

CHAPTER 251

AN ACT to repeal the mental hygiene law, and to enact a recodified mental hygiene law

Became law May 9, 1972, with the approval of the Governor. Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 27 OF THE CONSOLIDATED LAWS

MENTAL HYGIENE LAW

Title A. Organization of department of mental hygiene. (Arts. 1 and 5).

B. Mental health act. (Arts. 7, 9 and 10).

C. Developmental disabilities act.
(Arts. 13 and 15).

D. Alcoholism and substance abuse act. (Arts. 19, 22, and 25)

E. General provisions.

(Arts. 29-33, 36, 41, 43, 45, 61, 67, 71, 75, 79-81, 83, 84 and 91)

TITLE A

ORGANIZATION OF DEPARTMENT OF MENTAL HYGIENE

Article 1 Short title and definitions (§§ 1.01-1.03).

5 Department of mental hygiene (§§ 5.01-5.09).

TITLE B

MENTAL HEALTH ACT

Article 7 Office of mental health (§§ 7.01-7.49).

9 Hospitalization of persons with a mental illness
(§§ 9.01-9.64).

10 Sex offenders requiring civil commitment or supervision
(§§ 10.01-10.17).

TITLE C

DEVELOPMENTAL DISABILITIES ACT

Article 13 Office for people with developmental disabilities (§§ 13.01-13.45).

15 Admission of people with developmental disabilities to schools
(§§ 15.01-15.37).

16 Regulation and quality of services (§§ 16.00-16.37).

TITLE D

ALCOHOLISM AND SUBSTANCE ABUSE ACT

- Article 19 Office of alcoholism and substance abuse (§§ 19.01-19.45).
22 Chemical dependence programs, treatment facilities, and services (§§ 22.01-22.11).
25 Funding for services of the office of alcoholism and substance abuse services (§§ 25.01-25.18).
26 Funding of chemical dependence services and compulsive gambling services (§ 26.00).

TITLE E

GENERAL PROVISIONS

- Article 29 General provisions relating to in-patient facilities (§§ 29.01-29.29).
30 Comprehensive care centers for eating disorders (§§ 30.01-30.06).
31 Regulation and quality control of services for the mentally disabled (§§ 31.01-31.37).
32 Regulation and quality control of chemical dependence services and compulsive gambling services (§§ 32.01-32.39).
33 Rights of patients (§§ 33.01-33.28).
36 Addiction and mental health services and supports (§§ 36.01-36.08).
41 Local and unified services (§§ 41.01-41.57).
43 Fees for services (§§ 43.01-43.12).
47 Mental Hygiene legal service (§§ 47.01-47.03).
61 Federal aid (§§ 61.01-61.05).
67 Interstate relations (§§ 67.01-67.09).
71 Acquisition of real property (§ 71.01).
75 Community mental health services and developmental disabilities services companies (§§ 75.01-75.35).
79 Proceedings relative to incompetent veterans and infant wards of the United States veterans' administration (§§ 79.01-79.43).
80 Surrogate decision-making for medical care and treatment (§§ 80.01-80.13).
81 Proceedings for appointment of a guardian for personal needs or property management (§§ 81.01-81.44).

- 82 Supported decision-making (§§ 82.01-82.15).
- 83 Uniform guardianship and protective proceedings jurisdiction act (§§ 83.01-83.45).
- 84 New York achieving a better life experience savings account act (§§ 84.01-84.11).
- 91 Laws repealed; savings clause; time of taking effect (§§ 91.01-91.05).

TITLE A

ORGANIZATION OF DEPARTMENT OF MENTAL HYGIENE

Article 1 Short title and definitions

5 Department of mental hygiene

ARTICLE 1

SHORT TITLE AND DEFINITIONS

Section 1.01 Short title.

1.03 Definitions.

§ 1.01 Short title.

This chapter shall be known and may be cited as the "Mental Hygiene Law".

§ 1.03 Definitions.

When used in this chapter, unless otherwise expressly stated or unless the context otherwise requires:

1. "Department" means the department of mental hygiene of the state of New York. Except as used in article five of this chapter, the term "department" shall hereafter refer to an office of the department created by section 5.01 of this chapter.

2. "Commissioner" means the commissioner of mental health, the commissioner of developmental disabilities and the commissioner of addiction services and supports as used in this chapter. Any power or duty heretofore assigned to the commissioner of mental hygiene or to the department of mental hygiene pursuant to this chapter shall hereafter be assigned to the commissioner of mental health in the case of facilities, programs, or services for individuals with mental illness, to the commissioner of developmental disabilities in the case of facilities, programs, or services for individuals with developmental disabilities, to the commissioner of addiction services and supports in the case of facilities, programs, or addiction disorder services in accordance with the provisions of titles D and E of this chapter.

2-a. Notwithstanding any other section of law or regulation, on and after the effective date of this subdivision, any and all references to the office of alcoholism and substance abuse services and the predecessor agencies to the office of alcoholism and substance abuse services including the division of alcoholism and alcohol abuse and the division of substance abuse services, shall be known as the "office of addiction services and supports." Nothing in this subdivision shall be construed as requiring or prohibiting the further amendment of statutes or regulations to conform to the provisions of this subdivision.

3. "Mental disability" means mental illness, intellectual disability, developmental disability, or an addictive disorder as defined in this section.

4. "Services for persons with a mental disability" means examination, diagnosis, care, treatment, rehabilitation, supports, habilitation or training or as may be more specifically defined in this section.

5. "Provider of services" means an individual, association, corporation, partnership, limited liability company, or public or private agency, other than an agency or department of the state, which provides services for persons with a mental disability. It shall not include any part of a hospital as defined in article twenty-eight of the public health law which is not being operated for the purpose of

providing services for the mentally disabled. No provider of services shall be subject to the regulation or control of the department or one of its offices except as such regulation or control is provided for by other provisions of this chapter.

6. "Facility" means any place in which services for the mentally disabled are provided and includes but is not limited to a psychiatric center, developmental center, institute, clinic, ward, institution, or building, except that in the case of a hospital as defined in article twenty-eight of the public health law it shall mean only a ward, wing, unit, or part thereof which is operated for the purpose of providing services for the mentally disabled. It shall not include a place where the services rendered consist solely of non-residential services for the mentally disabled which are exempt from the requirement for an operating certificate under article sixteen, thirty-one or thirty-two of this chapter, nor shall it include domestic care and comfort to a person in the home.

7. "Department facility" means a facility within one of the offices of the department.

8. "Examining physician" means a physician licensed to practice medicine in the state of New York.

9. "Certified psychologist" means a person who has been certified and registered to practice psychology in the state of New York pursuant to the education law.

* 10. "Hospital" means the in-patient services of a psychiatric center under the jurisdiction of the office of mental health or other psychiatric in-patient facility in the department, a psychiatric in-patient facility maintained by a political subdivision of the state for the care or treatment of the mentally ill, a ward, wing, unit, or other part of a hospital, as defined in article twenty-eight of the public health law, operated as a part of such hospital for the purpose of providing services for the mentally ill pursuant to an operating certificate issued by the commissioner of mental health, a comprehensive psychiatric emergency program which has been issued an operating

certificate by such commissioner, or other facility providing in-patient care or treatment of the mentally ill which has been issued an operating certificate by such commissioner.

* NB Effective until July 1, 2027

* 10. "Hospital" means the in-patient services of a psychiatric center under the jurisdiction of the office of mental health or other psychiatric in-patient facility in the department, a psychiatric in-patient facility maintained by a political subdivision of the state for the care or treatment of the mentally ill, a ward, wing, unit, or other part of a hospital, as defined in article twenty-eight of the public health law, operated as a part of such hospital for the purpose of providing services for the mentally ill pursuant to an operating certificate issued by the commissioner of mental health, or other facility providing in-patient care or treatment of the mentally ill which has been issued an operating certificate by such commissioner.

* NB Effective July 1, 2027

11. "School" means the in-patient service of a developmental center or other residential facility for individuals with developmental disabilities under the jurisdiction of the office for people with developmental disabilities or a facility for the residential care, treatment, training, or education of individuals with developmental disabilities which has been issued an operating certificate by the commissioner of developmental disabilities.

12. "Addictive disorder" or "addiction disorder" for purposes of this chapter means substance use disorder or gambling disorder as such terms are defined in this section and derived from the most recent edition of the diagnostic and statistical manual of mental disorders (DSM), published by the American Psychiatric Association.

17. "Addiction treatment facility" or "Alcoholism facility" means an in-patient, residential or outpatient facility in the department suitable for the provision of addiction disorder services to persons suffering from an addictive disorder and which has been issued an operating certificate pursuant to article thirty-two of this chapter.

