§ 29.15 Discharge and conditional release of patients to the community.

(a) A patient may be discharged or conditionally released to the community by the director of a department facility, if, in the opinion of staff familiar with the patient's case history, such patient does not require active in-patient care and treatment.

(b) A patient may be conditionally released, rather than discharged, when in the opinion of staff familiar with the patient's case history, the clinical needs of such patient warrant this more restrictive placement, provided, however, that

1. an involuntary patient may be conditionally released only for the remainder of the authorized retention period; and

2. except as provided in subdivision (d) of this section, a voluntary patient may be conditionally released only for a twelve month period, provided however that (i) a voluntary patient under sixteen years of age may be conditionally released only after consultation with the parent, legal guardian, or next-of-kin of such patient; (ii) a voluntary patient over sixteen and under eighteen years of age may be conditionally released only with his consent or with the consent of the parent, legal guardian, or next-of-kin of such patient; (iii) a voluntary patient eighteen years of age or older may be conditionally released only with his consent.

(c) The director of a department facility from which any patient is conditionally released shall cause all such patients to be informed once during each one hundred twenty days of conditional release of their status and rights, including their right to avail themselves of the facilities of the mental hygiene legal service. At the time of such periodic notification, the written consent of a patient to his continued stay on conditional release status shall be obtained and a copy thereof shall be given to the mental hygiene legal service.

(d) 1. No voluntary patient who has been conditionally released shall be continued on such status for a period beyond twelve months from the date of commencement of such status or beyond twelve months from the effective date of this statute, whichever is later, unless the suitability of such patient to remain on such status and his willingness to so remain have been reviewed. The director shall review the

suitability of such patient to remain in such status, and the mental hygiene legal service shall review the willingness of such patient to remain in such status. Notice of the determination of the patient's suitability made by the director shall be given to the mental hygiene legal service. If the mental hygiene legal service finds that there is any ground to doubt the director's determination of the suitability of such patient to remain on such status, or the willingness of the patient to so remain, it shall make an application, upon notice to the patient and the director of the facility for a court order determining those questions. In any such proceeding, the patient or someone on his behalf or the mental hygiene legal service may request a hearing. If the mental hygiene legal service finds no grounds to doubt the determination of the director as to the suitability or the willingness of the patient to continue on conditional release status, it shall so certify and the patient may be continued on such status. A copy of such certification of review shall be filed in the patient's record.

2. If an application for a court order has been made, the court, in determining the proceeding, may approve the continued conditional release of the patient or, if the court finds that the patient is not suitable or willing to continue on conditional release status, it may order the discharge of such patient.

3. Prior to the termination of twelve months from the date of the certification by the mental hygiene legal service of such first review or, if an application for a court order has been made, from the date of the first order and, thereafter, prior to the termination of twelve months from any subsequent certification or subsequent order, as the case may be, the director and the mental hygiene legal service shall conduct another review of the patient's suitability and willingness to remain on conditional release status, as set forth in the foregoing subdivisions.

(e) * 1. In the case of an involuntary patient on conditional release, the director may terminate the conditional release and order the patient to return to the facility at any time during the period for which retention was authorized, if, in the director's judgment, the patient needs in-patient care and treatment and the conditional release is no

longer appropriate; provided, however, that in any such case, the director shall cause written notice of such patient's return to be given to the mental hygiene legal service. The director shall cause the patient to be retained for observation, care and treatment and further examination in a hospital for up to seventy-two hours if a physician on the staff of the hospital determines that such person may have a mental illness and may be in need of involuntary care and treatment in a hospital pursuant to the provisions of article nine of this chapter. Any continued retention in such hospital beyond the initial seventy-two hour period shall be in accordance with the provisions of this chapter 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 chapter, and does not agree to stay in the hospital as a voluntary or informal patient, he or she must be released, either conditionally or unconditionally.

