STATE OF NEW YORK

3407

2019-2020 Regular Sessions

IN SENATE

February 6, 2019

Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Substance Abuse

AN ACT to amend the mental hygiene law, in relation to emergency intervention for persons impaired by substances

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

Section 1. Section 22.09 of the mental hygiene law, as amended by section 1 of part D of chapter 69 of the laws of 2016, is amended to read as follows:

§ 22.09 Emergency services for persons intoxicated, impaired, or incapacitated by alcohol [~~and/or substances~~].

(a) As used in this article:

1. "Intoxicated or impaired person" means a person whose mental or physical functioning is substantially impaired as a result of the presence of alcohol [~~and/or substances~~] in his or her body.

2. "Incapacitated" means that a person, as a result of the use of alcohol [~~and/or substances~~], is unconscious or has his or her judgment otherwise so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment.

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

4. "Emergency services" means immediate physical examination, assessment, care and treatment of an incapacitated person for the purpose of confirming that the person is, and continues to be, incapacitated by

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

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alcohol [~~and/or substances~~] to the degree that there is a likelihood to result in harm to the person or others.

5. "Treatment facility" means a facility designated by the commissioner which may only include a general hospital as defined in article twenty-eight of the public health law, or a medically managed or medically supervised withdrawal, inpatient rehabilitation, or residential stabilization treatment program that has been certified by the commissioner to have appropriate medical staff available on-site at all times to provide emergency services and continued evaluation of capacity of individuals retained under this section.

(b) 1. An intoxicated or impaired person may come voluntarily for emergency services to a chemical dependence program or treatment facility authorized by the commissioner to provide such emergency services. A person who appears to be intoxicated or impaired and who consents to the proffered help may be assisted by any peace officer acting pursuant to his or her special duties, police officer, or by a designee of the director of community services to return to his or her home, to a chemical dependence program or treatment facility, or to any other facility authorized by the commissioner to provide such emergency services. In such cases, the peace officer, police officer, or designee of the director of community services shall accompany the intoxicated or impaired person in a manner which is reasonably designed to assure his or her safety, as set forth in regulations promulgated in accordance with subdivision (d) of this section.

2. A person who appears to be incapacitated by alcohol [~~and/or substances~~] to the degree that there is a likelihood to result in harm to the person or to others may be taken by a peace officer acting pursuant to his or her special duties, or a police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department or by the director of community services or a person duly designated by him or her to a treatment facility for purposes of receiving emergency services. Every reasonable effort shall be made to protect the health and safety of such person, including but not limited to the requirement that the peace officer, police officer, or director of community services or his or her designee shall accompany the apparently incapacitated person in a manner which is reasonably designed to assure his or her safety, as set forth in regulations promulgated in accordance with subdivision (d) of this section.

3. A person who comes voluntarily or is brought without his or her objection to any such facility or program in accordance with this subdivision shall be given emergency care and treatment at such place if found suitable therefor by authorized personnel, or referred to another suitable facility or treatment program for care and treatment, or sent to his or her home.

4. The director of a treatment facility may receive as a patient in need of emergency services any person who appears to be incapacitated as defined in this section.

5. A person who comes voluntarily or is brought with his or her objection to a treatment facility shall be examined as soon as possible but not more than twelve hours after arriving at such treatment facility by an examining physician. If such examining physician determines that such person is incapacitated by alcohol [~~and/or substances~~] to the degree that there is a likelihood to result in harm to the person or others, he or she may be retained to receive emergency services and shall be regularly reevaluated to confirm continued incapacity by alcohol [~~and/or substances~~] to the degree that there is a likelihood to

result in harm to the person or others. If the examining physician determines at any time that such person is not incapacitated by alcohol [~~and/or substances~~] to the degree that there is a likelihood to result in harm to the person or others, he or she must be released. Notwithstanding any other law, in no event may such person be retained against his or her objection beyond whichever is the shorter of the following: (i) the time that he or she is no longer incapacitated by alcohol [~~and/or substances~~] to the degree that there is a likelihood to result in harm to the person or others or (ii) a period longer than seventy-two hours.