19. "Significant other" means a relative, close friend, associate or individual otherwise concerned with the welfare of a person suffering from an addictive disorder when that individual is directly affected by the person's addictive disorder.

20. "Mental illness" means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking, or judgment to such an extent that the person afflicted requires care, treatment and rehabilitation.

22. "Developmental disability" means a disability of a person which:

(a) (1) is attributable to intellectual disability, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia, Prader-Willi syndrome or autism;

(2) is attributable to any other condition of a person found to be closely related to intellectual disability because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of intellectually disabled persons or requires treatment and services similar to those required for such person; or

(3) is attributable to dyslexia resulting from a disability described in subparagraph one or two of this paragraph;

(b) originates before such person attains age twenty-two;

(c) has continued or can be expected to continue indefinitely; and

(d) constitutes a substantial handicap to such person's ability to function normally in society.

23. "Patient" means a person receiving services for the mentally disabled at a facility. It includes a resident at a school.

24. "Informal caregiver" means the family member, friends, neighbors, or other natural person who normally provides the daily care or supervision of a mentally disabled person. Such informal caregiver may, but need not reside in the same household as the mentally disabled person.

26. "Infant" or "minor" means a person who has not attained the age of eighteen years.

27. "Aftercare services" means services for persons no longer receiving in-patient services for the mentally disabled and may include, but shall not be limited to, medical care, including psychiatric care, and vocational and social rehabilitation.

28. "Community residence" means any facility operated by or subject to licensure by the office of mental health or the office for people with developmental disabilities which provides a supervised residence or residential respite services for individuals with mental disabilities and a homelike environment and room, board and responsible supervision for the habilitation or rehabilitation of individuals with mental disabilities as part of an overall service delivery system. A community residence shall include an intermediate care facility with fourteen or fewer residents that has been approved pursuant to law, and a community residential facility as that term is used in section 41.36 of this chapter. Such term does not include family care homes.

28-a. "Supervised living facility" means a community residence providing responsible supervisory staff on-site twenty-four hours per day for the purpose of enabling residents to live as independently as possible.

28-b. "Supportive living facility" means a community residence providing practice in independent living under supervision but not providing staff on-site on a twenty-four hour per day basis.

30. "Conditional release" means release subject to the right of the school, hospital, or alcoholism facility to return the patient to in-patient care pursuant to the conditions set forth in section 29.15 of this chapter.

31. "Discharge" means release and the termination of any right to retain or treat the patient on an in-patient basis. The discharge of such a patient shall not preclude the patient from receiving necessary services on other than an in-patient basis nor shall it preclude subsequent readmission as an in-patient if made in accordance with

article nine, fifteen, or twenty-two of this chapter.

32. "Conference" means the New York state conference of local mental hygiene directors as established pursuant to section 41.10 of this chapter.

33. "Residential treatment facility for children and youth" shall mean an inpatient psychiatric facility which provides active treatment under the direction of a physician for individuals who are under twenty-one years of age, provided that a person who, during the course of treatment, attains the age of twenty-one may continue to receive services in a residential treatment facility for children and youth until he or she reaches the age of twenty-two. The term "residential treatment facility for children and youth" does not apply to the children's psychiatric centers described in section 7.17 of this chapter or to facilities specifically licensed by the office of mental health as children's hospitals. Residential treatment facilities for children and youth are a sub-class of the class of facilities defined to be "hospitals" in subdivision ten of this section.

34. "Authorized agency" shall have the meaning defined in section three hundred seventy-one of the social services law.

35. "Social services official" shall have the meaning defined in section two of the social services law.

36. "Residential care center for adults" means a facility which provides long term residential care and support services to mentally ill adults, provides case management and medication management services, and assists residents in securing clinical, vocational and social services necessary to enable the resident to continue to live in the community. No residential care center for adults established after September first, nineteen hundred eighty-six shall have more than one hundred fifty residents. A residential care center for adults is not an adult care facility subject to licensure by the department of social services, nor is it an inpatient treatment facility.

* 37. "Comprehensive psychiatric emergency program" means a program

which is licensed by the office of mental health to provide a full range of psychiatric emergency services within a defined geographic area to persons who are believed to be mentally ill and in need of such services, and which shall include crisis intervention services, crisis outreach services, crisis residence services, extended observation beds, and triage and referral services, as such terms are defined in section 31.27 of this chapter.

* NB Repealed July 1, 2027

38. "Residential services facility" or "Alcoholism community residence" means any facility licensed or operated pursuant to article thirty-two of this chapter which provides residential services for the treatment of an addiction disorder and a homelike environment, including room, board and responsible supervision as part of an overall service delivery system. Provided however, "certified recovery residence" as defined in subdivision fifty-nine of this section shall not be considered a residential services facility for the purposes of this chapter.

* 39. "Substance" shall mean:

(i) any controlled substance listed in section thirty-three hundred six of the public health law;

(ii) any substance listed in section thirty-three hundred eighty of the public health law;

(iii) any substance, except alcohol and tobacco, as listed in the published rules of the office which has been certified to the commissioner by the commissioner of health as having the capability of causing physical and/or psychological dependence. Notice of a proposed rule listing any such substance shall be given to the speaker of the assembly and the temporary president of the senate. The commissioner shall consider the advice and recommendations of the legislature and shall hold a public hearing prior to listing any substance in its published rules.

* NB There are 2 sub 39's

* 39. "Employee assistance program" means a confidential program designed to assist employees and their families, through identification, motivation referral, and follow-up, with problems that may interfere with the employees' ability to perform on the job effectively,

efficiently and safely. Such problems include addictive disorders, emotional, marital, family, and other personal problems.

* NB There are 2 sub 39's

42. "Substance use disorder program" or "Substance abuse program" shall mean any public or private person, corporation, partnership, agency, either profit or non-profit, or state or municipal government which provides substance use disorder services, in either a residential or ambulatory setting, to persons in need of services for the prevention of, or treatment and recovery from a substance use disorder. Any person or entity providing such services as a minor part of a general health or counseling unit subject to regulations promulgated by the commissioner and other appropriate agencies shall not be considered a substance use disorder program.

46. "Record" of a patient or client shall consist of admission, transfer or retention papers and orders, and accompanying data required by this article and the regulations of the commissioner.

47. "Director of community services" shall mean the director of community services for the mentally disabled appointed pursuant to this chapter.

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

49. "Prescription" shall mean an official New York state prescription, a written prescription or an oral prescription.

50. "Controlled substance" shall mean the definition of "controlled substance" as contained in section thirty-three hundred two of the

public health law.

52. "Persons with serious mental illness" means individuals who meet criteria established by the commissioner of mental health, which shall include persons who are in psychiatric crisis, or persons who have a designated diagnosis of mental illness under the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and whose severity and duration of mental illness results in substantial functional disability. Persons with serious mental illness shall include children and adolescents with serious emotional disturbances.

53. "Children and adolescents with serious emotional disturbances" means individuals under eighteen years of age who meet criteria established by the commissioner of mental health, which shall include children and adolescents who are in psychiatric crisis, or children and adolescents who have a designated diagnosis of mental illness under the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and whose severity and duration of mental illness results in substantial functional disability.

54. "Gambling disorder" means an addictive disorder, as defined by the most recent edition of the diagnostic and statistical manual of mental disorders (DSM), published by the American Psychiatric Association, characterized by repeated problematic gambling behavior which causes significant problems or distress. Unless otherwise provided, for the purposes of this chapter, the term gambling disorder shall mean and include compulsive gambling, pathological gambling or problem gambling.

55. "Addiction disorder services" or "addiction services" shall mean engagement to treatment, examination, evaluation, diagnosis, care, treatment, rehabilitation, relapse prevention and recovery maintenance, and related education and training of persons suffering from or recovering from an addictive disorder and their significant others. Unless otherwise provided, for the purposes of this chapter, the term addiction disorder services shall mean and include "chemical dependence services," alcoholism and/or substance abuse services, substance use disorder services, substance dependence, and gambling disorder services.

56. "Substance use disorder" means recurrent use of alcohol and/or legal or illegal drugs causing clinical and functionally significant impairment to the individual's physical and mental health, or the welfare of others. Unless otherwise provided, for the purposes of this chapter the term substance use disorder shall mean and include alcoholism, alcohol abuse, drug abuse, substance abuse, substance dependence, chemical abuse, and/or chemical dependence.

58. "Behavioral health services" means examination, diagnosis, care, treatment, rehabilitation, or training for persons with mental illness, or addictive disorders.

