STATE OF NEW YORK

6934

2023-2024 Regular Sessions

IN ASSEMBLY

May 9, 2023

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Higher Education

AN ACT to amend the mental hygiene law, in relation to the scope of practice of psychiatric nurse practitioners

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

Section 1. Subdivision 48 of section 1.03 of the mental hygiene law, as added by chapter 223 of the laws of 1992, is amended and two new subdivisions 13 and 14 are added to read as follows:

13. "Nurse practitioner" means a nurse practitioner certified pursuant to section sixty-nine hundred ten of the education law, practicing within his or her scope of practice.

14. "Psychiatric nurse practitioner" means a nurse practitioner certified by the department of education as a psychiatric nurse practitioner.

48. "Practitioner" shall mean a physician, **nurse practitioner,** dentist, podiatrist, veterinarian, scientific investigator, or other person licensed, or otherwise permitted to dispense, administer, or conduct research with respect to a controlled substance in the course of a licensed professional practice or research licensed pursuant to this article. Such person shall be deemed a "practitioner" only as to such substances, or conduct relating to such substances, as is permitted by his license, permit, or otherwise permitted by law.

§ 2. Section 9.01 of the mental hygiene law, as amended by chapter 723 of the laws of 1989 and the 7th undesignated paragraph as amended by chapter 595 of the laws of 2000, is amended to read as follows:

§ 9.01 Definitions.

As used in this article:

(a) "in need of care and treatment" means that a person has a mental illness for which in-patient care and treatment in a hospital is appropriate.

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

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(b) "in need of involuntary care and treatment" means that a person has a mental illness for which care and treatment as a patient in a hospital is essential to such person's welfare and whose judgment is so impaired that he is unable to understand the need for such care and treatment.

(c) "likelihood to result in serious harm" or "likely to result in serious harm" means [~~(a)~~]:

1. 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

[~~(b)~~] 2. 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.

(d) "need for retention" means that a person who has been admitted to a hospital pursuant to this article is in need of involuntary care and treatment in a hospital for a further period.

(e) "record" of a patient shall consist of admission, transfer or retention papers and orders, and accompanying data required by this article and by the regulations of the commissioner.

(f) "director of community services" means the director of community services for the mentally disabled appointed pursuant to article forty-one of this chapter.

(g) "qualified psychiatrist" means a physician licensed to practice medicine in New York state who:

[~~(a)~~] 1. is a diplomate of the American board of psychiatry and neurology or is eligible to be certified by that board; or

[~~(b)~~] 2. is certified by the American osteopathic board of neurology and psychiatry or is eligible to be certified by that board.

(h) "qualified psychiatric nurse practitioner" means a psychiatric nurse practitioner who has received a relevant board certification from a national accrediting body or is eligible to be certified by such board.

§ 3. Section 9.05 of the mental hygiene law, as renumbered by chapter 978 of the laws of 1977, is amended to read as follows:

§ 9.05 Examining physicians or nurse practitioners and medical certificates.

(a) A person is disqualified from acting as an examining physician or nurse practitioner in the following cases:

1. if he or she is a relative of the person applying for the admission or of the person alleged to be mentally ill.

2. if he or she is a manager, trustee, visitor, proprietor, officer, director, or stockholder of the hospital in which the patient is hospitalized or to which it is proposed to admit such person, except as otherwise provided in this chapter, or if he has any pecuniary interest, directly or indirectly, in such hospital, provided that receipt of fees, privileges, or compensation for treating or examining patients in such hospital shall not be deemed to be a pecuniary interest.

3. if he or she is on the staff of a proprietary facility to which it is proposed to admit such person.

(b) A certificate, as required by this article, must show that the person is mentally ill and shall be based on an examination of the person alleged to be mentally ill made within ten days prior to the date of admission. The date of the certificate shall be the date of such examination. All certificates shall contain the facts and circumstances upon which the judgment of the examining physicians or nurse practition-

ers is based and shall show that the condition of the person examined is such that he needs involuntary care and treatment in a hospital and such other information as the commissioner may by regulation require.

§ 4. Subdivision (a), paragraph 11 of subdivision (b), and subdivisions (d), (e) and (i) of section 9.27 of the mental hygiene law, subdivisions (a), (d) and (e) as renumbered by chapter 978 of the laws of 1977, paragraph 11 of subdivision (b) as added by chapter 343 of the laws of 1985, and subdivision (i) as amended by chapter 847 of the laws of 1987, are amended to read as follows:

(a) The director of a hospital may receive and retain therein as a patient any person alleged to be mentally ill and in need of involuntary care and treatment upon the certificates of two examining physicians, nurse practitioners, or a combination thereof, accompanied by an application for the admission of such person. The examination may be conducted jointly but each examining physician and/or nurse practitioner shall execute a separate certificate.

