# STATE OF NEW YORK

7724

2021-2022 Regular Sessions

# IN ASSEMBLY

May 20, 2021

Introduced by M. of A. MEEKS -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law and the public health law, in relation to providing a mental hygiene legal service to certain patients or residents of residential health care facilities

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

Section 1. Subdivision (a) of section 47.01 of the mental hygiene law, as amended by chapter 658 of the laws of 2019, is amended to read as follows:

(a) There shall be a mental hygiene legal service of the state in each judicial department. The service shall provide legal **services,** assistance **and advocacy** to patients or residents of a facility as defined in section 1.03 of this chapter, patients or residents of residential healthcare facilities licensed and operating pursuant to article twenty-eight of the public health law who have been admitted directly from a facility as defined in section 1.03 of this chapter and who have a serious mental illness as defined in section 1.03 of this chapter [~~and are receiving services related to such illness~~], or any other place or facility which is required to have an operating certificate pursuant to article sixteen or thirty-one of this chapter, and to persons alleged to be in need of care and treatment in such facilities or places, and to persons entitled to such legal assistance as provided by article ten of this chapter. The head of such service in each judicial department and such assistants and such staff as may be necessary shall be appointed and may be removed by the presiding justice of the appellate division of the judicial department. Appointments and transfers to the service shall comply with the provisions of the civil service law. Standards for qualifications of the personnel in the service shall be established by the presiding justice of the appellate division of the judicial department.

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

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The presiding justice of the appellate division of the judicial department shall promulgate such rules or regulations as may be necessary to effectuate the purposes of this article.

§ 2. Section 47.03 of the mental hygiene law, as added by chapter 789 of the laws of 1985, subdivision (c) as amended by chapter 408 of the laws of 1999, subdivisions (d) and (e) as amended and subdivision (f) as added by chapter 7 of the laws of 2007, is amended to read as follows:

§ 47.03 Functions, powers and duties of the service.

The mental hygiene legal service in each judicial department of the state shall perform the following duties:

(a) To study and review the admission and retention of all patients or residents which shall include a review of the willingness of the patient or resident to remain in his or her status and the determination of the facility director as to suitability of such status, as provided for by this chapter;

(b) To inform patients or residents and, in proper cases, others interested in such persons' welfare of procedures for admission and retention and of the patients' or residents' right to have judicial hearing and review, to be represented by legal counsel, and to seek independent medical opinion;

(c) To provide legal services [~~and~~], assistance **and advocacy** to patients or residents and their families related to the admission, retention, and care and treatment of such persons, to provide legal services and assistance to subjects of a petition or patients subject to section 9.60 of this chapter, and to inform patients or residents, their families and, in proper cases, others interested in the patients' or residents' welfare of the availability of other legal resources which may be of assistance in matters not directly related to the admission, retention, and care and treatment of such patients or residents;

(d) **To provide legal services, assistance and advocacy to patients or residents of residential health care facilities licensed or operating pursuant to article twenty-eight of the public health law who have been admitted directly from a facility as defined in section 1.03 of this chapter and who have a serious mental illness as defined in section 1.03 of this chapter;**

**(e)** To be granted access at any and all times to any facility or place or part thereof described in subdivision (a) of section 47.01 of this article, and to all books, records and data pertaining to any such facility or place deemed necessary for carrying out its functions, powers and duties. The mental hygiene legal service may require from the officers or employees of such facility or place any information deemed necessary for the purpose of carrying out the service's functions, powers and duties. Information, books, records or data which are confidential and any limitations on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to the service. Provided, however, whenever federal regulations restrict, or as a condition of federal aid require that a facility restrict the release of information contained in the clinical record of a patient or client, or restrict disclosure of the identity of a patient or access to that patient, to a greater extent than is allowed under this section, the provisions of such federal law or federal regulation shall be controlling;

[~~(e)~~] **(f)** To initiate and take any legal action deemed necessary to safeguard the right of any patient or resident **of a facility as defined in section 1.03 of this chapter, or patients or residents of residential health care facilities licensed and operating pursuant to article twen-**

ty-eight of the public health law who have been admitted to such residential health care facility directly from a facility as defined in section 1.03 of this chapter and who have a serious mental illness as defined in section 1.03 of this chapter to protection from abuse or mistreatment, which may include investigation into any such allegations of abuse or mistreatment of any such patient or resident; and

[~~(f)~~] (g) To provide legal services and assistance in accordance with article ten of this chapter.

