

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:

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

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

7 14. "Psychiatric nurse practitioner" means a nurse practitioner certi-
8 fied by the department of education as a psychiatric nurse practitioner.

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

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

20 § 9.01 Definitions.

21 As used in this article:

22 (a) "in need of care and treatment" means that a person has a mental
23 illness for which in-patient care and treatment in a hospital is appro-
24 priate.

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~~[(r)]~~; 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 certifies.

(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-

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

4 § 4. Subdivision (a), paragraph 11 of subdivision (b), and subdivi-
5 sions (d), (e) and (i) of section 9.27 of the mental hygiene law, subdivi-
6 sions (a), (d) and (e) as renumbered by chapter 978 of the laws of
7 1977, paragraph 11 of subdivision (b) as added by chapter 343 of the
8 laws of 1985, and subdivision (i) as amended by chapter 847 of the laws
9 of 1987, are amended to read as follows:

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

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

21 (d) Before an examining physician or nurse practitioner completes the
22 certificate of examination of a person for involuntary care and treat-
23 ment, he or she shall consider alternative forms of care and treatment
24 that might be adequate to provide for the person's needs without requir-
25 ing involuntary hospitalization. If the examining physician or nurse
26 practitioner knows that the person he or she is examining for involun-
27 tary care and treatment has been under prior treatment, he or she shall,
28 insofar as possible, consult with the physician, nurse practitioner, or
29 psychologist furnishing such prior treatment prior to completing his or
30 her certificate. Nothing in this section shall prohibit or invalidate
31 any involuntary admission made in accordance with the provisions of this
32 chapter.

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

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

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

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

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

11 The need for immediate hospitalization shall be confirmed by a staff
12 physician or nurse practitioner of the hospital prior to admission.
13 Within seventy-two hours, excluding Sunday and holidays, after such
14 admission, if such patient is to be retained for care and treatment
15 beyond such time and he or she does not agree to remain in such hospital
16 as a voluntary patient, the certificate of another examining physician
17 or nurse practitioner who is a member of the psychiatric staff of the
18 hospital that the patient is in need of involuntary care and treatment
19 shall be filed with the hospital. From the time of his or her admission
20 under this section the retention of such patient for care and treatment
21 shall be subject to the provisions for notice, hearing, review, and
22 judicial approval of continued retention or transfer and continued
23 retention provided by this article for the admission and retention of
24 involuntary patients, provided that, for the purposes of such
25 provisions, the date of admission of the patient shall be deemed to be
26 the date when the patient was first received in the hospital under this
27 section.

28 (c) Notwithstanding the provisions of subdivision (b) of this section,
29 in counties with a population of less than two hundred thousand, a
30 director of community services who is a licensed psychologist pursuant
31 to article one hundred fifty-three of the education law or a licensed
32 clinical social worker pursuant to article one hundred fifty-four of the
33 education law but who is not a physician or nurse practitioner may apply
34 for the admission of a patient pursuant to this section without a
35 medical examination by a designated physician or nurse practitioner, if
36 a hospital approved by the commissioner pursuant to section 9.39 of this
37 article is not located within thirty miles of the patient, and the
38 director of community services has made a reasonable effort to locate a
39 designated examining physician or nurse practitioner but such a designee
40 is not immediately available and the director of community services,
41 after personal observation of the person, reasonably believes that he or
42 she may have a mental illness which is likely to result in serious harm
43 to himself or herself or others and inpatient care and treatment of such
44 person in a hospital may be appropriate. In the event of an application
45 pursuant to this subdivision, a physician or nurse practitioner of the
46 receiving hospital shall examine the patient and shall not admit the
47 patient unless he or she determines that the patient has a mental
48 illness for which immediate inpatient care and treatment in a hospital
49 is appropriate and which is likely to result in serious harm to himself
50 or herself or others. If the patient is admitted, the need for hospital-
51 ization shall be confirmed by another staff physician or nurse practi-
52 tioner within twenty-four hours. An application pursuant to this subdi-
53 vision shall be in writing and shall be filed with the director of such
54 hospital at the time of the patient's reception, together with a state-
55 ment in a form prescribed by the commissioner giving such information as
56 he or she may deem appropriate, including a statement of the efforts

1 made by the director of community services to locate a designated exam-
2 ining physician or nurse practitioner prior to making an application
3 pursuant to this subdivision.

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

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

15 1. substantial risk of physical harm to himself or herself as mani-
16 fested by threats of or attempts at suicide or serious bodily harm or
17 other conduct demonstrating that he or she is dangerous to himself[~~7~~] or
18 herself; or

19 2. a substantial risk of physical harm to other persons as manifested
20 by homicidal or other violent behavior by which others are placed in
21 reasonable fear [~~or~~] of serious physical harm.

