§ 29.11 Commissioner's power to transfer and discharge patients.

(a) Subject to his regulations, the commissioner may order or approve the transfer of a patient from one facility to another appropriate facility.

(b) A voluntary or informal patient may be transferred only with his consent.

(c) In the case of a voluntary patient under eighteen years of age, transfer may be made only upon the request or consent of his parent, legal guardian, or next of kin unless such patient was admitted on his own application.

(d) No transfer shall be made to any facility other than a department facility without the consent of the facility to which the patient is transferred.

(e) A patient transferred to a department facility pursuant to section 67.07 of this chapter may be detained for a period not to exceed three days, excluding Sunday and holidays, pursuant to the laws of the sending state, and then shall be formally admitted under the laws of this state or discharged.

(f) Upon a determination that overcrowding exists in any facility because of the scarcity of space or the destruction of existing space or that the revocation or suspension of an operating certificate pursuant to section 13.15 of this chapter requires the removal of patients, the commissioner shall arrange for the interim and emergency accommodation of patients.

(g) The commissioner, by order, may discharge any patient in his judgment improperly detained in any facility.

(h) Notwithstanding any other provision of law, no person committed to the custody of the commissioner of mental hygiene pursuant to article seven hundred thirty of the criminal procedure law, or continuously thereafter retained in such custody, shall be discharged, released on condition or placed in any less secure facility or on any less restrictive status, including, but not limited to vacations, furloughs and temporary passes, unless the commissioner or his or her designee, which may include the director of an appropriate institution as defined in section 730.10 of the criminal procedure law, shall deliver written notice, at least four days, excluding Saturdays, Sundays and holidays, in advance of the change of such committed person's facility or status,

or in the case of a person committed pursuant to a final order of observation written notice upon discharge of such committed person, to all of the following:

1. the district attorney of the county from which such person was committed;

2. the superintendent of state police;

3. the sheriff of the county where the facility is located;

4. the police department having jurisdiction of the area where the facility is located;

5. any person who may reasonably be expected to be the victim of any assault or any violent felony offense, as defined in the penal law, or any offense listed in section 530.11 of the criminal procedure law which would be carried out by the committed person; provided that the person who reasonably may be expected to be a victim does not need to be a member of the same family or household as the committed person;

6. the attorney for the committed person, where the attorney shall so request; and

7. any other person the court may designate.

Said notice may be given by any means reasonably calculated to give prompt actual notice. The notice required by this subdivision shall also be given immediately upon the departure of such committed person from the actual custody of the commissioner or an appropriate institution, without proper authorization. Nothing in this subdivision shall be construed to impair any other right or duty regarding any notice or hearing contained in any other provision of law.

(i) If at the time the commissioner orders the transfer of an involuntary patient from a hospital to a hospital operated by the state, there is pending a request for a hearing or a decision by a court on the question of need for involuntary care and treatment, the commissioner

may either (i) stay his order of transfer until completion of the hearing, or (ii) direct the transfer to take place and the director of the state facility shall be substituted in all legal proceedings regarding continued retention of the patient.

(j) When an order of transfer is issued by the commissioner, the receiving facility may retain the patient for the balance of the period authorized in article nine of this chapter for the admission or retention of the patient, based on the date of admission to the facility from which the patient was transferred.