11. a qualified psychiatrist or psychiatric nurse practitioner who is either supervising the treatment of or treating such person for a mental illness in a facility licensed or operated by the office of mental health.

(d) Before an examining physician or nurse practitioner completes the certificate of examination of a person for involuntary care and treatment, he or she shall consider alternative forms of care and treatment that might be adequate to provide for the person's needs without requiring involuntary hospitalization. If the examining physician or nurse practitioner knows that the person he or she is examining for involuntary care and treatment has been under prior treatment, he or she shall, insofar as possible, consult with the physician, nurse practitioner, or psychologist furnishing such prior treatment prior to completing his or her certificate. Nothing in this section shall prohibit or invalidate any involuntary admission made in accordance with the provisions of this chapter.

(e) The director of the hospital where such person is brought shall cause such person to be examined forthwith by a physician or nurse practitioner who shall be a member of the psychiatric staff of such hospital other than the original examining physicians and/or nurse practitioners whose certificate or certificates accompanied the application and, if such person is found to be in need of involuntary care and treatment, he or she may be admitted thereto as a patient as herein provided.

(i) After an application for the admission of a person has been completed and [~~both~~] the physicians and/or nurse practitioners have examined such person and separately certified that he or she is mentally ill and in need of involuntary care and treatment in a hospital, either physician or nurse practitioner is authorized to request peace officers, when acting pursuant to their special duties, or police officers, who are members of an authorized police department or force or of a sheriff's department, to take into custody and transport such person to a hospital for determination by the director whether such person qualifies for admission pursuant to this section. Upon the request of either physician or nurse practitioner, an ambulance service, as defined by subdivision two of section three thousand one of the public health law, is authorized to transport such person to a hospital for determination by the director whether such person qualifies for admission pursuant to this section.

§ 5. Subdivisions (a) and (c) of section 9.37 of the mental hygiene law, subdivision (a) as amended by chapter 723 of the laws of 1989, and

subdivision (c) as amended by chapter 230 of the laws of 2004, are amended to read as follows:

(a) The director of a hospital, upon application by a director of community services or an examining physician **or nurse practitioner** duly designated by him or her, may receive and care for in such hospital as a patient any person who, in the opinion of the director of community services or the director's designee, has a mental illness for which immediate inpatient care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or herself or others.

The need for immediate hospitalization shall be confirmed by a staff physician **or nurse practitioner** of the hospital prior to admission. Within seventy-two hours, excluding Sunday and holidays, after such admission, if such patient is to be retained for care and treatment beyond such time and he or she does not agree to remain in such hospital as a voluntary patient, the certificate of another examining physician **or nurse practitioner** who is a member of the psychiatric staff of the hospital that the patient is in need of involuntary care and treatment shall be filed with the hospital. From the time of his or her admission under this section the retention of such patient for care and treatment shall be subject to the provisions for notice, hearing, review, and judicial approval of continued retention or transfer and continued retention 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 hospital under this section.

(c) Notwithstanding the provisions of subdivision (b) of this section, in counties with a population of less than two hundred thousand, a director of community services who is a licensed psychologist pursuant to article one hundred fifty-three of the education law or a licensed clinical social worker pursuant to article one hundred fifty-four of the education law but who is not a physician **or nurse practitioner** may apply for the admission of a patient pursuant to this section without a medical examination by a designated physician **or nurse practitioner**, if a hospital approved by the commissioner pursuant to section 9.39 of this article is not located within thirty miles of the patient, and the director of community services has made a reasonable effort to locate a designated examining physician **or nurse practitioner** but such a designee is not immediately available and the director of community services, after personal observation of the person, reasonably believes that he **or she** may have a mental illness which is likely to result in serious harm to himself or **herself or** others and inpatient care and treatment of such person in a hospital may be appropriate. In the event of an application pursuant to this subdivision, a physician **or nurse practitioner** of the receiving hospital shall examine the patient and shall not admit the patient unless he or she determines that the patient has a mental illness for which immediate inpatient care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or **herself or** others. If the patient is admitted, the need for hospitalization shall be confirmed by another staff physician **or nurse practitioner** within twenty-four hours. An application pursuant to this subdivision shall be in writing and shall be filed with the director of such hospital 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, including a statement of the efforts

made by the director of community services to locate a designated examining physician **or nurse practitioner** prior to making an application pursuant to this subdivision.