6. Every reasonable effort must be made to obtain the person's consent to give prompt notification of a person's retention in a facility or program pursuant to this section to his or her closest relative or friend, and, if requested by such person, to his or her attorney and personal physician, in accordance with federal confidentiality regulations.

7. A person may not be retained pursuant to this section beyond a period of seventy-two hours without his or her consent. Persons suitable therefor may be voluntarily admitted to a chemical dependence program or facility pursuant to this article.

(c) Discharge procedures. 1. The discharge procedure process shall begin as soon as the patient is admitted to the treatment facility and shall be considered a part of the treatment planning process. The discharge plan shall be developed in collaboration with the patient and any significant other(s) the patient chooses to involve. If the patient is a minor, the discharge plan must also be developed in consultation with his or her parent or guardian, unless the minor is being treated without parental consent as authorized by section 22.11 of this [~~chapter~~] **article**.

2. No patient shall be discharged without a discharge plan which has been completed and reviewed by the multi-disciplinary team prior to the discharge of the patient. This review may be part of a regular treatment plan review. The portion of the discharge plan which includes the referrals for continuing care shall be given to the patient upon discharge. This requirement shall not apply to patients who refuse continuing care planning, provided, however, that the treatment facility shall make reasonable efforts to provide information about the dangers of long term substance use as well as information related to treatment including, but not limited to, the OASAS HOPELINE and the OASAS Bed Availability Dashboard.

3. The discharge plan shall be developed by the responsible clinical staff member, who, in the development of such plan, shall consider the patient's self-reported confidence in maintaining abstinence and following an individualized relapse prevention plan. The responsible clinical staff member shall also consider an assessment of the patient's home and family environment, vocational/educational/employment status, and the patient's relationships with significant others. The purpose of the discharge plan shall be to establish the level of clinical and social resources available to the patient upon discharge from the inpatient service and the need for the services for significant others. The discharge plan shall include, but not be limited to, the following:

(i) identification of continuing chemical dependence services including management of withdrawal or continuing stabilization and any other treatment, rehabilitation, self-help and vocational, educational and employment services the patient will need after discharge;

(ii) identification of the type of residence, if any, that the patient will need after discharge;

(iii) identification of specific providers of these needed services; and

(iv) specific referrals and initial appointments for these needed services.

4. A discharge summary which includes the course and results of care and treatment must be prepared and included in each patient's case record within twenty days of discharge.

(d) The commissioner shall promulgate all rules and regulations, after consulting with representatives of appropriate law enforcement and chemical dependence providers of services, establishing procedures for taking intoxicated or impaired persons and persons apparently incapacitated by alcohol [~~and/or substances~~] to their residences or to appropriate public or private facilities for emergency services and for minimizing the role of the police in obtaining treatment of such persons necessary to implement the provisions of this section, including but not limited to establishing procedures for transporting incapacitated persons to a treatment facility for emergency services.

§ 2. The mental hygiene law is amended by adding a new section 22.10 to read as follows:

§ 22.10 Emergency services for persons impaired or incapacitated by substances.

(a) Definitions. As used in this article:

1. "Impaired person" means a person whose mental or physical functioning is substantially impaired as a result of the presence of substances in his or her body.

2. "Incapacitated" means that a person, as a result of the use of substances, is unconscious or has his or her judgment otherwise so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment.

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

4. "Emergency services" means immediate voluntary or involuntary physical examination, assessment, care and treatment of an impaired person who has become incapacitated in order to achieve stabilization and/or subsequent admission to extended voluntary or involuntary treatment.

5. "Treatment facility" means a hospital as defined in article twenty-eight of the public health law, or a chemical dependence program facility certified or approved by the commissioner.

6. "Substance" shall have the same meaning as set forth in subdivision thirty-nine of section 1.03 of this chapter.