59. "Certified recovery residence" means a shared living environment in the state that has been certified by the office of addiction services and supports and utilizes connection to services to promote sustained recovery from a substance use disorder.

ARTICLE 5

DEPARTMENT OF MENTAL HYGIENE

Section 5.01 Department of mental hygiene.

5.03 Commissioners.

5.05 Powers and duties of the head of the department.

5.06 Behavioral health services advisory council.

5.07 Establishment of statewide goals and objectives; statewide comprehensive plans of services for the mentally disabled.

5.09 Facilities development corporation.

§ 5.01 Department of mental hygiene.

There shall continue to be in the state government a department of mental hygiene. Within the department there shall be the following autonomous offices:

(1) office of mental health;

- (2) office for people with developmental disabilities;
- (3) office of addiction services and supports.

§ 5.03 Commissioners.

The head of the office of mental health shall be the commissioner of mental health; the head of the office for people with developmental disabilities shall be the commissioner of developmental disabilities; and the head of the office of addiction services and supports shall be the commissioner of addiction services and supports. Each commissioner shall be appointed by the governor, by and with the advice and consent of the senate, to serve at the pleasure of the governor.

§ 5.05 Powers and duties of the head of the department.

(a) The commissioners of the office of mental health and the office for people with developmental disabilities, as the heads of the department, shall jointly visit and inspect, or cause to be visited and inspected, all facilities either public or private used for the care, treatment and rehabilitation of individuals with mental illness and developmental disabilities in accordance with the requirements of section four of article seventeen of the New York state constitution.

(b) (1) The commissioners of the office of mental health, the office for people with developmental disabilities and the office of alcoholism and substance abuse services shall constitute an inter-office coordinating council which, consistent with the autonomy of each office for matters within its jurisdiction, shall ensure that the state policy for the prevention, care, treatment and rehabilitation of individuals with mental illness and developmental disabilities, alcoholism, alcohol abuse, substance abuse, substance dependence, and chemical dependence is planned, developed and implemented comprehensively; that gaps in services to individuals with multiple disabilities are eliminated and that no person is denied treatment and services because he or she has more than one disability; that procedures for the regulation of programs which offer care and treatment for more than one class of persons with mental disabilities be coordinated between the offices having

jurisdiction over such programs; and that research projects of the institutes, as identified in section 7.17 or 13.17 of this chapter or as operated by the office for people with developmental disabilities, are coordinated to maximize the success and cost effectiveness of such projects and to eliminate wasteful duplication.

(2) The inter-office coordinating council shall annually issue a report on its activities to the legislature on or before December thirty-first. Such annual report shall include, but not be limited to, the following information: proper treatment models and programs for persons with multiple disabilities and suggested improvements to such models and programs; research projects of the institutes and their coordination with each other; collaborations and joint initiatives undertaken by the offices of the department; consolidation of regulations of each of the offices of the department to reduce regulatory inconsistencies between the offices; inter-office or office activities related to workforce training and development; data on the prevalence, availability of resources and service utilization by persons with multiple disabilities; eligibility standards of each office of the department affecting clients suffering from multiple disabilities, and eligibility standards under which a client is determined to be an office's primary responsibility; agreements or arrangements on statewide, regional and local government levels addressing how determinations over client responsibility are made and client responsibility disputes are resolved; information on any specific cohort of clients with multiple disabilities for which substantial barriers in accessing or receiving appropriate care has been reported or is known to the inter-office coordinating council or the offices of the department; and coordination of planning, standards or services for persons with multiple disabilities between the inter-office coordinating council, the offices of the department and local governments in accordance with the local planning requirements set forth in article forty-one of this chapter.

(c) The commissioners shall meet from time to time with the New York state conference of local mental hygiene directors to assure consistent procedures in fulfilling the responsibilities required by this section and by article forty-one of this chapter.

(d) 1. The commissioner of mental health shall evaluate the type and

level of care required by patients in the adult psychiatric centers authorized by section 7.17 of this chapter and develop appropriate comprehensive requirements for the staffing of inpatient wards. These requirements should reflect measurable need for administrative and direct care staff including physicians, nurses and other clinical staff, direct and related support and other support staff, established on the basis of sound clinical judgment. The staffing requirements shall include but not be limited to the following: (i) the level of care based on patient needs, including on ward activities, (ii) the number of admissions, (iii) the geographic location of each facility, (iv) the physical layout of the campus, and (v) the physical design of patient care wards.

2. Such commissioner, in developing the requirements, shall provide for adequate ward coverage on all shifts taking into account the number of individuals expected to be off the ward due to sick leave, workers' compensation, mandated training and all other off ward leaves.

3. The staffing requirements shall be designed to reflect the legitimate needs of facilities so as to ensure full accreditation and certification by appropriate regulatory bodies. The requirements shall reflect appropriate industry standards. The staffing requirements shall be fully measurable.

4. The commissioner of mental health shall submit an interim report to the governor and the legislature on the development of the staffing requirements on October first, nineteen hundred eighty-eight and again on April first, nineteen hundred eighty-nine. The commissioner shall submit a final report to the governor and the legislature no later than October first, nineteen hundred eighty-nine and shall include in his report a plan to achieve the staffing requirements and the length of time necessary to meet these requirements.

(e) The commissioners of the office of mental health, office for people with developmental disabilities, and the office of alcoholism and substance abuse services shall cause to have all new contracts with agencies and providers licensed by the offices to have a clause requiring notice be provided to all current and new employees of such

agencies and providers stating that all instances of abuse shall be investigated pursuant to this chapter, and, if an employee leaves employment prior to the conclusion of a pending abuse investigation, the investigation shall continue. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract.

§ 5.06 Behavioral health services advisory council.

(a) There is hereby created within the department a behavioral health services advisory council, the purpose of which shall be to advise the offices of mental health and addiction services and supports on matters relating to the provision of behavioral health services; issues of joint concern to the offices, including the integration of various behavioral health services and the integration of behavioral health services with health services; issues related to the delivery of behavioral health services that are responsive to local, state and federal concerns; and issues related to treatment disparities and treatment equity, as defined in section 19.45 of this chapter. The council shall consist of the commissioners of mental health and of addiction services and supports, who shall not have the right to vote, the chair of the conference of local mental hygiene directors or his or her designee, and thirty-two members appointed by the governor, upon the advice and consent of the senate. Members shall be appointed only if they have professional knowledge in the care of persons receiving behavioral health services, or an active interest in the behavioral health services system.

(b) The governor shall designate one of the members of the council as chair. At least one-half of the members of the council shall not be providers of behavioral health services. Membership shall reflect a balanced representation of persons with interests in mental health and substance use disorder services and shall include:

- (1) at least five current or former consumers of behavioral health services;
- (2) at least three individuals who are parents or relatives of current or former consumers of behavioral health services;
- (3) at least three members who are not providers of behavioral health

services and who represent non-governmental organizations, such as not-for-profit entities representing health or behavioral health care employees, private payors of behavioral health services, or other organizations concerned with the provision of behavioral health services;

(4) at least five representatives of providers of services to persons with mental illness and at least five representatives of providers of services to persons with substance use disorders, at least two of whom shall be physicians and at least one of whom shall have provided services to veterans who served in a combat theater or combat zone of operations;

(5) one member appointed on the recommendation of the state commissioner of the department of veterans' services and one member appointed on the recommendation of the adjutant general of the division of military and naval affairs, at least one of whom shall be a current or former consumer of mental health services or substance use disorder services who is a veteran who has served in a combat theater or combat zone of operations and is a member of a veterans organization;

(6) at least three representatives of local governments or other state and local agencies concerned with the provision of behavioral health services;

(7) at least two members who are also members of the public health and health planning council pursuant to section two hundred twenty of the public health law; and

(8) at least four members that have expertise in issues facing vulnerable populations, as defined in section 19.45 of this chapter, who are receiving or seeking to receive substance use disorder services. Of such members, one member shall be appointed by the governor at the recommendation of the temporary president of the senate, one member shall be appointed by the governor at the recommendation of the minority leader of the senate, one member shall be appointed by the governor at the recommendation of the speaker of the assembly and one member shall be appointed by the governor at the recommendation of the minority leader of the assembly.

(c) Members shall be appointed for terms of three years provided, however, that of the members first appointed, one-third shall be appointed for one year terms and one-third shall be appointed for two

year terms. Vacancies shall be filled in the same manner as original appointments for the remainder of any unexpired term. No person shall be an appointed member of the council for more than six years in any period of twelve consecutive years.

(d) The council shall meet at least four times in each full calendar year. The council shall meet at the request of its chair or either commissioner.

