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

(a) As used in this article:

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

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

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

4. "Emergency services" means immediate physical examination, assessment, care and treatment of an incapacitated person for the purpose of confirming that the person is, and continues to be, incapacitated by alcohol and/or substances to the degree that there is a likelihood to result in harm to the person or others.

5. "Treatment facility" means a facility designated by the commissioner which may only include a general hospital as defined in article twenty-eight of the public health law, or a medically managed or medically supervised withdrawal, inpatient rehabilitation, or residential stabilization treatment program that has been certified by the commissioner to have appropriate medical staff available on-site at all times to provide emergency services and continued evaluation of capacity of individuals retained under this section or a crisis stabilization center licensed pursuant to article 36.01 of this chapter.

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

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

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

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

5. A person who comes voluntarily or is brought with his or her objection to a treatment facility shall be examined as soon as possible but not more than twelve hours after arriving at such treatment facility by an examining physician. If such examining physician determines that such person is incapacitated by alcohol and/or substances to the degree that there is a likelihood to result in harm to the person or others, he or she may be retained to receive emergency services and shall be regularly reevaluated to confirm continued incapacity by alcohol and/or substances to the degree that there is a likelihood to result in harm to the person or others. If the examining physician determines at any time that such person is not incapacitated by alcohol and/or substances to the degree that there is a likelihood to result in harm to the person or others, he or she must be released. Notwithstanding any other law, in no event may such person be retained against his or her objection beyond whichever is the shorter of the following: (i) the time that he or she is no longer incapacitated by alcohol and/or substances to the degree that there is a likelihood to result in harm to the person or others or (ii) a period longer than seventy-two hours.

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

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

(c) Discharge procedures. 1. The discharge procedure process shall begin as soon as the patient is admitted to the treatment facility and shall be considered a part of the treatment planning process. The

discharge plan shall be developed in collaboration with the patient and any significant other(s) the patient chooses to involve. If the patient is a minor, the discharge plan must also be developed in consultation with his or her parent or guardian, unless the minor is being treated without parental consent as authorized by section 22.11 of this chapter.

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

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

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

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

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

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

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

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