by the commissioner to [give such emergen-
18 cy treatment] PROVIDE SUCH EMERGENCY SERVICES. A person who appears to
19 be intoxicated or impaired and who consents to the proffered help may be
20 assisted by any peace officer acting pursuant to his or her special
21 duties, police officer, or by a designee of the director of community
22 services to return to his or her home, to a chemical dependence program
23 or treatment facility, or to any other facility authorized by the
24 commissioner to [give emergency treatment] PROVIDE SUCH EMERGENCY
25 SERVICES. In such cases, the peace officer, police officer, or designee
26 of the director of community services shall accompany the intoxicated or
27 impaired person in a manner which is reasonably designed to assure his
28 or her safety, as set forth in regulations promulgated in accordance
29 with subdivision [(f)] (D) of this section.

30 [(c)] 2. A person who appears to be incapacitated by alcohol and/or
31 substances to the degree that there is a likelihood to result in harm to
32 the person or to others may be taken by a peace officer acting pursuant
33 to his or her special duties, or a police officer who is a member of the
34 state police or of an authorized police department or force or of a
35 sheriff's department or by the director of community services or a
36 person duly designated by him or her to a [general hospital or to any
37 other place authorized by the commissioner in regulations promulgated in
38 accordance with subdivision (f) of this section to give emergency treat-
39 ment, for immediate observation, care, and emergency treatment] TREAT-
40 MENT FACILITY FOR PURPOSES OF RECEIVING EMERGENCY SERVICES. Every
41 reasonable effort shall be made to protect the health and safety of such
42 person, including but not limited to the requirement that the peace
43 officer, police officer, or director of community services or his or her
44 designee shall accompany the apparently incapacitated person in a manner
45 which is reasonably designed to assure his or her safety, as set forth
46 in regulations promulgated in accordance with subdivision [(f)] (D) of
47 this section.

48 [(d)] 3. A person who comes voluntarily or is brought without his or
49 her objection to any such facility or program in accordance with THIS
50 subdivision [(c) of this section] shall be given emergency care and
51 treatment at such place if found suitable therefor by authorized person-
52 nel, or referred to another suitable facility or treatment program for
53 care and treatment, or sent to his or her home.

54 4. THE DIRECTOR OF A TREATMENT FACILITY MAY RECEIVE AS A PATIENT IN
55 NEED OF EMERGENCY SERVICES ANY PERSON WHO APPEARS TO BE INCAPACITATED AS
56 DEFINED IN THIS SECTION.

1 [(e)] 5. A person who COMES VOLUNTARILY OR is brought with his or her
2 objection to [any] A TREATMENT facility [or treatment program in accord-
3 ance with subdivision (c) of this section] shall be examined as soon as
4 possible BUT NOT MORE THAN TWELVE HOURS AFTER ARRIVING AT SUCH TREATMENT
5 FACILITY by an examining physician. If such examining physician deter-
6 mines that such person is incapacitated by alcohol and/or substances to
7 the degree that there is a likelihood to result in harm to the person or
8 others, he or she may be retained [for emergency treatment] TO RECEIVE
9 EMERGENCY SERVICES AND SHALL BE REGULARLY REEVALUATED TO CONFIRM CONTIN-
10 UED INCAPACITY BY ALCOHOL AND/OR SUBSTANCES TO THE DEGREE THAT THERE IS
11 A LIKELIHOOD TO RESULT IN HARM TO THE PERSON OR OTHERS. If the examin-
12 ing physician determines AT ANY TIME that such person is not incapaci-
13 tated by alcohol and/or substances to the degree that there is a likeli-
14 hood to result in harm to the person or others, he or she must be
15 released. Notwithstanding any other law, in no event may such person be
16 retained against his or her objection beyond whichever is the shorter of
17 the following: (i) the time that he or she is no longer incapacitated by
18 alcohol and/or substances to the degree that there is a likelihood to
19 result in harm to the person or others or (ii) a period longer than
20 [forty-eight] SEVENTY-TWO hours.

21 [1.] 6. Every reasonable effort must be made to obtain the person's
22 consent to give prompt notification of a person's retention in a facili-
23 ty or program pursuant to this section to his or her closest relative or
24 friend, and, if requested by such person, to his or her attorney and
25 personal physician, in accordance with federal confidentiality regu-
26 lations.

27 [2.] 7. A person may not be retained pursuant to this section beyond a
28 period of [forty-eight] SEVENTY-TWO hours without his or her consent.
29 Persons suitable therefor may be voluntarily admitted to a chemical
30 dependence program or facility pursuant to this article.

31 (C) DISCHARGE PROCEDURES. 1. THE DISCHARGE PROCEDURE PROCESS SHALL
32 BEGIN AS SOON AS THE PATIENT IS ADMITTED TO THE TREATMENT FACILITY AND
33 SHALL BE CONSIDERED A PART OF THE TREATMENT PLANNING PROCESS. THE
34 DISCHARGE PLAN SHALL BE DEVELOPED IN COLLABORATION WITH THE PATIENT AND
35 ANY SIGNIFICANT OTHER(S) THE PATIENT CHOOSES TO INVOLVE. IF THE PATIENT
36 IS A MINOR, THE DISCHARGE PLAN MUST ALSO BE DEVELOPED IN CONSULTATION
37 WITH HIS OR HER PARENT OR GUARDIAN, UNLESS THE MINOR IS BEING TREATED
38 WITHOUT PARENTAL CONSENT AS AUTHORIZED BY SECTION 22.11 OF THIS CHAPTER.