§ 3. Subdivision (c) of section 47.03 of the mental hygiene law, as added by chapter 789 of the laws of 1985, is amended to read as follows:

(c) To provide legal services [~~and~~], assistance and advocacy to patients or residents and their families related to the admission, retention, and care and treatment of such persons, and to inform patients or residents, their families and, in proper cases, others interested in the patients' or residents' welfare of the availability of other legal resources which may be of assistance in matters not directly related to the admission, retention, and care and treatment of such patients or residents;

§ 4. Section 29.13 of the mental hygiene law, as added by chapter 332 of the laws of 1976, subdivision (b) as amended by chapter 135 of the laws of 1993, is amended to read as follows:

§ 29.13 Treatment plans.

(a) Subject to the regulations of the commissioner, the director of each departmental facility shall require the development of a written treatment plan to assure adequate care and treatment for each patient.

(b) The written treatment plan shall include, but not be limited to, a statement of treatment goals; appropriate programs, treatment or therapies to be undertaken to meet such goals; and a specific timetable for assessment of patient programs as well as for periodic mental and physical reexaminations. In causing such a plan to be prepared or when such a plan is to be revised, the patient shall be advised of whatever services may be available to him or her through the mental hygiene legal service, including advocacy services, and the following persons shall be interviewed and provided an opportunity to actively participate in such preparation or revision: the patient; an authorized representative of the patient, to include the mental hygiene legal service, and the parent or parents if the patient is a minor, unless such minor sixteen years of age or older objects to the participation of the parent or parents and there has been a clinical determination by a physician indicating that the involvement of the parent or parents is not clinically appropriate and such determination is documented in the record; upon the request of the patient sixteen years of age or older, a significant individual to the patient including the mental hygiene legal service and any relative, close friend or individual otherwise concerned with the welfare of the patient, other than an employee of the facility.

§ 5. Section 29.15 of the mental hygiene law is amended by adding a new subdivision (o) to read as follows:

(o) It shall be the responsibility of the director of any department facility or the chief administrator of any facility providing inpatient services subject to licensure by the office of mental health to notify the mental hygiene legal service when a patient who has a serious mental illness, as defined in section 1.03 of this chapter, and is receiving services related to such illness is about to be discharged to a residential health care facility licensed and operating pursuant to article twenty-eight of the public health law and to provide the mental hygiene

**legal service with the written service plan developed for such person as required under subdivision (f) of this section.**

§ 6. Subdivision 3 of section 2803-c of the public health law is amended by adding a new paragraph r to read as follows:

**r. In accordance with subdivision (a) of section 47.01 of the mental hygiene law, no facility shall restrict or prohibit the mental hygiene legal service operating pursuant to article forty-seven of the mental hygiene law from access to patients or their records who have been admitted to the facility directly from a facility as defined by section 1.03 of the mental hygiene law and who have a serious mental illness. Disclosure of records to the mental hygiene legal service shall not give rise to any claims against the facility, its staff, or the patient's physician based solely on the fact of such disclosure pursuant to statutory authorization.**

§ 7. This act shall take effect immediately; provided, however, that the amendments to subdivision (c) of section 47.03 of the mental hygiene law made by section two of this act shall not affect the repeal of such subdivision pursuant to section 18 of chapter 408 of the laws of 1999, as amended, when upon such date the provisions of section three of this act shall take effect. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.