(e) The council shall establish such committees as it deems necessary to address the service needs of special populations and to address particular subjects of importance in the development and management of behavioral health services. Provided however, the council shall establish a committee to specifically focus on substance use disorder treatment disparities that may exist for vulnerable populations, as defined in section 19.45 of this chapter.

(f) The council may consider any matter relating to the improvement of behavioral health services in the state and shall advise the commissioners on any such matter, including, but not limited to:

(1) care and services to persons with behavioral health disorders, including special and underserved populations as determined by the commissioner;

(2) financing behavioral health services;

(3) integration of behavioral health services with health services;

(4) care and services for persons with co-occurring disorders or multiple disabilities;

(5) prevention of behavioral health disorders;

(6) improvement of care in state operated or community based programs, recruitment, education and training of qualified direct care personnel, and protection of the interests of employees affected by adjustments in the behavioral health service system; and

(7) ways to achieve treatment equity, as defined in section 19.45 of this chapter.

(g) The council shall, in cooperation with the commissioners, establish statewide goals and objectives for services to persons with behavioral health disorders, pursuant to section 5.07 of this article.

(h) (1) The council shall review the portion of the statewide plan to be developed and updated annually by the commissioners pursuant to section 5.07 of this article, and report its recommendations thereon to

the commissioners.

(2) The council shall review any mental health or substance use component of statewide health plans developed in accordance with any applicable federal law, and shall report its recommendations thereon to the commissioners.

(i) The council shall review applications filed in accordance with:

(1) section 31.22 of this chapter for approval of incorporation or establishment of a facility, and section 31.23 of this chapter for approval of the construction of a facility for which approval from the commissioner of mental health is required; and

(2) section 32.29 or 32.31 of this chapter for approval of incorporation or establishment or construction of a facility for which approval to operate is required from the commissioner of alcoholism and substance abuse services pursuant to article thirty-two of this chapter, and as otherwise requested by such commissioner;

(j) The council shall be notified of, and may review at its discretion, any closure of a hospital or ward thereof operated by the office of mental health or office of alcoholism and substance abuse services, and may issue recommendations pertaining to issues including community reinvestment and continuity of care. All such recommendations shall be provided to the relevant commissioner or commissioners, the temporary president of the senate and the speaker of the assembly.

(k) At least sixty days prior to the commissioners' final approval of rules and regulations under their respective jurisdiction, other than emergency rules and regulations and regulations promulgated pursuant to section 43.01 of this chapter, the commissioners shall submit such proposed rules and regulations to the council for its review. The council shall review all proposed rules and regulations and report its recommendations thereon to the commissioners within sixty days. The commissioner having statutory jurisdiction over the proposed rule or regulation shall not act in a manner inconsistent with the recommendations of the council without first appearing before the council to report the reasons therefor. The council, upon a majority vote of its members, may require that an alternative approach to the proposed rules and regulations be published with the notice of the proposed rules and regulations pursuant to section two hundred two of the state administrative procedure act. When an alternative approach is

published pursuant to this section, the commissioner having statutory jurisdiction of the subject proposed rule or regulation shall state the reasons for not selecting such alternative approach.

(l) The council, by a majority vote of its members, may propose rules and regulations on any matter within the regulatory jurisdiction of the offices of mental health or alcoholism and substance abuse services, other than establishment of fee schedules pursuant to section 43.01 of this chapter, and forward such proposed rules and regulations to both commissioners for review and consideration; provided, however, that only the approval of the commissioner with statutory jurisdiction of the proposed rule or regulation shall be required. Prior to such commissioner's final approval and promulgation of such proposed rules and regulations, if such rules and regulations are modified in any respect, they shall be submitted to the council pursuant to subdivision (k) of this section. If such commissioner determines not to promulgate such proposed rules and regulations, the commissioner shall appear before the council to report the reasons therefor.

(m) The members of the council shall receive no compensation for their services but shall be reimbursed for expenses actually and necessarily incurred in the performance of their duties.

(n) The commissioners, upon request of the council, shall designate one or more officers or employees from either or both offices to provide administrative support services to the council, and may assign from time to time such other employees as the council may request.

(o) No civil action shall be brought in any court against any member of the behavioral health services advisory council for any act done, failure to act, or statement or opinion made, while discharging his or her duties as a member of the council, without leave from a justice of the supreme court, first had and obtained. In any event, such member shall not be liable for damages in any such action if he or she acted in good faith, with reasonable care and upon probable cause. Members of the council shall be considered public officers for the purposes of section seventeen of the public officers law.

(p) The council may establish written bylaws.

§ 5.07 Establishment of statewide comprehensive plans of services for

persons with mental disabilities.

(a) (1) The behavioral health services advisory council and the advisory council on developmental disabilities shall provide recommendations for statewide priorities and goals to guide comprehensive planning, resource allocation and evaluation processes for state and local services for persons with mental illness, developmental disabilities, and/or those with substance use or compulsive gambling disorders. Such goals and objectives shall:

a. be measurable in terms of attainment and focused on outcomes for those being served;

b. be developed in collaboration with, and communicated to, providers of services, department facilities, consumers and consumer representatives, and other appropriate state and local governmental agencies;

c. reflect the partnership between state and local governmental units; and

d. emphasize the need to integrate behavioral health and health services.

(2) Such advisory councils shall accomplish their duties by means of a process which is:

a. open, visible and accessible to the public; and

b. consistent with the statewide and federally mandated planning, appropriation and evaluation processes and activities for services to persons with mental disabilities.

(3) The advisory councils are hereby empowered to hold public hearings and meetings to enable them to accomplish their duties.

(b) Statewide comprehensive plan for services to persons with mental disabilities.

(1) The office of mental health, the office for people with developmental disabilities and the office of alcoholism and substance abuse services shall formulate a statewide comprehensive five-year plan

for the provision of all state and local services for persons with mental illness, developmental disabilities, and/or those with substance use or compulsive gambling disorders. The statewide comprehensive plan shall be based upon an analysis of local services plans developed by each local governmental unit, in consultation with consumers, consumer groups, providers of services and departmental facilities that furnish behavioral health services in conformance with statewide priorities and goals established with recommendations of the behavioral health services advisory council and the advisory council on developmental disabilities. The plan shall:

- a. identify statewide priorities;
- b. specify statewide goals that reflect the statewide priorities and are focused on obtaining positive measurable outcomes;
- c. propose strategies and initiatives to address the priorities and facilitate achievement of statewide goals;
- d. identify services and supports, which may include programs run or led by peers, that are designed to promote the health and wellness of persons with mental illness, developmental disabilities, and/or substance use or compulsive gambling disorders;
- e. provide analysis of current and anticipated utilization of state and local, and public and private facilities, programs, services, and/or supports;
- f. encourage and promote person-centered, culturally and linguistically competent community-based programs, services, and supports that reflect the partnership between state and local governmental units;
- g. include progress reports on the implementation of both short-term and long-term recommendations of the children's plan required pursuant to section four hundred eighty-three-f of the social services law; and

h. include final reports for time-limited demonstration programs pursuant to subdivision (d) of section 41.35 of this chapter.

(2) The commissioner of mental health shall also include the following in the portion of the statewide comprehensive plan required by this subdivision for services to persons with mental illness:

a. an analysis of the long-term need for the delivery of inpatient care and services for adults and children and youth at state-operated hospitals as listed in section 7.17 of this chapter, including a review of statewide policies and trends relating to admissions, discharges, deaths, transfers, and appropriate community placements for inpatients, and a review of the correlation between these policies and trends and the future use of state inpatient facilities, resulting in a projected range of the anticipated census over the next five years for each state-operated hospital listed in section 7.17 of this chapter;

b. a review of the long-term needs of persons currently residing in state-operated hospitals, including an estimate of the number of such individuals needing state inpatient care, and an estimate of the number of such individuals who may be discharged to nursing homes, adult homes, residences operated, licensed or funded by the office of mental health, and independent housing;

c. an analysis of the anticipated future of the forensic psychiatric program operated by the office of mental health pursuant to subdivision (c) of section 7.09 of this chapter, including a programmatic and fiscal review of clinical care needs for persons committed to such programs, identification of service gaps for this population, projected range of anticipated census over the next five years, and any recommendations for new service configurations;

d. an analysis of the anticipated future of the mission of the state-operated office of mental health research institutes that are listed in section 7.17 of this chapter;

e. a description of the available community-based acute inpatient, out-patient, community support and emergency services, which shall

include comprehensive psychiatric emergency programs licensed pursuant to section 31.27 of this chapter. Such description should include the extent to which these services are currently utilized by persons with mental illness and, as available, compare estimates of utilization with estimates of the prevalence of mental illness among persons residing in the service area to determine unmet need;

f. recommendations for new or expanded programs or services that may be required to meet the unmet need for community-based services identified in accordance with subparagraph e of this paragraph;

g. a review and evaluation of efforts undertaken by the office of mental health to encourage community hospitals to provide both emergency and acute inpatient care;

h. a description of the involvement of local government mental health authorities in the planning and development of a needs-based, comprehensive service system and in the determination of the allocation of resources;

i. to the extent practicable, all such information required pursuant to this paragraph shall be provided on a statewide, regional and individual state-operated hospital and state-operated research institute basis; and

j. recommendations on the provision of state and local mental health services based on the development of best practices by programs promoting culturally and linguistically competent mental health services.