39 2. NO PATIENT SHALL BE DISCHARGED WITHOUT A DISCHARGE PLAN WHICH HAS
40 BEEN COMPLETED AND REVIEWED BY THE MULTI-DISCIPLINARY TEAM PRIOR TO THE
41 DISCHARGE OF THE PATIENT. THIS REVIEW MAY BE PART OF A REGULAR TREATMENT
42 PLAN REVIEW. THE PORTION OF THE DISCHARGE PLAN WHICH INCLUDES THE REFER-
43 RALS FOR CONTINUING CARE SHALL BE GIVEN TO THE PATIENT UPON DISCHARGE.
44 THIS REQUIREMENT SHALL NOT APPLY TO PATIENTS WHO REFUSE CONTINUING CARE
45 PLANNING, PROVIDED, HOWEVER, THAT THE TREATMENT FACILITY SHALL MAKE
46 REASONABLE EFFORTS TO PROVIDE INFORMATION ABOUT THE DANGERS OF LONG TERM
47 SUBSTANCE USE AS WELL AS INFORMATION RELATED TO TREATMENT INCLUDING, BUT
48 NOT LIMITED TO, THE OASAS HOPELINE AND THE OASAS BED AVAILABILITY DASH-
49 BOARD.

50 3. THE DISCHARGE PLAN SHALL BE DEVELOPED BY THE RESPONSIBLE CLINICAL
51 STAFF MEMBER, WHO, IN THE DEVELOPMENT OF SUCH PLAN, SHALL CONSIDER THE
52 PATIENT'S SELF-REPORTED CONFIDENCE IN MAINTAINING ABSTINENCE AND FOLLOW-
53 ING AN INDIVIDUALIZED RELAPSE PREVENTION PLAN. THE RESPONSIBLE CLINICAL
54 STAFF MEMBER SHALL ALSO CONSIDER AN ASSESSMENT OF THE PATIENT'S HOME AND
55 FAMILY ENVIRONMENT, VOCATIONAL/EDUCATIONAL/EMPLOYMENT STATUS, AND THE
56 PATIENT'S RELATIONSHIPS WITH SIGNIFICANT OTHERS. THE PURPOSE OF THE

1 DISCHARGE PLAN SHALL BE TO ESTABLISH THE LEVEL OF CLINICAL AND SOCIAL
2 RESOURCES AVAILABLE TO THE PATIENT UPON DISCHARGE FROM THE INPATIENT
3 SERVICE AND THE NEED FOR THE SERVICES FOR SIGNIFICANT OTHERS. THE
4 DISCHARGE PLAN SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

5 (I) IDENTIFICATION OF CONTINUING CHEMICAL DEPENDENCE SERVICES INCLUD-
6 ING MANAGEMENT OF WITHDRAWAL OR CONTINUING STABILIZATION AND ANY OTHER
7 TREATMENT, REHABILITATION, SELF-HELP AND VOCATIONAL, EDUCATIONAL AND
8 EMPLOYMENT SERVICES THE PATIENT WILL NEED AFTER DISCHARGE;

9 (II) IDENTIFICATION OF THE TYPE OF RESIDENCE, IF ANY, THAT THE PATIENT
10 WILL NEED AFTER DISCHARGE;

11 (III) IDENTIFICATION OF SPECIFIC PROVIDERS OF THESE NEEDED SERVICES;
12 AND

13 (IV) SPECIFIC REFERRALS AND INITIAL APPOINTMENTS FOR THESE NEEDED
14 SERVICES.

15 4. A DISCHARGE SUMMARY WHICH INCLUDES THE COURSE AND RESULTS OF CARE
16 AND TREATMENT MUST BE PREPARED AND INCLUDED IN EACH PATIENT'S CASE
17 RECORD WITHIN TWENTY DAYS OF DISCHARGE.

18 [(f)] (D) The commissioner shall promulgate ALL RULES AND regulations,
19 after consulting with representatives of appropriate law enforcement and
20 chemical dependence providers of services, establishing procedures for
21 taking intoxicated or impaired persons and persons apparently incapaci-
22 tated by alcohol and/or substances to their residences or to appropriate
23 public or private facilities for emergency [treatment] SERVICES and for
24 minimizing the role of the police in obtaining treatment of such persons
25 NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION, INCLUDING BUT NOT
26 LIMITED TO ESTABLISHING PROCEDURES FOR TRANSPORTING INCAPACITATED
27 PERSONS TO A TREATMENT FACILITY FOR EMERGENCY SERVICES.

28 S 2. This act shall take effect on the ninetieth day after it shall
29 have become law; provided however, that any and all regulations neces-
30 sary for the implementation of this act shall have been promulgated
31 prior to such effective date.

32 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-
33 sion, section or part of this act shall be adjudged by any court of
34 competent jurisdiction to be invalid, such judgment shall not affect,
35 impair, or invalidate the remainder thereof, but shall be confined in
36 its operation to the clause, sentence, paragraph, subdivision, section
37 or part thereof directly involved in the controversy in which such judg-
38 ment shall have been rendered. It is hereby declared to be the intent of
39 the legislature that this act would have been enacted even if such
40 invalid provisions had not been included herein.

41 S 3. This act shall take effect immediately provided, however, that
42 the applicable effective date of Parts A through D of this act shall be
43 as specifically set forth in the last section of such Parts.