§ 6. Subdivision (a) of section 9.37 of the mental hygiene law, as amended by chapter 251 of the laws of 1972, is amended to read as follows:

(a) The director of a hospital, upon application by a director of community services or an examining physician **or nurse practitioner** duly designated by him **or her**, may receive and care for in such hospital as a patient any person who, in the opinion of the director of community services or his **or her** designee, has a mental illness for which immediate inpatient care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or **herself or** others; "likelihood of serious harm" shall mean:

1. substantial risk of physical harm to himself **or herself** as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he **or she** is dangerous to himself[~~,~~] **or herself;** or

2. 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~~] **of** serious physical harm.

The need for immediate hospitalization shall be confirmed by a staff physician **or nurse practitioner** of the hospital prior to admission. Within seventy-two hours, excluding Sunday and holidays, after such admission, if such patient is to be retained for care and treatment beyond such time and he **or she** does not agree to remain in such hospital as a voluntary patient, the certificate of another examining physician **or nurse practitioner** who is a member of the psychiatric staff of the hospital that the patient is in need of involuntary care and treatment shall be filed with the hospital. From the time of his **or her** admission under this section the retention of such patient for care and treatment shall be subject to the provisions for notice, hearing, review, and judicial approval of continued retention or transfer and continued retention 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 hospital under this section.

§ 7. Subdivision (a) of section 9.39 of the mental hygiene law, as amended by chapter 789 of the laws of 1985, is amended to read as follows:

(a) The director of any hospital maintaining adequate staff and facilities for the observation, examination, care, and treatment of persons alleged to be mentally ill and approved by the commissioner to receive and retain patients pursuant to this section may receive and retain therein as a patient for a period of fifteen days any person alleged to have a mental illness for which immediate observation, care, and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or **herself or** others. "Likelihood to result in serious harm" as used in this article shall mean:

1. substantial risk of physical harm to himself **or herself** as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he **or she** is dangerous to himself[~~,~~] **or herself;** or

2. 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.

The director shall cause to be entered upon the hospital records the name of the person or persons, if any, who have brought such person to the hospital and the details of the circumstances leading to the hospitalization of such person.

The director shall admit such person pursuant to the provisions of this section only if a staff physician **or psychiatric nurse practitioner** of the hospital upon examination of such person finds that such person qualifies under the requirements of this section. Such person shall not be retained for a period of more than forty-eight hours unless within such period such finding is confirmed after examination by another physician **or psychiatric nurse practitioner** who shall be a member of the psychiatric staff of the hospital. Such person shall be served, at the time of admission, with written notice of his **or her** status and rights as a patient under this section. Such notice shall contain the patient's name. At the same time, such notice shall also be given to the mental hygiene legal service and personally or by mail to such person or persons, not to exceed three in number, as may be designated in writing to receive such notice by the person alleged to be mentally ill. If at any time after admission, the patient, any relative, friend, or the mental hygiene legal service gives notice to the director in writing of request for court hearing on the question of need for immediate observation, care, and treatment, a hearing shall be held as herein provided as soon as practicable but in any event not more than five days after such request is received, except that the commencement of such hearing may be adjourned at the request of the patient. It shall be the duty of the director upon receiving notice of such request for hearing to forward forthwith a copy of such notice with a record of the patient to the supreme court or county court in the county where such hospital is located. A copy of such notice and record shall also be given **to** the mental hygiene legal service. The court which receives such notice shall fix the date of such hearing and cause the patient or other person requesting the hearing, the director, the mental hygiene legal service and such other persons as the court may determine to be advised of such date. Upon such date, or upon such other date to which the proceeding may be adjourned, the court shall hear testimony and examine the person alleged to be mentally ill, if it be deemed advisable in or out of court, and shall render a decision in writing that there is reasonable cause to believe that the patient has a mental illness for which immediate inpatient care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or **herself or** others. If it be determined that there is such reasonable cause, the court shall forthwith issue an order authorizing the retention of such patient for any such purpose or purposes in the hospital for a period not to exceed fifteen days from the date of admission. Any such order entered by the court shall not be deemed to be an adjudication that the patient is mentally ill, but only a determination that there is reasonable cause to retain the patient for the purposes of this section.

§ 8. Subdivisions (b) and (c) of section 9.40 of the mental hygiene law, subdivision (b) as amended by section 2 of part PPP of chapter 58 of the laws of 2020, and subdivision (c) as added by chapter 723 of the laws of 1989, are amended to read as follows:

(b) The director shall cause examination of such persons not discharged after the provision of triage and referral services to be

initiated by a staff physician **or psychiatric nurse practitioner** of the program as soon as practicable and in any event within six hours after the person is received into the program's emergency room. Such person may be retained for observation, care, and treatment and further examination for up to twenty-four hours if, at the conclusion of such examination, such physician **or psychiatric nurse practitioner** determines that such person may have a mental illness for which immediate observation, care, and treatment in a comprehensive psychiatric emergency program is appropriate, and which is likely to result in serious harm to the person or others.