(3) The commissioner of the office for people with developmental disabilities shall also include, to the extent practicable, the following data in the portion of the statewide comprehensive plan required by this section for services to persons with developmental disabilities:

(a) the number of individuals and average Medicaid eligible expenditure level per service recipient, categorized by the following:

(i) from birth to twenty years of age;

- (ii) from twenty-one years of age to sixty-four years of age inclusive; and
- (iii) sixty-five years of age and older;
- (b) race or ethnicity of the service recipient, by age range;
- (c) primary language spoken by the service recipient and other related details, as feasible; and
- (d) residence type, subcategorized by age, race or ethnicity, and primary language.

(4) The commissioners of each of the offices shall be responsible for the development of such statewide five-year plan for services within the jurisdiction of their respective offices and after giving due notice shall conduct one or more public hearings on such plan. The behavioral health services advisory council and the advisory council on developmental disabilities shall review the statewide five year comprehensive plan developed by such office or offices and report its recommendations thereon to such commissioner or commissioners. Each commissioner shall submit the plan, with appropriate modifications, to the governor no later than the first day of November of each year in order that such plan may be considered with the estimates of the offices for the preparation of the executive budget of the state of New York for the next succeeding state fiscal year. Such comprehensive plan shall be submitted to the legislature and also be posted to the website of each office. Statewide plans shall ensure responsiveness to changing needs and goals and shall reflect the development of new information and the completion of program evaluations. An interim report detailing the commissioner's actions in fulfilling the requirements of this section in preparation of the plan and modifications in the plan of services being considered by the commissioner shall be submitted to the governor and the legislature on or before the fifteenth day of March of each year. Such interim report shall include, but need not be limited to:

- (a) actions to include participation of consumers, consumer groups, providers of services and departmental facilities, as required by this subdivision; and
- (b) any modifications in the plan of services being considered by the commissioner, to include: (i) compelling budgetary, programmatic or clinical justifications or other major appropriate reason for any significant new statewide programs or policy changes from a prior

(approved) five year comprehensive plan; and (ii) procedures to involve or inform local governmental units of such actions or plans.

(5) The commissioner of mental health in consultation with the department of civil service, the office of employee relations and any other appropriate state agency, shall prepare for the governor and the legislature a written evaluation report concerning the retraining and continuation of employment of persons whose employment in a state-operated hospital listed in section 7.17 of this chapter may be terminated because of planned closure or consolidation of such state-operated hospital. Such report shall include, but not be limited to:

- (i) specific proposals to help implement transitional employment arrangements with state, local governmental units and voluntary agencies;

- (ii) specific proposals to help provide for the development of appropriate retraining programs;

- (iii) specific proposals to help provide for continuity of employment and utilization of alternatives to layoffs;

- (iv) specific proposals to help provide for the active participation of the legal bargaining representatives of the employees of the office, where appropriate, in the planning for and implementation of mechanisms to help ensure continuity of employment;

- (v) specific proposals to help ensure that the planning for the closure or consolidation of state-operated hospitals is consistent with the planning for the continuity of employment of state employees, including procedures to ensure timely notification of represented employees and their designated legal representatives and managerial and confidential employees regarding planned program closure or consolidation of state-operated hospitals; and

- (vi) specific proposals regarding the establishment of demonstration projects incorporating staff training, transfers and assignment of staff of state-operated hospitals to the offices in local governmental units and in voluntary agencies. Such proposals shall take into consideration those areas of the state that are determined to be most in need of the development of appropriate systems of service delivery to best meet the appropriate needs of persons with serious mental illness, including children and adolescents with serious emotional disturbances.

On or before December first, nineteen hundred ninety-four a copy of such report, and such recommendations as may be deemed appropriate shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly, and the respective minority leaders of each such house.

(c) Three year capital plan. (1) On or before July first of each year, the commissioners of the offices of the department of mental hygiene shall each submit to the advisory council of their respective offices a statewide three year capital plan for facilities within the jurisdiction of their respective offices. The capital plan shall set forth the projects proposed to be designed, constructed, acquired, reconstructed, rehabilitated or otherwise substantially altered pursuant to appropriation to meet the capital development needs of the respective agencies for the next ensuing three years; the years of such plan shall correspond to the years of the statewide five year plan as required by subdivision (b) of this section.

(2) Such plan for each office shall include but not be limited to a detailed project schedule indicating the location by county or borough and estimated cost of each project, the anticipated dates on which the design and construction of the project is to commence, the proposed method of financing for the project, the estimated economic life of the project and whether the proposed project constitutes design, new construction or rehabilitation.

(3) Such plan shall further specify for each project whether the project is to be a residential or nonresidential facility, a state or voluntary operated facility, and, the number of clients, by source of clients, proposed to utilize the facility. The information on the source of the client shall include but not be limited to identification of clients currently living independently, or at home with families, or with caretakers, clients defined by their respective agencies as special populations, or clients currently residing in an institutional setting under the jurisdiction of the offices of the department.

(4) The advisory council of the appropriate office shall review such plan and report its recommendation to the commissioner for inclusion, provided, however, that the behavioral health services advisory council shall forward its comments on the capital plan of the office of mental

health to the mental health planning council which shall forward such recommendations after review to the commissioner of mental health. The commissioner shall submit his or her plan with the formal recommendations of the advisory council of his or her office and any subsequent appropriate modifications to the governor no later than the first day of November of each year or concurrent with the annual submission of estimates and information required by section one of article seven of the constitution in order that such plans shall be considered with the estimates of the offices for the preparation of the executive budget of the state of New York for the next succeeding state fiscal year. The commissioners shall also submit such plans to the chairmen of the senate finance committee and the assembly ways and means committee.

(5) Each statewide three year capital plan for facilities shall be evaluated and revised annually to encompass the fiscal year then in progress and the next ensuing two fiscal years to ensure responsiveness to the changing needs and goals of the department, and to reflect the development of new information and project completion.

§ 5.09 Facilities development corporation.

(a) The facilities development corporation shall be entitled to exclusive possession, jurisdiction, supervision and control of all real property held for facilities operated by any of the offices of the department, such facilities being defined as mental hygiene facilities by section three of the facilities development corporation act, to exclusive possession, jurisdiction, supervision and control of such facilities, and to all payments made for the care, maintenance and treatment of patients at such facilities; provided, however, that the directors of the said corporation shall make all such property and all such facilities available to the commissioners and offices of the department of mental hygiene for use in the care, maintenance, and treatment of the mentally disabled.

The provisions of this section shall not be applicable to community mental health and developmental disabilities facilities as defined in section three of the facilities development corporation act or to

payments made for the care, maintenance and treatment of patients at such community mental health and developmental disabilities facilities.

(b) The director of a department facility shall permit any director, officer, employee or agent of the facilities development corporation to inspect and test the physical condition of any building, unit, room, structure, improvement, walkway, roadway, parking lot or utility connection at the facility under appropriate conditions designed to minimize any disruption in the care, maintenance, and treatment of patients at the facility. The director and officers and employees at the facility shall cooperate fully with any such trustee, officer, employee or agent in assessing the need for physical construction, reconstruction, rehabilitation and improvement at the facility and for the acquisition of furnishings, equipment, machinery and apparatus to be used in mental hygiene facilities upon the completion of construction, reconstruction, rehabilitation or improvement work and shall cooperate fully in carrying out all work being done under the direction of the said corporation.

TITLE B

MENTAL HEALTH ACT

Article 7 Office of mental health

9 Hospitalization of the mentally ill

10 Sex offenders requiring civil commitment or supervision

ARTICLE 7

OFFICE OF MENTAL HEALTH

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§ 7.01 Declaration of policy.

The state of New York and its local governments have a responsibility for the prevention and early detection of mental illness and for the comprehensively planned care, treatment and rehabilitation of their

mentally ill citizens.