22 The need for immediate hospitalization shall be confirmed by a staff
23 physician or nurse practitioner of the hospital prior to admission.
24 Within seventy-two hours, excluding Sunday and holidays, after such
25 admission, if such patient is to be retained for care and treatment
26 beyond such time and he or she does not agree to remain in such hospital
27 as a voluntary patient, the certificate of another examining physician
28 or nurse practitioner who is a member of the psychiatric staff of the
29 hospital that the patient is in need of involuntary care and treatment
30 shall be filed with the hospital. From the time of his or her admission
31 under this section the retention of such patient for care and treatment
32 shall be subject to the provisions for notice, hearing, review, and
33 judicial approval of continued retention or transfer and continued
34 retention provided by this article for the admission and retention of
35 involuntary patients, provided that, for the purposes of such
36 provisions, the date of admission of the patient shall be deemed to be
37 the date when the patient was first received in the hospital under this
38 section.

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

42 (a) The director of any hospital maintaining adequate staff and facil-
43 ities for the observation, examination, care, and treatment of persons
44 alleged to be mentally ill and approved by the commissioner to receive
45 and retain patients pursuant to this section may receive and retain
46 therein as a patient for a period of fifteen days any person alleged to
47 have a mental illness for which immediate observation, care, and treat-
48 ment in a hospital is appropriate and which is likely to result in seri-
49 ous harm to himself or herself or others. "Likelihood to result in seri-
50 ous harm" as used in this article shall mean:

51 1. substantial risk of physical harm to himself or herself as mani-
52 fested by threats of or attempts at suicide or serious bodily harm or
53 other conduct demonstrating that he or she is dangerous to himself[~~7~~] or
54 herself; or

1 2. a substantial risk of physical harm to other persons as manifested
2 by homicidal or other violent behavior by which others are placed in
3 reasonable fear of serious physical harm.

4 The director shall cause to be entered upon the hospital records the
5 name of the person or persons, if any, who have brought such person to
6 the hospital and the details of the circumstances leading to the hospi-
7 talization of such person.

8 The director shall admit such person pursuant to the provisions of
9 this section only if a staff physician or psychiatric nurse practitioner
10 of the hospital upon examination of such person finds that such person
11 qualifies under the requirements of this section. Such person shall not
12 be retained for a period of more than forty-eight hours unless within
13 such period such finding is confirmed after examination by another
14 physician or psychiatric nurse practitioner who shall be a member of the
15 psychiatric staff of the hospital. Such person shall be served, at the
16 time of admission, with written notice of his or her status and rights
17 as a patient under this section. Such notice shall contain the patient's
18 name. At the same time, such notice shall also be given to the mental
19 hygiene legal service and personally or by mail to such person or
20 persons, not to exceed three in number, as may be designated in writing
21 to receive such notice by the person alleged to be mentally ill. If at
22 any time after admission, the patient, any relative, friend, or the
23 mental hygiene legal service gives notice to the director in writing of
24 request for court hearing on the question of need for immediate observa-
25 tion, care, and treatment, a hearing shall be held as herein provided as
26 soon as practicable but in any event not more than five days after such
27 request is received, except that the commencement of such hearing may be
28 adjourned at the request of the patient. It shall be the duty of the
29 director upon receiving notice of such request for hearing to forward
30 forthwith a copy of such notice with a record of the patient to the
31 supreme court or county court in the county where such hospital is
32 located. A copy of such notice and record shall also be given to the
33 mental hygiene legal service. The court which receives such notice shall
34 fix the date of such hearing and cause the patient or other person
35 requesting the hearing, the director, the mental hygiene legal service
36 and such other persons as the court may determine to be advised of such
37 date. Upon such date, or upon such other date to which the proceeding
38 may be adjourned, the court shall hear testimony and examine the person
39 alleged to be mentally ill, if it be deemed advisable in or out of
40 court, and shall render a decision in writing that there is reasonable
41 cause to believe that the patient has a mental illness for which immedi-
42 ate inpatient care and treatment in a hospital is appropriate and which
43 is likely to result in serious harm to himself or herself or others. If
44 it be determined that there is such reasonable cause, the court shall
45 forthwith issue an order authorizing the retention of such patient for
46 any such purpose or purposes in the hospital for a period not to exceed
47 fifteen days from the date of admission. Any such order entered by the
48 court shall not be deemed to be an adjudication that the patient is
49 mentally ill, but only a determination that there is reasonable cause to
50 retain the patient for the purposes of this section.

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

55 (b) The director shall cause examination of such persons not
56 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

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

9 § 11. Section 9.55 of the mental hygiene law, as amended by chapter
10 847 of the laws of 1987, is amended to read as follows:

11 § 9.55 Emergency admissions for immediate observation, care, and treat-
12 ment; powers of qualified psychiatrists and qualified psychi-
13 atric nurse practitioners.