* NB Effective until June 30, 2027

* 1. In the case of an involuntary patient on conditional release, the director may terminate the conditional release and order the patient to return to the facility at any time during the period for which retention was authorized, if, in the director's judgment, the patient needs in-patient care and treatment and the conditional release is no longer appropriate provided, however, that in any such case, the director shall cause written notice of such patient's return to be given to the mental hygiene legal service. If, at any time prior to the expiration of thirty days from the date of return to the facility, he or any relative or friend or the mental hygiene legal service gives notice in writing to the director of request for hearing on the question of the suitability of such patient's return to the facility, a hearing shall be held pursuant to the provisions of this chapter relating to the involuntary admission of a person.

* NB Effective June 30, 2027

2. In the case of a voluntary patient on conditional release, the director may terminate the conditional release and order the patient to return to the facility at any time, if, in the judgment of the director, the patient needs in-patient care and treatment and the conditional

release is no longer appropriate, provided, however, that if such patient does not consent to return to the facility, he shall not be returned to the facility, except in accordance with the provisions of this chapter and the regulations of the commissioner for the involuntary admission of a person.

(f) The discharge or conditional release of all clients at developmental centers, patients at psychiatric centers or patients at psychiatric inpatient services subject to licensure by the office of mental health shall be in accordance with a written service plan prepared by staff familiar with the case history of the client or patient to be discharged or conditionally released and in cooperation with appropriate social services officials and directors of local governmental units. In causing such plan to be prepared, the director of the facility shall take steps to assure that the following persons are interviewed, provided an opportunity to actively participate in the development of such plan and advised of whatever services might be available to the patient through the mental hygiene legal service: the patient to be discharged or conditionally released; with the consent of the patient, a representative of a community provider of mental health services, including a provider of case management services, that maintains the patient on its caseload, if applicable, and local programs that provide peer supports and services, if available; an authorized representative of the patient, to include the parent or parents if the patient is a minor, unless such minor sixteen years of age or older objects to the participation of the parent or parents and there has been a clinical determination by a physician that the involvement of the parent or parents is not clinically appropriate and such determination is documented in the clinical record and there is no plan to discharge or release the minor to the home of such parent or parents; and upon the request of the patient sixteen years of age or older, an individual significant to the patient including any relative, close friend or individual otherwise concerned with the welfare of the patient, other than an employee of the facility. With the consent of the patient and consistent with section 33.13 of this chapter, such service plan may be provided to a parent or parents, any relative, close friend, or individual otherwise concerned with the welfare of the patient.

(g) A written service plan prepared pursuant to this section shall

include, but shall not be limited to, the following:

1. a statement of the patient's need, if any, for supervision, medication, aftercare services, and assistance in finding employment following discharge or conditional release, and

2. a specific recommendation of the type of residence in which the patient is to live and a listing of the services available to the patient in such residence.

3. A listing of organizations, facilities, including those of the department, and individuals who are available to provide services in accordance with the identified needs of the patient.

4. The notification of the appropriate school district and the committee on special education regarding the proposed discharge or release of a patient under twenty-one years of age, consistent with all applicable federal and state laws relating to confidentiality of such information.

5. An evaluation of the patient's need and potential eligibility for public benefits following discharge or conditional release, including public assistance, medicaid, and supplemental security income.

6. Material providing information related to extreme risk protection orders, pursuant to article sixty-three-A of the civil practice law and rules. Such information may be provided to the patient or, upon consent of the patient, to an authorized representative who has actively participated in the patient's treatment plan. Such information may only be provided if the director of the facility and such facility's clinical staff who worked directly with the patient determine through an evaluation and assessment, that there is the presence of a mental health diagnosis or symptoms of a mental illness exhibited by the patient, which indicates the patient may be at substantial risk of physical harm to himself or herself, or has made threats of or attempts at suicide. Such determination and the basis for it shall be included in the written clinical record.