Therefore, it shall be the policy of the state to conduct research and to develop programs which further prevention and early detection of mental illness; to develop a comprehensive, integrated system of treatment and rehabilitative services for the mentally ill. Such a system should include, whenever possible, the provision of necessary treatment services to people in their home communities; it should assure the adequacy and appropriateness of residential arrangements for people in need of service; and it should rely upon improved programs of institutional care only when necessary and appropriate. Further, such a system should recognize the important therapeutic roles of all disciplines which may contribute to the care or treatment of the mentally ill, such as psychology, social work, psychiatric nursing, special education and other disciplines in the field of mental illness, as well as psychiatry and should establish accountability for implementation of the policies of the state with regard to the care and rehabilitation of the mentally ill.

To facilitate the implementation of these policies and to further advance the interests of the mentally ill and their families, a new autonomous agency to be known as the office of mental health has been established by this article. The office and its commissioner shall plan and work with local governments, voluntary agencies and all providers and consumers of mental health services in order to develop an effective, integrated, comprehensive system for the delivery of all services to the mentally ill and to create financing procedures and mechanisms to support such a system of services to ensure that mentally ill persons in need of services receive appropriate care, treatment and rehabilitation close to their families and communities. In carrying out these responsibilities, the office and its commissioner shall make full use of existing services in the community including those provided by voluntary organizations.

§ 7.03 Definitions.

As used in this title:

1. "Office" means the office of mental health.
2. "Commissioner" means the head of the office of mental health.
3. "Mental health peer" or "MHP" means an individual with lived-experience who is actively in recovery from a mental health condition and has self-disclosed their mental health journey.
4. "Family peer advocate" or "FPA" means an individual with lived-experience as the biological, foster, or adoptive parent or primary caregiver of a child or youth with a social, emotional, behavioral, mental health, or developmental disability.
5. "Youth peer advocate" or "YPA" means an individual who self-identifies as a person with first-hand experience with mental health and/or co-occurring behavioral challenges as a young person or has received services in any one of the child-serving systems or programs pursuant to this chapter.
6. "New York state certified peer specialist" or "NYCPS" means a mental health peer who has specialized training and holds a credential from a certifying authority recognized by the commissioner.
7. "Credentialed family peer advocate" or "CFPA" means an individual verified to have met the criteria for a family peer advocate as defined in subdivision four of this section and who holds a credential from a certifying authority recognized by the commissioner.
8. "Credentialed youth peer advocate" or "CYPA" means an individual verified to have met the criteria for a youth peer advocate as defined in subdivision five of this section and who holds a credential from a certifying authority recognized by the commissioner.

§ 7.07 Office of mental health; scope of responsibilities.

(a) The office of mental health is charged with the responsibility for assuring the development of comprehensive plans, programs, and services in the areas of research, prevention, and care, treatment, rehabilitation, education, and training of the mentally ill. Such plans, programs, and services shall be developed by the cooperation of the office, the other offices of the department where appropriate, local governments, consumers and community organizations and agencies. The office shall provide appropriate facilities and encourage the provision of facilities by local government and community organizations and agencies.

(b) The office of mental health shall advise and assist the governor in developing policies designed to meet the needs of the mentally ill and to encourage their full participation in society.

(c) The office of mental health shall have the responsibility for seeing that mentally ill persons are provided with care and treatment, that such care, treatment and rehabilitation is of high quality and effectiveness, and that the personal and civil rights of persons receiving care, treatment and rehabilitation are adequately protected.

(d) The office of mental health shall foster programs for the training and development of persons capable of providing the foregoing services, and for the qualification of persons capable of providing peer services as defined in subdivisions three, four, five, six, seven, and eight of section 7.03 of this article and in accordance with criteria established by the commissioner.

(e) Consistent with the requirements of subdivision (b) of section 5.05 of this chapter, the office shall carry out the provisions of article thirty-one as such article pertains to regulation and quality control of services for the mentally ill.

(f) The office shall establish, and provide technical and financial support to establish two programs promoting culturally and linguistically competent mental health services. Such programs shall be operated in a collaborative manner with the Nathan S. Kline Institute for Psychiatric Research, the New York State Psychiatric Institute, academia, mental health care providers, communities interested in the mentally ill and other interested private and public sector parties. The programs, in consultation with the office's multicultural advisory committee, shall investigate and report, to the commissioner on a

biannual basis recommendations as to best practices for the delivery of culturally and linguistically competent mental health services to underserved populations affected by disparities due to cultural, linguistic and systemic barriers.

(g) The office of mental health shall have the responsibility for assuring the development of plans, programs, and services in the areas of research and prevention of suicide, to reduce suicidal behavior and suicide through consultation, training, implementation of evidence-based practices, and use of suicide surveillance data. Such plans, programs, and services shall consider the unique needs of differing demographic groups and the impact of gender, race and ethnicity, and cultural and language needs. Such plans, programs, and services shall be developed in cooperation with other agencies and departments of the state, local governments, community organizations and entities, or other organizations and individuals. The office shall prepare and submit a written report to the governor, the speaker of the assembly, and temporary president of the senate that sets forth the progress of the office in the development of such plans, programs, and services by December first, two thousand nineteen, and biennially thereafter. In addition to delineating the progress the office has made, such report shall also include information on specific suicide prevention services and program initiatives developed and implemented to address the needs of high risk minority groups or special populations, including but not limited to latina and latino adolescents, black youth, individuals residing in rural communities, veterans, members of the lesbian, gay, bisexual and transgender community, and any other group deemed high risk or underserved by the office.

(h) The office shall periodically review suicide prevention programs established, licensed, certified, or funded by the office to ensure that the needs of individuals at risk of suicide are being met and make recommendations to improve such programs, which shall include but not be limited to: (1) cultural and linguistic competency; and (2) best practices for screening and interventions aimed at addressing suicide risk factors for minority groups and other underrepresented populations.

§ 7.09 Powers of the office and commissioner; how exercised.

(a) The commissioner shall exercise all powers vested in the office. He may delegate any function, power, or duty assigned to him or to the office of mental health to a director of a facility operated by such office or to any other officer or employee of such office, unless otherwise provided by law. He may enter into agreements with the executive director of the justice center for the protection of people with special needs or the other commissioners of the department in order to ensure that programs and services are provided for all of the mentally disabled.

(b) The commissioner may adopt regulations necessary and proper to implement any matter under his jurisdiction. Proposed rules and regulations shall be submitted at least sixty days prior to action thereon to the mental health services council for its advice, in accordance with section 7.05 of this chapter, unless the commissioner finds that the public health, safety or general welfare requires that such submission be dispensed with.

(c) The commissioner shall administer the forensic psychiatric program of the office. Commitments to the commissioner of mental hygiene pursuant to the provisions of the criminal procedure law and the correction law shall be deemed to be commitments to the custody of the commissioner of mental health or the commissioner of developmental disabilities, as appropriate. The commissioner of mental health shall arrange with the commissioner of developmental disabilities for the placement, where appropriate, of any such committed person in a school.

(d) The commissioner and directors of office facilities may request and upon such request the coroner, coroner's physician or medical examiner shall provide to such persons access to original autopsy slides, tissue materials and specimens derived from any autopsy or inquiry with respect to the death of a patient or resident in a mental hygiene facility, as defined in subdivision two of section five hundred fifty of the executive law. Such original materials shall be preserved intact, except for unavoidable changes due to necessary scientific testing, and shall be returned to the coroner, coroner's physician or medical examiner.

(e) The commissioner shall accept custody of a juvenile under an order issued by the family court pursuant to the provisions of section 322.2 of the family court act. He or she may place the juvenile in any

appropriate facility or program under his or her jurisdiction, but he or she shall comply with any order requiring treatment in a residential facility made pursuant to paragraph (c) of subdivision five of section 322.2 of the family court act, unless, after a hearing held in accordance with subdivision seven of section 322.2 of the family court act, the court modifies the order. In determining the appropriate placement, the commissioner shall be furnished with a copy of the findings of the court pursuant to subdivision four or five of section 322.2 of the family court act and shall consider the nature of the act alleged in such findings and the level of the juvenile's mental disability. The commissioner shall review the condition of the juvenile in accordance with the requirements of section 322.2 of the family court act and he or she may petition the family court at any time for any relief authorized by such section.

(f) The commissioner may approve special employment programs which are operated by facilities within the office of mental health, for purposes of producing products and services for procurement by the state or any governmental agency, political subdivision or public benefit corporation thereof, in accordance with the provisions of sections one hundred seventy-five-a and one hundred seventy-five-b of the state finance law. The term "special employment program" shall have the same meaning as such term is defined in section one hundred seventy-five-c of the state finance law.