(b) Voluntary emergency services. 1. An impaired person may come voluntarily for emergency services to a chemical dependence program or treatment facility authorized by the commissioner to provide such emergency services. A person who appears to be impaired and who consents to the proffered help shall be assisted by any peace officer acting pursuant to his or her special duties, police officer, or by a designee of the director of community services to return to his or her home, to a chemical dependence program or treatment facility, or to any other facility authorized by the commissioner to provide emergency services.

In such cases, the peace officer, police officer, or designee of the director of community services shall accompany the impaired person in a manner which is reasonably designed to assure his or her safety, as set forth in regulations promulgated in accordance with subdivision (f) of this section.

2. Consistent with subdivision (b) of section 22.07 of this article, a person who appears to be incapacitated by substances to the degree that there is a likelihood to result in harm to the person or to others shall be taken by a peace officer acting pursuant to his or her special duties, or a police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department or by the director of community services or a person duly designated by him or her, or pursuant to petition to the director of community services pursuant to subdivision (d) of this section, to a treatment facility for purposes of receiving emergency services. Every reasonable effort shall be made to protect the health and safety of such person, including but not limited to the requirement that the peace officer, police officer, or director of community services or his or her designee shall accompany the apparently incapacitated person in a manner which is reasonably designed to assure his or her safety, as set forth in regulations promulgated in accordance with subdivision (f) of this section.

3. A person who comes voluntarily or is brought without his or her objection to any such treatment facility in accordance with paragraph two of this subdivision shall be provided emergency services at such place if found suitable by authorized personnel, or referred to another suitable facility or treatment program for emergency services, or sent to his or her home.

4. A person who is brought with his or her objection to any treatment facility in accordance with paragraph two of this subdivision shall be examined as soon as possible by an examining physician. If such examining physician determines that such person is incapacitated by substances to the degree that there is a likelihood to result in harm to the person or others, he or she may be retained for emergency treatment to achieve stabilization. If the examining physician determines that such person is not incapacitated by substances to the degree that there is a likelihood to result in harm to the person or others, he or she must be released. Except as provided in subdivision (c) of this section, in no event may such person be retained against his or her objection beyond whichever is the shorter of the following:

(i) the time that he or she is no longer incapacitated by substances to the degree that there is a likelihood to result in harm to the person or others or;

(ii) a period longer than seventy-two hours.

5. Every reasonable effort must be made to obtain the person's consent to give prompt notification of a person's retention in a facility or program pursuant to this subdivision to his or her closest relative or friend, and, if requested by such person, to his or her attorney and personal physician, in accordance with federal confidentiality regulations.

(c) Involuntary emergency services on certificate of a director of community services or designee. 1. The director of a treatment facility designated by the commissioner to provide emergency services shall upon the certificate of a local director of community services or a physician duly designated by the director of community services, receive and care for in such facility as a patient any person who, in the opinion of the director of community services or his or her designee sought by petition

pursuant to subdivision (d) of this section, is incapacitated such that such person's use or abuse of chemical substances is likely to result in harm to himself, herself or others and for whom immediate involuntary emergency services is appropriate.

2. The need for immediate involuntary emergency services shall be confirmed prior to admission by a physician affiliated with the facility. Excluding Sundays and holidays, if the physician recommends such patient be retained for emergency services beyond seventy-two hours and the patient does not agree to remain in such facility as a voluntary patient, the certificate of such physician attesting that the patient is in need of extended involuntary emergency services shall be filed with the facility. From the time of such patient's admission under this subdivision the retention of such patient for emergency services beyond seventy-two hours shall be subject to the provisions for notice, hearing, review, and judicial approval provided by this article for the admission and retention of involuntary patients, provided that, for the purposes of such provisions, the date of admission of the patient shall be deemed to be the date when the patient was first received in the facility pursuant to this subdivision.

(d) Petition to local director of community services for voluntary or involuntary emergency services. 1. A petition for emergency services may be sought for an adult or for a minor by petition to a local governmental unit's director of community services in accordance with this subdivision. Any one of the following persons may petition the director of community services:

(i) in the case of an adult, a physician, the person's spouse or guardian, any relative of the person, or any other adult who has personal knowledge of a person's substance abuse impairment; or

(ii) in the case of a minor, the minor's parent, legal guardian, or legal custodian.