7. For patients at psychiatric centers or psychiatric inpatient services subject to licensure by the office of mental health, a screening to determine the patient's suicide, violence, and substance use risk to be incorporated into safety planning for the patient's discharge plan. Individuals with an elevated risk of self-harm or suicide shall have an individualized community suicide safety plan completed before discharge and such plan shall be provided to the patient's aftercare providers.

An inpatient facility operated or licensed by the office of mental health shall provide reasonable and appropriate assistance to the patient, in cooperation with local social services districts, in applying for benefits identified in the written service plan pursuant to paragraph five of this subdivision, prior to discharge or conditional release.

(g-1) For patients at psychiatric centers or psychiatric inpatient services subject to licensure by the office, it shall also be the responsibility of the director of any department facility from which a client or patient has been discharged or conditionally released, in collaboration, when appropriate, with appropriate social services officials and directors of local governmental units, and consistent with section 33.13 of this chapter:

1. to provide a discharge summary to the service provider or providers responsible for the patient's care after discharge under the service plan as described in subdivisions (f) and (g) of this section. Such discharge summary shall include relevant clinical information and post-discharge treatment recommendations in accordance with regulations promulgated by the commissioner;

2. to obtain contact information of the patient, if possible, and confirm a follow-up appointment has been scheduled for the patient with the appropriate service provider or providers to occur within seven days of discharge. If, after making diligent efforts, the facility cannot identify an aftercare provider with an available appointment within seven days, the facility shall document its efforts and schedule the

appointment for as soon as possible thereafter. Individuals who are leaving the facility against medical advice or who decline aftercare services shall be provided with information about available treatment options, and have an appointment scheduled whenever possible; and

3. for a patient with an elevated risk of violence, to work collaboratively with the director of community service of the county where the patient resides, if available, such patient's outpatient treatment providers, residential providers, if applicable, and school, if applicable, to incorporate strategies to address violence risk factors and access to weapons into their overall discharge plan.

(h) It shall also be the responsibility of the director of any department facility from which a client or patient has been discharged or conditionally released, in collaboration, when appropriate, with appropriate social services officials and directors of local governmental units, to prepare, to cause to be implemented, and to monitor a comprehensive program designed:

1. to determine whether the residence in which such client or patient is living, is adequate and appropriate for the needs of such patient or client;

2. to verify that such patient or client is receiving the services specified in such patient's or client's written service plan; and

3. to recommend, and to take steps to assure the provision of, any additional services.

(i) 1. No patient about to be discharged or conditionally released from a department facility or an inpatient facility operated or licensed by the office of mental health shall be directly referred to any facility subject to licensure, certification or approval by any state agency or department, unless it has been determined that such facility has a current and valid license, certificate or approval. In addition, no patient about to be discharged or conditionally released from a department facility shall be directly referred to any residential accommodation not subject to licensure, certification or approval by any state agency or department unless it has been determined, after

consultation with appropriate local agencies, that such residential accommodation complies with all appropriate local zoning, building, fire and safety codes, ordinances and regulations.

2. (I) A patient about to be discharged or conditionally released from a department facility licensed or operated by the office for people with developmental disabilities or from an inpatient facility operated or licensed by the office of alcoholism and substance abuse services or the office of mental health to an adult home or residence for adults, as defined in section two of the social services law, shall be referred only to such home or residence that is consistent with that patient's needs and that operates pursuant to section four hundred sixty of the social services law, provided further that: (A) for a department facility licensed or operated by the office for people with developmental disabilities or for an inpatient facility operated by the office of alcoholism and substance abuse services or the office of mental health, the facility director retains authority to determine whether the home, program or residence is consistent with that patient's needs and (B) such referral shall be made to the patient's home county whenever possible or appropriate.