(c) No person shall be involuntarily retained in accordance with this section for more than twenty-four hours, unless (i) within that time the determination of the examining staff physician **or psychiatric nurse practitioner** has been confirmed after examination by another physician **or psychiatric nurse practitioner** who is a member of the psychiatric staff of the program and (ii) the person is admitted to an extended observation bed, as such term is defined in section 31.27 of this chapter. At the time of admission to an extended observation bed, such person shall be served with written notice of his **or her** status and rights as a patient under this section. Such notice shall contain the patient's name. The notice shall be provided to the same persons and in the manner as if provided pursuant to subdivision (a) of section 9.39 of this article. Written requests for court hearings on the question of need for immediate observation, care and treatment shall be made, and court hearings shall be scheduled and held, in the manner provided pursuant to subdivision (a) of section 9.39 of this article, provided however, if a person is removed or admitted to a hospital pursuant to subdivision (e) or (f) of this section the director of such hospital shall be substituted for the director of the comprehensive psychiatric emergency program in all legal proceedings regarding the continued retention of the person.

§ 9. Paragraph 2 of subdivision (d) of section 9.51 of the mental hygiene law, as amended by section 1 of part NNN of chapter 58 of the laws of 2020, is amended to read as follows:

(2) Proper treatment of the individual's psychiatric condition requires in-patient care and treatment under the direction of a physician **or psychiatric nurse practitioner**; and

§ 10. Section 9.55 of the mental hygiene law, as amended by chapter 598 of the laws of 1994, is amended to read as follows:

§ 9.55 Emergency admissions for immediate observation, care, and treatment; powers of qualified psychiatrists **and psychiatric nurse practitioners**.

A qualified psychiatrist **or qualified psychiatric nurse practitioner** shall have the power to direct the removal of any person, whose treatment for a mental illness he or she is either supervising or providing in a facility licensed or operated by the office of mental health which does not have an inpatient psychiatric service, to a hospital approved by the commissioner pursuant to subdivision (a) of section 9.39 of this article or to a comprehensive psychiatric emergency program, if he or she determines upon examination of such person that such person appears to have a mental illness for which immediate observation, care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or herself or others. Upon the request of such qualified psychiatrist **or qualified psychiatric nurse practitioner**, peace officers, when acting pursuant to their special duties, or police officers, who are members of an authorized police department or force or

of a sheriff's department shall take into custody and transport any such person. Upon the request of a qualified psychiatrist **or qualified psychiatric nurse practitioner,** an ambulance service, as defined by subdivision two of section three thousand one of the public health law, is authorized to transport any such person. Such person may then be admitted to a hospital in accordance with the provisions of section 9.39 of this article or to a comprehensive psychiatric emergency program in accordance with the provisions of section 9.40 of this article.

§ 11. Section 9.55 of the mental hygiene law, as amended by chapter 847 of the laws of 1987, is amended to read as follows:

§ 9.55 Emergency admissions for immediate observation, care**,** and treatment; powers of qualified psychiatrists **and qualified psychiatric nurse practitioners**.

A qualified psychiatrist **or qualified psychiatric nurse practitioner** shall have the power to direct the removal of any person, whose treatment for a mental illness he **or she** is either supervising or providing in a facility licensed or operated by the office of mental health which does not have an inpatient psychiatric service, to a hospital approved by the commissioner pursuant to subdivision (a) of section 9.39 of this article, if he **or she** determines upon examination of such person that such person appears to have a mental illness for which immediate observation, care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself **or herself** or others, as defined in section 9.39 of this article. Upon the request of such qualified psychiatrist **or qualified psychiatric nurse practitioner**, peace officers, when acting pursuant to their special duties, or police officers, who are members of an authorized police department or force or of a sheriff's department shall take into custody and transport any such person. Upon the request of a qualified psychiatrist **or qualified psychiatric nurse practitioner,** an ambulance service, as defined by subdivision two of section three thousand one of the public health law, is authorized to transport any such person. Such person may then be admitted in accordance with the provisions of section 9.39 of this article.

§ 12. Section 9.57 of the mental hygiene law, as amended by chapter 598 of the laws of 1994, is amended to read as follows:

§ 9.57 Emergency admissions for immediate observation, care and treatment; powers of emergency room physicians **and psychiatric nurse practitioners**.