2. Petition for admission of a patient to a treatment facility for emergency services pursuant to this section shall be based upon a personal examination by a director of community services or his or her designee. It shall be in writing and shall be filed with the director of a facility at the time of the patient's reception, together with a statement in a form prescribed by the commissioner giving such information as he or she may deem appropriate. A petition for admission for emergency services must establish the reason the petitioner believes that there is a likelihood to result in harm to the person or others unless he or she is admitted for immediate emergency services. A petition must include:

(i) the name of the person to be admitted, the name and signature of the petitioner, the relationship between the person to be admitted and the applicant; and

(ii) the reason the petitioner believes that because of such impairment the person has lost the power of self-control with respect to substance abuse; and

(iii) the reason the petitioner believes that the person's refusal to voluntarily receive emergency services is based on judgement so impaired by reason of substance abuse that he or she is incapable of appreciating his or her need for such services and of making a rational decision regarding his or her need for services.

3. Upon receipt of such petition, the director of community services or a person duly designated by him or her shall review such petition and may take actions pursuant to subdivisions (b) or (c) of this section.

(e) Each person admitted to a treatment facility for emergency services pursuant to this section shall be provided with written notice regarding patient rights pursuant to section 22.03 of this article, access to his or her personal attorney upon request, and notice as to the availability of the mental hygiene legal service for legal counsel and shall be provided access to the service upon request.

(f) The commissioner shall promulgate regulations establishing procedures for taking intoxicated or impaired persons and persons apparently incapacitated by alcohol and/or substances to their residence or to appropriate public or private treatment facilities for emergency services and minimizing the role of the police in obtaining treatment of such persons.

§ 3. The mental hygiene law is amended by adding a new section 22.13 to read as follows:

§ 22.13 Court authorization to retain an involuntary patient.

(a) If the director of a facility shall determine that a patient admitted pursuant to subdivision (c) of section 22.10 of this article, for whom there is no prior court order authorizing retention for a specified period, is in need of retention beyond seventy-two hours and if such patient does not agree to remain in such facility as a voluntary patient, the director shall apply to the supreme court or the county court in the county where the facility is located for an order authorizing continued retention. The facility is authorized to retain the patient for seventy-two hours or during the period in which the application may be pending, such period not to exceed ninety days. The director shall cause written notice of such application to be given to the patient and a copy thereof shall be given personally or by mail to any persons required by this article to be served with notice of such patient's initial admission and to the mental hygiene legal service. Such notice shall state that a hearing may be requested by the patient or the service and that failure to make such a request within five days, excluding Sunday and holidays, from the date that the notice was given to the patient will permit the entry without a hearing of an order authorizing retention for a period not to exceed ninety days from the date of the order, provided the court is satisfied that the patient requires continued retention.

(b) Upon the demand of the patient or of anyone on his or her behalf or upon request of the mental hygiene legal service, the court shall, or may on its own motion, fix a date for the hearing of the application pursuant to court procedure in the jurisdiction of the facility.

(c) Except as provided in subdivision (a) of this section a person may not be retained beyond a period of ninety days without his or her consent. Persons suitable therefor may be voluntarily admitted to a chemical dependence program or facility pursuant to this article.

§ 4. Subdivision (d) of section 22.11 of the mental hygiene law, as added by chapter 558 of the laws of 1999, is amended to read as follows:

(d) Inpatient or residential treatment. 1. [~~Admission~~] Voluntary admission procedures. (i) A copy of the patient's rights established under this section and under section 22.03 of this article shall be given and explained to the minor and to the minor's consenting parent or guardian at the time of admission by the director of the facility or such person's designee.

(ii) The minor shall be required to sign a form indicating that the treatment is being voluntarily sought, and that he or she has been advised of his or her ability to access the mental hygiene legal service and of his or her rights under this section and section 22.03 of this

article. The signed form shall be included in the minor's medical record.