(g) The commissioner shall work cooperatively with the commissioner of the office for people with developmental disabilities and the commissioner of the office of temporary and disability assistance to assist the commissioner of education in furnishing integrated employment services to individuals with severe disabilities, including the development of an integrated employment implementation plan, pursuant to article twenty-one of the education law.

(h) The commissioner shall promulgate rules and regulations to address the communications needs of non-English speaking individuals seeking or receiving services in facilities operated or licensed by the office in order to facilitate their access to services. Such rules and regulations shall include, but not be limited to, reasonable means to accommodate the language capabilities and preferences of non-English speaking individuals in such facilities where a significant number of non-English

speaking individuals seek or receive services.

(i) The commissioner of mental health shall be authorized to have access to criminal history information contained in the central data facility established by the division of criminal justice services, upon such terms and conditions as the commissioner of mental health and the commissioner of the division of criminal justice services shall agree. The report containing such criminal history information may be summarized for inclusion in the patient's clinical record, however, such report shall be destroyed within fourteen days of its receipt. Such information shall be used for purposes of making decisions regarding care and treatment, health and safety, privileges and discharge planning for patients admitted to or retained in hospitals operated by the office of mental health. The commissioner of mental health shall promulgate standards regarding the use of such information, which may include, but not be limited to, consideration of the type of offense and the date of conviction, and its relevance to care and treatment, health and safety, privileges and discharge planning. Patients shall be given written notice that their criminal history information will be obtained by the hospital, that the opportunity exists to request the correction of any inaccurate criminal history information in accordance with the regulations of the division of criminal justice services, and that the opportunity exists to challenge the accuracy of such information maintained in the patients' clinical record to the extent authorized by section 33.16 of this chapter. Such information shall be kept confidential to the extent required under applicable federal and state law, including section 33.13 of this chapter.

(j) (1) The commissioner, in cooperation with other applicable state agencies, shall collect, retain or modify data or records, and shall transmit such data or records: (i) to the division of criminal justice services, or to the criminal justice information services division of the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 USC 921(a)(3), in accordance with applicable federal laws or regulations, or (ii) to the division of criminal justice services, which may re-disclose such data and records only for determining whether a license issued pursuant to section 400.00 of the

penal law should be denied, suspended or revoked, under subdivision eleven of such section, or for determining whether a person is no longer permitted under federal or state law to possess a firearm. Such records, which may not be used for any other purpose, shall include only names and other non-clinical identifying information of persons who have been involuntarily committed to a hospital pursuant to article nine of this chapter, or section four hundred two or subdivision two of section five hundred eight of the correction law, or article seven hundred thirty or section 330.20 of the criminal procedure law or sections 322.2 or 353.4 of the family court act, or to a secure treatment facility pursuant to article ten of this chapter.

(2) The commissioner shall establish within the office of mental health an administrative process to permit a person who has been or may be disqualified from possessing such a firearm pursuant to 18 USC 922(4)(d) or who has been or may be disqualified from continuing to have a license to carry, possess, repair, or dispose of a firearm under section 400.00 of the penal law because such person was involuntarily committed or civilly confined to a facility under the jurisdiction of the commissioner, to petition for relief from that disability where such person's record and reputation are such that such person will not be likely to act in a manner dangerous to public safety and where the granting of the relief would not be contrary to public safety. The commissioner shall promulgate regulations to establish the relief from disabilities program, which shall include, but not be limited to, provisions providing for: (i) an opportunity for a disqualified person to petition for relief in writing; (ii) the authority for the agency to require that the petitioner undergo a clinical evaluation and risk assessment; and (iii) a requirement that the agency issue a decision in writing explaining the reasons for a denial or grant of relief. The denial of a petition for relief from disabilities may be reviewed de novo pursuant to the proceedings under article seventy-eight of the civil practice law and rules.

* (k) Notwithstanding any other law, rule or regulation, on request by a representative of a cemetery organization or funeral establishment, the commissioner and directors of office facilities shall release to the representative the name, date of birth, or date of death of a person who was a patient at the facility when the person died, unless the person or

the person's guardian provided written instructions to the facility not to release such person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subdivision only for the purpose of inscribing the name or date on a grave marker.

* NB There are 2 sb (k)'a

* (k) The commissioner shall develop clear and detailed definitions of at least four categories of types of injuries that a staff member or person confined may experience as the result of an assault by or an altercation between a person confined and any staff member or other person confined in state forensic psychiatric centers as such term is defined in section 7.17 of this article. On at least a quarterly basis beginning in January of each year, the commissioner shall report to the legislature on the number of types of injuries within the detailed categories required by this subdivision.

* NB There are 2 sb (k)'a

(l) Notwithstanding any general or special law to the contrary, the commissioner, in conjunction with the commissioner of the office of addiction services and supports and the director of the department of veterans' services shall develop a public education initiative designed to eliminate stigma and misinformation about mental illness and substance use among service members, veterans, and their families, improve their understanding of mental and substance use disorders and the existence of effective treatment, and provide information regarding available resources and how to access them. These public education initiatives may include the use of the internet, including the use of social networking sites.

(m) The commissioner shall publish on the website of the office information regarding the mental illness anti-stigma distinctive license plate established under section four hundred four-dd of the vehicle and traffic law. Such information shall include, but not be limited to, a link to the department of motor vehicle website where an individual may order such license plate.

§ 7.11 Organization and administration of the office of mental health and its facilities.

(a) The commissioner shall have the professional jurisdiction, supervision, and control of the office and all department facilities for the mentally ill.

(b) The commissioner shall control the organization of the office and may continue, establish, discontinue, expand, and contract facilities under his jurisdiction. The facilities set forth in section 7.17 may not be discontinued by the commissioner. Units and facilities shall have such functions, duties, and responsibilities as may be assigned to them by the commissioner.

(c) The commissioner may, within the amounts appropriated therefor, lease space or facilities in which services for the mentally ill are to be provided. He may delegate this authority to the facilities development corporation.

§ 7.13 Local services.

Local services for the mentally ill shall be planned, financed and implemented in accordance with the provisions of article forty-one of this chapter.

§ 7.15 Programs of the office of mental health.

(a) The commissioner shall plan, promote, establish, develop, coordinate, evaluate, and conduct programs and services of prevention, diagnosis, examination, care, treatment, rehabilitation, training, and research for the benefit of the mentally ill. Such programs shall include but not be limited to in-patient, out-patient, partial hospitalization, day care, emergency, rehabilitative, and other appropriate treatments and services. He or she shall take all actions that are necessary, desirable, or proper to implement the purposes of this chapter and to carry out the purposes and objectives of the department within the amounts made available therefor by appropriation, grant, gift, devise, bequest, or allocation from the mental health services fund established under section ninety-seven-f of the state finance law.

(b) The activities described in subdivision (a) of this section may be

undertaken in cooperation and agreement with other offices of the department and with other departments or agencies of the state, local or federal government, or with other organizations and individuals.

§ 7.17 Programs, services, and operation of facilities in the office of mental health.

(a) The commissioner shall establish policy and procedures for the organization, administration, and operation of the facilities under his jurisdiction. He shall make provision for the effective rendition of services to patients by such facilities.

(b) There shall be in the office the hospitals named below for the care, treatment and rehabilitation of persons with mental illness and for research and teaching in the science and skills required for the care, treatment and rehabilitation of such persons with mental illness.

Greater Binghamton Health Center

Bronx Psychiatric Center

Buffalo Psychiatric Center

Capital District Psychiatric Center

Central New York Psychiatric Center

Creedmoor Psychiatric Center

Elmira Psychiatric Center

Kingsboro Psychiatric Center

Kirby Forensic Psychiatric Center

Manhattan Psychiatric Center

Mid-Hudson Forensic Psychiatric Center

Mohawk Valley Psychiatric Center

Nathan S. Kline Institute for Psychiatric Research

New York State Psychiatric Institute

Pilgrim Psychiatric Center

Richard H. Hutchings Psychiatric Center

Rochester Psychiatric Center

Rockland Psychiatric Center

St. Lawrence Psychiatric Center

South Beach Psychiatric Center

New York City Children's Center

Rockland Children's Psychiatric Center

Sagamore Children's Psychiatric Center

Western New York Children's Psychiatric Center

The New York State Psychiatric Institute and The Nathan S. Kline Institute for Psychiatric Research are designated as institutes for the conduct of medical research and other scientific investigation directed towards furthering knowledge of the etiology, diagnosis, treatment and prevention of mental illness.