A physician **or psychiatric nurse practitioner** who has examined a person in an emergency room or provided emergency medical services at a general hospital, as defined in article twenty-eight of the public health law, which does not have an inpatient psychiatric service, or a physician **or psychiatric nurse practitioner** who has examined a person in a comprehensive psychiatric emergency program shall be authorized to request that the director of the program or hospital, or the director's designee, direct the removal of such person to a hospital approved by the commissioner pursuant to subdivision (a) of section 9.39 of this article or to a comprehensive psychiatric emergency program, if the physician **or psychiatric nurse practitioner** determines upon examination of such person that such person appears to have a mental illness for which immediate care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or **herself or** others. Upon the request of the physician **or psychiatric nurse practitioner**, the director of the program or hospital**,** or the director's designee, is authorized to direct peace officers, when acting pursuant

to their special duties, or police officers, who are members of an authorized police department or force or of a sheriff's department to take into custody and transport any such person. Upon the request of an emergency room physician **or psychiatric nurse practitioner,** or the director of the program or hospital, or the director's designee, an ambulance service, as defined by subdivision two of section three thousand one of the public health law, is authorized to take into custody and transport any such person. Such person may then be admitted to a hospital in accordance with the provisions of section 9.39 of this article or to a comprehensive psychiatric emergency program in accordance with the provisions of section 9.40 of this article.

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

§ 9.57 Emergency admissions for immediate observation, care and treatment; powers of emergency room physicians **and psychiatric nurse practitioners**.

A physician **or psychiatric nurse practitioner** who has examined a person in an emergency room or provided emergency medical services at a general hospital, as defined in article twenty-eight of the public health law, which does not have an inpatient psychiatric service, shall be authorized to request that the director of the hospital, or his **or her** designee, direct the removal of such person to a hospital approved by the commissioner pursuant to subdivision (a) of section 9.39 of this article, if the physician **or psychiatric nurse practitioner** determines upon examination of such person that such person appears to have a mental illness for which immediate care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or **herself or** others, as defined in section 9.39 of this article. Upon the request of the physician **or psychiatric nurse practitioner**, the director of the hospital**,** or his **or her** designee, is authorized to direct peace officers, when acting pursuant to their special duties, or police officers, who are members of an authorized police department or force or of a sheriff's department to take into custody and transport any such person. Upon the request of an emergency room physician **or psychiatric nurse practitioner,** or the director of the hospital, or his **or her** designee, an ambulance service, as defined by subdivision two of section three thousand one of the public health law, is authorized to take into custody and transport any such person. Such person may then be admitted **to a hospital** in accordance with the provisions of section 9.39 of this article.

§ 14. Paragraph 2 of subdivision (d) of section 9.58 of the mental hygiene law, as amended by chapter 230 of the laws of 2004, is amended to read as follows:

(2) "Qualified mental health professional" shall mean a licensed psychologist, registered professional nurse, licensed clinical social worker or a licensed master social worker under the supervision of a physician, **psychiatric nurse practitioner,** psychologist**,** or licensed clinical social worker.

§ 15. Subparagraph (iii) of paragraph 4 of subdivision (c), subparagraph (v) of paragraph 1 and paragraphs 3 and 4 of subdivision (e), paragraphs 1, 2, 3 and 4 of subdivision (h), subdivision (i), paragraph 2 of subdivision (k), and subdivision (n) of section 9.60 of the mental hygiene law, subparagraph (iii) of paragraph 4 of subdivision (c) and paragraph 2 of subdivision (h) as amended by section 2 of subpart H of part UU of chapter 56 of the laws of 2022, subparagraph (v) of paragraph 1 and paragraph 3 of subdivision (e), paragraphs 1, 3 and 4 of subdivi-

sion (h), and subdivision (i) as amended by chapter 158 of the laws of 2005, paragraph 4 of subdivision (e) as amended by chapter 382 of the laws of 2015, and paragraph 2 of subdivision (k) and subdivision (n) as amended by chapter 1 of the laws of 2013, are amended to read as follows:

(iii) notwithstanding subparagraphs (i) and (ii) of this paragraph, resulted in the issuance of a court order for assisted outpatient treatment which has expired within the last six months, and since the expiration of the order, the person has experienced a substantial increase in symptoms of mental illness and such symptoms substantially interferes with or limits one or more major life activities as determined by a director of community services who previously was required to coordinate and monitor the care of any individual who was subject to such expired assisted outpatient treatment order. The applicable director of community services or their designee shall arrange for the individual to be evaluated by a physician **or psychiatric nurse practitioner**. If the physician **or psychiatric nurse practitioner** determines court ordered services are clinically necessary and the least restrictive option, the director of community services may initiate a court proceeding[~~.~~]**; and**

(v) a qualified psychiatrist **or qualified psychiatric nurse practitioner** who is either supervising the treatment of or treating the subject of the petition for a mental illness; or