(II) No patient about to be discharged or conditionally released from a department facility licensed or operated by the office for people with developmental disabilities or from an inpatient facility operated or licensed by the office of alcoholism and substance abuse services or the office of mental health shall be referred to any adult home or residence for adults, as defined in section two of the social services law, which has received an official written notice from the department of health of: (A) the proposed revocation, suspension or denial of its operating certificate; (B) the limitation of its operating certificate with respect to new admissions; (C) the issuance of a department of health order or commissioner of health's order or the seeking of equitable relief pursuant to section four hundred sixty-d of the social services law; (D) the proposed assessment of civil penalties for violations of the provisions of subparagraph two of paragraph (b) of subdivision seven of section four hundred sixty-d of the social services law; or placement on the "do not refer list" pursuant to subdivision fifteen of section four hundred sixty-d of the social services law. Referrals may resume

when such enforcement actions are resolved.

(III) A community provider of mental hygiene services, including a provider of case management services, which serves residents of any home or residence in which the department of social services has acted pursuant to subdivision nine of section four hundred sixty-one-c of the social services law, shall assist the operator of such home or residence or the department of social services in efforts to secure an appropriate alternate placement of a resident.

(IV) The commissioner shall promptly refer to the department of social services any serious complaint received about the care provided or health and safety conditions in an adult home or residence for adults. The commissioner may as appropriate assist the department of social services in the investigation and resolution of such complaints as well as in the investigation and resolution of any such complaint which is initially received by the department of social services.

(j) The department shall submit to the legislature and the governor by the first day of January, nineteen hundred seventy-eight, a comprehensive plan describing those reasonable steps taken or to be taken by the department to locate former patients who had been in a department facility for a continuous period for two or more years prior to their discharge or conditional release and who had been discharged or conditionally released on or after the thirty-first day of December, nineteen hundred seventy without the benefit of a written service plan. In each case in which the person has been located, the department, in cooperation with appropriate social services officials and directors of community services, shall make every effort to develop a written service plan for such person and shall assume the same responsibilities with respect to such person as the department is required to assume with respect to a person who was discharged or conditionally released from a department facility pursuant to a written service plan.

(k) No patient shall be required, as a condition precedent to his discharge, to agree to the terms of a written service plan. If after the advisability of following the program proposed in the written service plan has been explained to the patient who has been discharged or who is to be discharged, such patient expresses his objection to such program or any part thereof, a notation of such objection shall be made in the patient's records.

(l) Nothing in this section shall be construed to prohibit, limit, or restrict the obligation of the director of a department facility to make necessary expenditures for the board and family care of patients subject to the approval of the commissioner, provided that no such expenditure shall be made with respect to any patient who is receiving public assistance and care under the social services law.

(m) It shall be the responsibility of the chief administrator of any facility providing inpatient services subject to licensure by the office of mental health to notify, when appropriate, the local social services commissioner and appropriate state and local mental health representatives when an inpatient is about to be discharged or conditionally released and to provide to such officials the written service plan developed for such inpatient as required under subdivision (f) of this section.

(n) It shall be the duty of directors of local social services districts and local governmental units to cooperate with facilities licensed or operated by an office of the department in the preparation and implementation of comprehensive written services plans as required by this section.

(o) Service plans and discharge summaries for individuals with complex needs at psychiatric centers or psychiatric inpatient services subject to licensure by the office. For purposes of this subdivision, an "individual or patient with complex needs" shall be defined by regulations of the commissioner. The facility shall comply with all other provisions of this section, in addition to the following:

1. service plans and discharge summaries shall be provided in writing to the patient;

2. referrals to services described in service plans shall be facilitated at the time of discharge;

3. a verbal clinical sign-out shall be provided on or before the day of discharge to the receiving outpatient treatment program and if applicable, the licensed residential program;

4. the patient's discharge plan shall be communicated to the

designated post-discharge care manager, if applicable, to facilitate continuity of care and service coordination; and

5. referrals for care management services or community-based services and peer based programs shall be facilitated, as clinically appropriate and in accordance with regulations promulgated by the commissioner.