§ 9.39 Emergency admissions for immediate observation, care, and treatment.

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

1. substantial risk of physical harm to themself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that they are dangerous to themself, or

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

3. a substantial risk of physical harm to the person due to an inability or refusal, as a result of their mental illness, to provide for their own essential needs such as food, clothing, necessary medical care, personal safety, or shelter.

The director shall cause to be entered upon the hospital records the name of the person or persons, if any, who have brought such person to the hospital and the details of the circumstances leading to the hospitalization of such person. The director shall, in accordance with section 33.13 of this chapter, upon admission of a person under this section, ensure that reasonable efforts are made to identify and promptly notify any community provider of mental health services that maintains such person on its caseload that such person has been received for examination under this section.

The director shall admit such person pursuant to the provisions of this section only if a staff physician of the hospital upon examination

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

court shall not be deemed to be an adjudication that the patient is mentally ill, but only a determination that there is reasonable cause to retain the patient for the purposes of this section.

(a-1) 1. If a patient admitted under this section is discharged at any time before such patient has been admitted to a psychiatric center or inpatient psychiatric service subject to licensure by the office of mental health, the facility shall:

(i) advise such patient of clinically appropriate follow up services; and

(ii) for individuals with complex needs, as defined by the regulations of the office:

(A) for individuals in care management programs, coordinate discharge planning with such care management program; and

(B) provide referrals, if clinically appropriate and available, for care management services, community-based services, residential services, or peerbased programs.

2. Discharges pursuant to this subdivision shall comply with discharge obligations under article twenty-eight of the public health law and the regulations of the department of health, as applicable.

(b) Within fifteen days of arrival at the hospital, if a determination is made that the person is not in need of involuntary care and treatment, he shall be discharged unless he agrees to remain as a voluntary or informal patient. If he is in need of involuntary care and treatment and does not agree to remain as a voluntary or informal patient, he may be retained beyond such fifteen day period only by admission to such hospital or another appropriate hospital pursuant to the provisions governing involuntary admission on application supported by medical certification and subject to the provisions for notice, hearing, review, and judicial approval of retention or transfer and retention governing such admissions, provided that, for the purposes of such provisions, the date of admission of the patient shall be deemed to be the date when the patient was first received under this section. If a hearing has been requested pursuant to the provisions of subdivision (a), the filing of an application for involuntary admission on medical certification shall not delay or prevent the holding of the hearing.

(c) If a person is examined and determined to be mentally ill the fact

that such person suffers from alcohol or substance abuse shall not preclude commitment under this section.