(3) The petition shall be accompanied by an affirmation or affidavit of a physician **or psychiatric nurse practitioner**, who shall not be the petitioner, stating either that:

(i) such physician **or psychiatric nurse practitioner** has personally examined the subject of the petition no more than ten days prior to the submission of the petition, recommends assisted outpatient treatment for the subject of the petition, and is willing and able to testify at the hearing on the petition; or

(ii) no more than ten days prior to the filing of the petition, such physician **or psychiatric nurse practitioner** or his or her designee has made appropriate attempts but has not been successful in eliciting the cooperation of the subject of the petition to submit to an examination, such physician **or psychiatric nurse practitioner** has reason to suspect that the subject of the petition meets the criteria for assisted outpatient treatment, and such physician **or psychiatric nurse practitioner** is willing and able to examine the subject of the petition and testify at the hearing on the petition.

(4) In counties with a population of less than eighty thousand, the affirmation or affidavit required by paragraph three of this subdivision may be made by a physician **or psychiatric nurse practitioner** who is an employee of the office. The office is authorized to make available, at no cost to the county, a qualified physician **or psychiatric nurse practitioner** for the purpose of making such affirmation or affidavit consistent with the provisions of such paragraph.

(1) Upon receipt of the petition, the court shall fix the date for a hearing. Such date shall be no later than three days from the date such petition is received by the court, excluding Saturdays, Sundays and holidays. Adjournments shall be permitted only for good cause shown. In granting adjournments, the court shall consider the need for further examination by a physician **or psychiatric nurse practitioner** or the potential need to provide assisted outpatient treatment expeditiously. The court shall cause the subject of the petition, any other person receiving notice pursuant to subdivision (f) of this section, the petitioner, the physician **or psychiatric nurse practitioner** whose affirma-

tion or affidavit accompanied the petition, and such other persons as the court may determine to be advised of such date. Upon such date, or upon such other date to which the proceeding may be adjourned, the court shall hear testimony and, if it be deemed advisable and the subject of the petition is available, examine the subject of the petition in or out of court. If the subject of the petition does not appear at the hearing, and appropriate attempts to elicit the attendance of the subject have failed, the court may conduct the hearing in the subject's absence. In such case, the court shall set forth the factual basis for conducting the hearing without the presence of the subject of the petition.

(2) The court shall not order assisted outpatient treatment unless an examining physician **or psychiatric nurse practitioner**, who recommends assisted outpatient treatment and has personally examined the subject of the petition no more than ten days before the filing of the petition, testifies in person or by video conference at the hearing. Provided however, a physician **or psychiatric nurse practitioner** shall only be authorized to testify by video conference when it has been: (i) shown that diligent efforts have been made to attend such hearing in person and the subject of the petition consents to the physician **or psychiatric nurse practitioner** testifying by video conference; or (ii) the court orders the physician **or psychiatric nurse practitioner** to testify by video conference upon a finding of good cause. Such physician **or psychiatric nurse practitioner** shall state the facts and clinical determinations which support the allegation that the subject of the petition meets each of the criteria for assisted outpatient treatment.

(3) If the subject of the petition has refused to be examined by a physician **or psychiatric nurse practitioner**, the court may request the subject to consent to an examination by a physician **or psychiatric nurse practitioner** appointed by the court. If the subject of the petition does not consent and the court finds reasonable cause to believe that the allegations in the petition are true, the court may order peace officers, acting pursuant to their special duties, or police officers who are members of an authorized police department or force, or of a sheriff's department to take the subject of the petition into custody and transport him or her to a hospital for examination by a physician **or psychiatric nurse practitioner**. Retention of the subject of the petition under such order shall not exceed twenty-four hours. The examination of the subject of the petition may be performed by the physician **or psychiatric nurse practitioner** whose affirmation or affidavit accompanied the petition pursuant to paragraph three of subdivision (e) of this section, if such physician **or psychiatric nurse practitioner** is privileged by such hospital or otherwise authorized by such hospital to do so. If such examination is performed by another physician **or psychiatric nurse practitioner**, the examining physician **or psychiatric nurse practitioner** may consult with the physician **or psychiatric 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 psychiatric 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 psychiatric 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.

(i) Written treatment plan. (1) The court shall not order assisted outpatient treatment unless a physician **or psychiatric 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 psychiatric 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 psychiatric 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 psychiatric 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 psychiatric 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 psychiatric nurse practitioner** shall consider any directions included in such proxy in developing the written treatment plan.