(iii) At the time of admission, any minor so admitted shall be informed by the director of the facility or the director's designee, orally and in writing, of the minor's right to be discharged in accordance with the provisions of this [~~section~~] **subdivision** within twenty-four hours of his or her making a request therefor.

(iv) Emergency contacts.

(A) At the time of admission, the provider of services shall use its best efforts to obtain from the minor's consenting parent or guardian a telephone number or numbers where he or she may be reached by the facility at any time during the day or night. In addition, such provider of services shall also use its best efforts to obtain from the parent or guardian a name, address and appropriate telephone number or numbers of an adult designated by such parent or guardian as an emergency contact person in the event the facility is unable to reach such parent or guardian.

(B) If the minor is admitted in accordance with subdivision (c) of this section, the provider of services shall use its best efforts to obtain from the minor the name, address, and telephone number of an adult who may serve as an emergency contact, and the facility shall verify the existence and availability of such contact upon notice to and with the prior written consent of the minor.

(C) Failure to obtain emergency contacts, after reasonable effort, in accordance with this section shall not preclude admission of the minor to treatment.

(v) Notice of admission and discharge procedures.

(A) A copy of the facility's admission and discharge procedures shall be provided to the minor and to the minor's consenting parent or guardian at the time of admission by the director of the facility or such person's designee. Such information shall also be mailed to the designated emergency contact person by regular mail.

(B) If the minor is admitted in accordance with subdivision (c) of this section, a copy of the facility's admission and discharge procedures shall be provided to the minor. Such information shall also be mailed to the designated emergency contact person by regular mail.

(vi) Each minor admitted for inpatient or residential chemical dependence treatment pursuant to this subdivision shall be provided with written notice regarding the availability of the mental hygiene legal service for legal counsel, and shall be provided access to the service upon request.

2. **Involuntary admission procedures. (i) Minors admitted pursuant to section 22.10 of this article shall be provided with written notice regarding the availability of the mental hygiene legal service for legal counsel, and shall be provided access to the service upon request.**

(ii) No minor receiving involuntary inpatient emergency services pursuant to subdivision (c) of section 22.10 of this article may be discharged from the program prior to seventy-two hours based solely on his or her request.

(iii) A copy of the patient's rights established under this section and under section 22.03 of this article shall be given and explained to the minor and to the minor's consenting parent or guardian at the time of admission by the director of the facility or such person's designee.

(iv) The minor shall be required to sign a form indicating that he or she has been advised of his or her ability to access the mental hygiene legal service and of his or her rights under this section and section

22.03 of this article. The signed form shall be included in the minor's medical record.

3. Discharge procedures. All minors admitted pursuant to this subdivision shall be discharged in accordance with the following:

(i) [~~Any minor admitted to an inpatient or residential chemical dependence treatment facility has the right to be discharged within twenty-four hours of his or her request in accordance with the provisions of this subdivision.~~

~~(ii)~~] If discharge is requested prior to completion of a minor's treatment plan, such minor must request discharge in writing.

(A) Upon receipt of any form of written request for discharge, the director of the facility in which the minor is admitted shall immediately notify the minor's parent or guardian. If the facility is unable to contact such parent or guardian within a reasonable time, or if the minor has been admitted pursuant to subdivision (c) of this section, the facility shall notify the designated emergency contact person.

(B) The minor shall not be discharged from such facility until it is determined:

(1) that the safety and well being of such minor will not be threatened [~~or the expiration of twenty-four hours, whichever is sooner~~]; [~~or~~]

(2) that the minor's parent or guardian consents to the release of such minor; and

(3) that the parent, guardian, or designated emergency contact person has made appropriate and timely departure arrangements with the facility. [~~However, unless otherwise directed by the minor's parent or guardian or designated emergency contact person pursuant to this item, such minor shall be discharged within twenty-four hours after submission of the request.~~

~~(iii)~~] (ii) Writing materials for use in requesting a discharge shall be made available at all times to all minors admitted under this section.

(iii) The staff of the facility shall assist such minors in preparing or submitting requests for discharge.

§ 5. This act shall take effect immediately.