14 A qualified psychiatrist or qualified psychiatric nurse practitioner
15 shall have the power to direct the removal of any person, whose treat-
16 ment for a mental illness he or she is either supervising or providing
17 in a facility licensed or operated by the office of mental health which
18 does not have an inpatient psychiatric service, to a hospital approved
19 by the commissioner pursuant to subdivision (a) of section 9.39 of this
20 article, if he or she determines upon examination of such person that
21 such person appears to have a mental illness for which immediate obser-
22 vation, care and treatment in a hospital is appropriate and which is
23 likely to result in serious harm to himself or herself or others, as
24 defined in section 9.39 of this article. Upon the request of such quali-
25 fied psychiatrist or qualified psychiatric nurse practitioner, peace
26 officers, when acting pursuant to their special duties, or police offi-
27 cers, who are members of an authorized police department or force or of
28 a sheriff's department shall take into custody and transport any such
29 person. Upon the request of a qualified psychiatrist or qualified
30 psychiatric nurse practitioner, an ambulance service, as defined by
31 subdivision two of section three thousand one of the public health law,
32 is authorized to transport any such person. Such person may then be
33 admitted in accordance with the provisions of section 9.39 of this arti-
34 cle.

35 § 12. Section 9.57 of the mental hygiene law, as amended by chapter
36 598 of the laws of 1994, is amended to read as follows:

37 § 9.57 Emergency admissions for immediate observation, care and treat-
38 ment; powers of emergency room physicians and psychiatric
39 nurse practitioners.

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

1 to their special duties, or police officers, who are members of an
2 authorized police department or force or of a sheriff's department to
3 take into custody and transport any such person. Upon the request of an
4 emergency room physician or psychiatric nurse practitioner, or the
5 director of the program or hospital, or the director's designee, an
6 ambulance service, as defined by subdivision two of section three thou-
7 sand one of the public health law, is authorized to take into custody
8 and transport any such person. Such person may then be admitted to a
9 hospital in accordance with the provisions of section 9.39 of this arti-
10 cle or to a comprehensive psychiatric emergency program in accordance
11 with the provisions of section 9.40 of this article.

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

14 § 9.57 Emergency admissions for immediate observation, care and treat-
15 ment; powers of emergency room physicians and psychiatric
16 nurse practitioners.

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

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

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

49 § 15. Subparagraph (iii) of paragraph 4 of subdivision (c), subpara-
50 graph (v) of paragraph 1 and paragraphs 3 and 4 of subdivision (e),
51 paragraphs 1, 2, 3 and 4 of subdivision (h), subdivision (i), paragraph
52 2 of subdivision (k), and subdivision (n) of section 9.60 of the mental
53 hygiene law, subparagraph (iii) of paragraph 4 of subdivision (c) and
54 paragraph 2 of subdivision (h) as amended by section 2 of subpart H of
55 part UU of chapter 56 of the laws of 2022, subparagraph (v) of paragraph
56 1 and paragraph 3 of subdivision (e), paragraphs 1, 3 and 4 of subdivi-

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

6 (iii) notwithstanding subparagraphs (i) and (ii) of this paragraph,
7 resulted in the issuance of a court order for assisted outpatient treat-
8 ment which has expired within the last six months, and since the expira-
9 tion of the order, the person has experienced a substantial increase in
10 symptoms of mental illness and such symptoms substantially interferes
11 with or limits one or more major life activities as determined by a
12 director of community services who previously was required to coordinate
13 and monitor the care of any individual who was subject to such expired
14 assisted outpatient treatment order. The applicable director of communi-
15 ty services or their designee shall arrange for the individual to be
16 evaluated by a physician or psychiatric nurse practitioner. If the
17 physician or psychiatric nurse practitioner determines court ordered
18 services are clinically necessary and the least restrictive option, the
19 director of community services may initiate a court proceeding[~~+~~]; and

20 (v) a qualified psychiatrist or qualified psychiatric nurse practi-
21 tioner who is either supervising the treatment of or treating the
22 subject of the petition for a mental illness; or

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

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

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

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

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

1 should be authorized, shall describe the beneficial and detrimental
2 physical and mental effects of such medication, and shall recommend
3 whether such medication should be self-administered or administered by
4 authorized personnel.