(3) The court shall not order assisted outpatient treatment unless a physician **or psychiatric nurse practitioner** appearing on behalf of a director testifies to explain the written proposed treatment plan. Such physician **or psychiatric nurse practitioner** shall state the categories of assisted outpatient treatment recommended, the rationale for each such category, facts which establish that such treatment is the least restrictive alternative, and, if the recommended assisted outpatient treatment plan includes medication, such physician **or psychiatric nurse practitioner** shall state the types or classes of medication recommended, the beneficial and detrimental physical and mental effects of such medication, and whether such medication should be self-administered or administered by an authorized professional. If the subject of the peti-

tion has executed a health care proxy, such physician **or psychiatric nurse practitioner** shall state the consideration given to any directions included in such proxy in developing the written treatment plan. If a director is the petitioner, testimony pursuant to this paragraph shall be given at the hearing on the petition. If a person other than a director is the petitioner, such testimony shall be given on the date set by the court pursuant to paragraph three of subdivision (j) of this section.

(2) Within thirty days prior to the expiration of an order of assisted outpatient treatment, the appropriate director or the current petitioner, if the current petition was filed pursuant to subparagraph (i) or (ii) of paragraph one of subdivision (e) of this section, and the current petitioner retains his or her original status pursuant to the applicable subparagraph, may petition the court to order continued assisted outpatient treatment for a period not to exceed one year from the expiration date of the current order. If the court's disposition of such petition does not occur prior to the expiration date of the current order, the current order shall remain in effect until such disposition. The procedures for obtaining any order pursuant to this subdivision shall be in accordance with the provisions of the foregoing subdivisions of this section; provided that the time restrictions included in paragraph four of subdivision (c) of this section shall not be applicable. The notice provisions set forth in paragraph six of subdivision (j) of this section shall be applicable. Any court order requiring periodic blood tests or urinalysis for the presence of alcohol or illegal drugs shall be subject to review after six months by the physician **or psychiatric nurse practitioner** who developed the written treatment plan or another physician **or psychiatric nurse practitioner** designated by the director, and such physician **or psychiatric nurse practitioner** shall be authorized to terminate such blood tests or urinalysis without further action by the court.

(n) Failure to comply with assisted outpatient treatment. Where in the clinical judgment of a physician **or psychiatric nurse practitioner**, (i) the assisted outpatient[~~,~~] has failed or refused to comply with the assisted outpatient treatment, (ii) efforts were made to solicit compliance, and (iii) such assisted outpatient may be in need of involuntary admission to a hospital pursuant to section 9.27 of this article or immediate observation, care**,** and treatment pursuant to section 9.39 or 9.40 of this article, such physician **or psychiatric nurse practitioner** may request the appropriate director of community services, the director's designee, or any physician **or psychiatric nurse practitioner** designated by the director of community services pursuant to section 9.37 of this article, to direct the removal of such assisted outpatient to an appropriate hospital for an examination to determine if such person has a mental illness for which hospitalization is necessary pursuant to section 9.27, 9.39**,** or 9.40 of this article. Furthermore, if such assisted outpatient refuses to take medications as required by the court order, or he or she refuses to take, or fails a blood test, urinalysis, or alcohol or drug test as required by the court order, such physician **or psychiatric nurse practitioner** may consider such refusal or failure when determining whether the assisted outpatient is in need of an examination to determine whether he or she has a mental illness for which hospitalization is necessary. Upon the request of such physician **or psychiatric nurse practitioner**, the appropriate director, the director's designee, or any physician **or psychiatric nurse practitioner** designated pursuant to section 9.37 of this article, may direct peace

officers, acting pursuant to their special duties, or police officers who are members of an authorized police department or force or of a sheriff's department, to take the assisted outpatient into custody and transport him or her to the hospital operating the assisted outpatient treatment program or to any hospital authorized by the director of community services to receive such persons. Such law enforcement officials shall carry out such directive. Upon the request of such physician **or psychiatric nurse practitioner**, the appropriate director, the director's designee, or any physician **or psychiatric nurse practitioner** designated pursuant to section 9.37 of this article, an ambulance service, as defined by subdivision two of section three thousand one of the public health law, or an approved mobile crisis outreach team, as defined in section 9.58 of this article, shall be authorized to take into custody and transport any such person to the hospital operating the assisted outpatient treatment program, or to any other hospital authorized by the appropriate director of community services to receive such persons. Any director of community services, or **the director's** designee, shall be authorized to direct the removal of an assisted outpatient who is present in his or her county to an appropriate hospital, in accordance with the provisions of this subdivision, based upon a determination of the appropriate director of community services directing the removal of such assisted outpatient pursuant to this subdivision. Such person may be retained for observation, care, and treatment and further examination in the hospital for up to seventy-two hours to permit a physician **or psychiatric nurse practitioner** to determine whether such person has a mental illness and is in need of involuntary care and treatment in a hospital pursuant to the provisions of this article. Any continued involuntary retention in such hospital beyond the initial seventy-two hour period shall be in accordance with the provisions of this article relating to the involuntary admission and retention of a person. If at any time during the seventy-two hour period the person is determined not to meet the involuntary admission and retention provisions of this article, and does not agree to stay in the hospital as a voluntary or informal patient, he or she must be released. Failure to comply with an order of assisted outpatient treatment shall not be grounds for involuntary civil commitment or a finding of contempt of court.

§ 16. Subdivisions (d), (e) and (f) of section 33.04 of the mental hygiene law, subdivisions (d) and (f) as added by chapter 779 of the laws of 1977, and subdivisions (d) and (f) as renumbered and subdivision (e) as amended by chapter 334 of the laws of 1980, are amended to read as follows:

(d) Restraint shall be [~~effected~~] **affected** only by written order of a physician **or psychiatric nurse practitioner** after a personal examination of the patient except in an emergency situation, as provided by subdivision (e) of this section. The order shall set forth the facts justifying the restraint and shall specify the nature of the restraint and any conditions for maintaining the restraint. The order shall also set forth the time of expiration of the authorization, with such order to apply for a period of no more than four hours, provided, however, that any such order imposing restraint after nine o'clock p.m. may extend until nine o'clock a.m. of the next day. A full record of restraint, including all signed orders of physicians **or psychiatric nurse practitioners**, shall be kept in the patient's file and shall be subject to inspection by authorized persons.

(e) If an emergency situation exists in which the patient is engaging in activity that presents an immediate danger to himself or **herself or**

others and a physician is not immediately available, restraint may be [~~effected~~] affected only to the extent necessary to prevent the patient from injuring himself or herself or others at the direction of the senior member of the staff who is present. The senior staff member shall cause a physician or psychiatric nurse practitioner to be immediately summoned and shall record the time of the call and the person contacted. Pending the arrival of a physician or psychiatric nurse practitioner, the patient shall be kept under constant supervision. If a physician or psychiatric nurse practitioner does not arrive within thirty minutes of being summoned, the senior staff member shall record any such delay in the patient's clinical record and also place into the patient's clinical record a written description of the facts justifying the emergency restraint which shall specify the nature of the restraint and any conditions for maintaining the restraint until the arrival of a physician or psychiatric nurse practitioner, the reasons why less restrictive forms of restraint were not used, and a description of the steps taken to assure that the patient's needs, comfort, and safety were properly cared for. Such physician or psychiatric nurse practitioner shall place in the clinical record an explanation for any such delay.

(f) During the time that a patient is in restraint, he or she shall be monitored to see that his or her physical needs, comfort, and safety are properly cared for. An assessment of the patient's condition shall be made at least once every thirty minutes or at more frequent intervals as directed by a physician or psychiatric nurse practitioner. The assessment shall be recorded and placed in the patient's file. A patient in restraint shall be released from restraint at least every two hours, except when asleep. If at any time a patient upon being released from restraint makes no overt gestures that would threaten serious harm or injury to himself or herself or others, restraint shall not be reimposed and a physician or psychiatric nurse practitioner shall be immediately notified. Restraint shall not be reimposed in such situation unless, in the physician's or psychiatric nurse practitioner's professional judgment, release would be harmful to the patient or others.

§ 17. This act shall take effect immediately; provided, however, that the amendments to:

a. subdivision (a) of section 9.37 of the mental hygiene law made by section five of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 21 of chapter 723 of the laws of 1989, as amended, when upon such date the provisions of section six of this act shall take effect;

b. subdivisions (b) and (c) of section 9.40 of the mental hygiene law made by section eight of this act shall not affect the repeal of such section and shall be deemed repealed therewith;

c. section 9.55 of the mental hygiene law made by section ten of this act shall be subject to the expiration and reversion of such section pursuant to section 21 of chapter 723 of the laws of 1989, as amended, when upon such date the provisions of section eleven of this act shall take effect;

d. section 9.57 of the mental hygiene law made by section twelve of this act shall be subject to the expiration and reversion of such section pursuant to section 21 of chapter 723 of the laws of 1989, as amended, when upon such date the provisions of section thirteen of this act shall take effect; and

e. subparagraph (iii) of paragraph 4 of subdivision (c), subparagraph (v) of paragraph 1 and paragraphs 3 and 4 of subdivision (e), paragraphs 1, 2, 3 and 4 of subdivision (h), subdivision (i), paragraph 2 of subdi-

vision (k), and subdivision (n) of section 9.60 of the mental hygiene law made by section fifteen of this act shall not affect the repeal of such section and shall be deemed repealed therewith.