5 (i) Written treatment plan. (1) The court shall not order assisted
6 outpatient treatment unless a physician or psychiatric nurse practition-
7 er appointed by the appropriate director, in consultation with such
8 director, develops and provides to the court a proposed written treat-
9 ment plan. The written treatment plan shall include case management
10 services or assertive community treatment team services to provide care
11 coordination. The written treatment plan also shall include all catego-
12 ries of services, as set forth in paragraph one of subdivision (a) of
13 this section, which such physician or psychiatric nurse practitioner
14 recommends that the subject of the petition receive. All service provid-
15 ers shall be notified regarding their inclusion in the written treatment
16 plan. If the written treatment plan includes medication, it shall state
17 whether such medication should be self-administered or administered by
18 authorized personnel, and shall specify type and dosage range of medica-
19 tion most likely to provide maximum benefit for the subject. If the
20 written treatment plan includes alcohol or substance abuse counseling
21 and treatment, such plan may include a provision requiring relevant
22 testing for either alcohol or illegal substances provided the physi-
23 cian's or psychiatric nurse practitioner's clinical basis for recommend-
24 ing such plan provides sufficient facts for the court to find (i) that
25 such person has a history of alcohol or substance abuse that is clin-
26 ically related to the mental illness; and (ii) that such testing is
27 necessary to prevent a relapse or deterioration which would be likely to
28 result in serious harm to the person or others. If a director is the
29 petitioner, the written treatment plan shall be provided to the court no
30 later than the date of the hearing on the petition. If a person other
31 than a director is the petitioner, such plan shall be provided to the
32 court no later than the date set by the court pursuant to paragraph
33 three of subdivision (j) of this section.

34 (2) The physician or psychiatric nurse practitioner appointed to
35 develop the written treatment plan shall provide the following persons
36 with an opportunity to actively participate in the development of such
37 plan: the subject of the petition; the treating physician or psychiatric
38 nurse practitioner, if any; and upon the request of the subject of the
39 petition, an individual significant to the subject including any rela-
40 tive, close friend or individual otherwise concerned with the welfare of
41 the subject. If the subject of the petition has executed a health care
42 proxy, the appointed physician or psychiatric nurse practitioner shall
43 consider any directions included in such proxy in developing the written
44 treatment plan.

45 (3) The court shall not order assisted outpatient treatment unless a
46 physician or psychiatric nurse practitioner appearing on behalf of a
47 director testifies to explain the written proposed treatment plan. Such
48 physician or psychiatric nurse practitioner shall state the categories
49 of assisted outpatient treatment recommended, the rationale for each
50 such category, facts which establish that such treatment is the least
51 restrictive alternative, and, if the recommended assisted outpatient
52 treatment plan includes medication, such physician or psychiatric nurse
53 practitioner shall state the types or classes of medication recommended,
54 the beneficial and detrimental physical and mental effects of such medi-
55 cation, and whether such medication should be self-administered or
56 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[~~r~~] 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

1 officers, acting pursuant to their special duties, or police officers
2 who are members of an authorized police department or force or of a
3 sheriff's department, to take the assisted outpatient into custody and
4 transport him or her to the hospital operating the assisted outpatient
5 treatment program or to any hospital authorized by the director of
6 community services to receive such persons. Such law enforcement offi-
7 cials shall carry out such directive. Upon the request of such physician
8 or psychiatric nurse practitioner, the appropriate director, the direc-
9 tor's designee, or any physician or psychiatric nurse practitioner
10 designated pursuant to section 9.37 of this article, an ambulance
11 service, as defined by subdivision two of section three thousand one of
12 the public health law, or an approved mobile crisis outreach team, as
13 defined in section 9.58 of this article, shall be authorized to take
14 into custody and transport any such person to the hospital operating the
15 assisted outpatient treatment program, or to any other hospital author-
16 ized by the appropriate director of community services to receive such
17 persons. Any director of community services, or the director's designee,
18 shall be authorized to direct the removal of an assisted outpatient who
19 is present in his or her county to an appropriate hospital, in accord-
20 ance with the provisions of this subdivision, based upon a determination
21 of the appropriate director of community services directing the removal
22 of such assisted outpatient pursuant to this subdivision. Such person
23 may be retained for observation, care, and treatment and further exam-
24 ination in the hospital for up to seventy-two hours to permit a physi-
25 cian or psychiatric nurse practitioner to determine whether such person
26 has a mental illness and is in need of involuntary care and treatment in
27 a hospital pursuant to the provisions of this article. Any continued
28 involuntary retention in such hospital beyond the initial seventy-two
29 hour period shall be in accordance with the provisions of this article
30 relating to the involuntary admission and retention of a person. If at
31 any time during the seventy-two hour period the person is determined not
32 to meet the involuntary admission and retention provisions of this arti-
33 cle, and does not agree to stay in the hospital as a voluntary or
34 informal patient, he or she must be released. Failure to comply with an
35 order of assisted outpatient treatment shall not be grounds for involun-
36 tary civil commitment or a finding of contempt of court.

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

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

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

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

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

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

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

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

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

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

54 e. subparagraph (iii) of paragraph 4 of subdivision (c), subparagraph
55 (v) of paragraph 1 and paragraphs 3 and 4 of subdivision (e), paragraphs
56 1, 2, 3 and 4 of subdivision (h), subdivision (i), paragraph 2 of subdi-

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