(c) The commissioner shall establish the areas which each facility under his jurisdiction shall serve and the categories of patients which each such facility shall receive, retain, or treat.

(d) The commissioner may permit the other offices of the department and any public or private non-profit organization or political

subdivision of the state to operate programs for the mentally disabled not inconsistent with the programs and objectives of the department, in any facility under his jurisdiction. The commissioner may permit any facility under his jurisdiction to operate programs for the mentally disabled, not inconsistent with the programs and objectives of the department, under contracts or agreements with other offices within the department.

(e) In the event that the plan for state and local mental health services, developed in accordance with subdivision (b) of this section, determines that significant service reductions are anticipated for a particular state-operated hospital or its catchment area, or a state-operated research institute, the commissioner shall take the following actions, provided nothing in this subdivision shall create a basis for enjoining any otherwise lawful service reductions:

1. confer with the department of civil service, the governor's office of employee relations and any other state agency to develop strategies which attempt to minimize the impact on the state workforce by providing assistance in obtaining state employment in state-operated community-based services or other employment opportunities, and to develop strategies for the development of necessary retraining and redeployment programs. In planning such strategies, the commissioner shall provide for the participation of the representatives of the employee labor organizations and for the participation of managerial and confidential employees to ensure continuity of employment;

2. consult with the department of economic development and any other appropriate state agencies to develop strategies which attempt to minimize the impact of such significant service reductions on the local and regional economies;

3. provide for a mechanism which may reasonably be expected to provide notice to local governments, community organizations, employee labor organizations, managerial and confidential employees, consumer and advocacy groups of the potential for significant service reductions at such state-operated hospitals and state-operated research institutes at least twelve months prior to commencing such service reduction,

provided, however, that this requirement shall be deemed satisfied with respect to reductions at Central Islip Psychiatric Center, Gowanda Psychiatric Center, Harlem Valley Psychiatric Center, Kings Park Psychiatric Center, Willard Psychiatric Center and Manhattan Children's Psychiatric Center; and

4. consult with the office of general services and any other appropriate state agency in developing a mechanism for determining alternative uses for land and buildings to be vacated by the office of mental health. Such a mechanism should include a review of other programs or state agencies that could feasibly expand their operations onto a state-operated hospital campus and are compatible with health, safety and programmatic needs of patients served in such facilities.

* (f) (1) The commissioner shall appoint program coordinators of assisted outpatient treatment, who shall be responsible for the oversight and monitoring of assisted outpatient treatment programs established pursuant to section 9.60 of this chapter. Directors of community services of local governmental units shall work in conjunction with such program coordinators to coordinate the implementation of assisted outpatient treatment programs.

(2) The oversight and monitoring role of the program coordinator of the assisted outpatient treatment program shall include each of the following:

(i) that each assisted outpatient receives the treatment provided for in the court order issued pursuant to section 9.60 of this chapter;

(ii) that existing services located in the assisted outpatient's community are utilized whenever practicable;

(iii) that a case manager or assertive community treatment team is designated for each assisted outpatient;

(iv) that a mechanism exists for such case manager, or assertive community treatment team, to regularly report the assisted outpatient's compliance, or lack of compliance with treatment, to the director of the assisted outpatient treatment program;

(v) that directors of community services establish procedures which provide that reports of persons who may be in need of assisted outpatient treatment are appropriately investigated in a timely manner; and

(vi) that assisted outpatient treatment services are delivered in a timely manner.

(3) The commissioner shall develop standards designed to ensure that case managers or assertive community treatment teams have appropriate training and have clinically manageable caseloads designed to provide effective case management or other care coordination services for persons subject to a court order under section 9.60 of this chapter.

(4) Upon review or receiving notice that services are not being delivered in a timely manner, the program coordinator shall require the director of such assisted outpatient treatment program to immediately commence corrective action and inform the program coordinator of such corrective action. Failure of a director to take corrective action shall be reported by the program coordinator to the commissioner of mental health, as well as to the court which ordered the assisted outpatient treatment.

* NB Repealed June 30, 2027

(g) The commissioner, in cooperation with any other state agency or relevant stakeholder, shall identify information and training programs relating to the diagnosis and treatment of post-traumatic stress disorder for military veterans, including but not limited to, trainings developed using funds received from the state of New York, and publish such information and links to relevant training programs on the office's website. The identified information and training programs shall include a component on military culture competency and shall be intended for use by mental health providers and mental health clinicians.

§ 7.18 Secure treatment facilities in the office.

(a) There shall be in the office secure treatment facilities, as defined in subdivision (o) of section 10.03 of this title, as designated by the commissioner for the care and treatment of dangerous sex offenders requiring confinement, as described in article ten of this title.

(b) Such secure treatment facilities may be created on the former grounds of hospitals operated by the office, but shall be considered separate and distinct facilities and shall not be considered or defined as hospitals.

§ 7.19 Personnel of the office.

(a) The commissioner or his or her designee may, within the amounts appropriated therefor, appoint and remove in accordance with law and applicable rules of the state civil service commission, such officers and employees of the office of mental health as are necessary for efficient administration and shall administer the office's personnel system in accordance with such law and rules. In exercising the appointing authority, the commissioner shall take all reasonable and necessary steps, consistent with article twenty-three-A of the correction law, to ensure that any such person so appointed has not previously engaged in any act in violation of any law which could compromise the health and safety of patients.

(b) The director of a hospital or institute in the office shall have professional qualifications and experience to be prescribed by the commissioner.

(c) Notwithstanding the provisions of any other law, the positions of psychiatrist III and deputy director in any office facility, in Matteawan state hospital, or in Dannemora state hospital may be filled by promotion open to employees of all such facilities who possess the minimum qualifications for the respective positions. Promotion lists which are established for those positions shall be general eligible promotion lists from which names are certified in the order of final earned ratings and from which certification shall not be subdivided by the facility or department in which such persons are employed. Nothing in this subdivision shall prevent the use of open competitive examinations.

(d) The commissioner shall establish regulations governing the personnel administration of the department and its facilities.

(e) The use of volunteers at facilities in the office of mental health shall be encouraged. The commissioner may establish regulations governing such volunteer services.

(f) Where, and to the extent that, an agreement between the state and an employee organization entered into pursuant to article fourteen of the civil service law so provides, the commissioner is authorized to implement the provisions of such agreement relating to discipline

consistent with the terms thereof.

§ 7.21 Directors of facilities.

(a) The director of a facility under the jurisdiction of the office of mental health shall be its chief executive officer. Each such director shall be in the noncompetitive class and designated as confidential as defined by subdivision two-a of section forty-two of the civil service law and shall be appointed by and serve at the pleasure of the commissioner. He or she shall manage the facility subject to applicable law and the regulations of the commissioner of mental health. Before the commissioner shall issue any such regulation or any amendment or revision thereof, he or she shall consult with the facility directors regarding its suitability. The director shall maintain effective supervision of all parts of the facility and over all persons employed therein or coming thereon and shall generally direct the care and treatment of patients. Directors presently serving at office of mental health facilities shall continue to serve under the terms of their original appointment.

(b) Such director shall have the responsibility of seeing that there is humane treatment of the patients at his or her facility and shall investigate, or cause to be investigated, every reportable incident in accordance with article eleven of the social services law. Also in accordance with article eleven of the social services law, the director shall require allegations of reportable incidents to be reported to the vulnerable persons' central register, which shall screen and immediately forward reports that appear to allege crimes to the appropriate law enforcement agency. The vulnerable persons' central register shall notify immediately, and in any event within three working days, the board of visitors of the facility and the mental hygiene legal service located in the same judicial department as the hospital, school, or institution of every complaint of patient abuse or neglect and shall inform the board and the mental hygiene legal service of the results of his investigation.

(c) In any investigation into the treatment and care of patients or the conduct, performance, or neglect of duty of officers or employees, the director of a department hospital shall be authorized to subpoena

witnesses, compel their attendance, administer oaths to witnesses, examine witnesses under oath, and require the production of any books or papers deemed relevant to the inquiry or investigation. A subpoena issued under this section shall be regulated by the civil practice law and rules.

(d) Each facility director of the office shall, upon notice from the commissioner or upon knowledge that programs of such facility may be contracted or terminated, implement procedures to ensure timely notification to affected employees. Such procedures shall include, but not be limited to:

(1) dissemination and posting of all decisions, policies and procedures with respect to all aspects of such actions and their impact on facility staff; and

(2) compliance with all requirements and protection of employee rights pursuant to collective bargaining agreements with the designated legal representative of the employees and the civil service law.

(e) Every facility director or designee thereof is authorized and empowered to grant leaves of absence to employees of such facility not involved in direct patient care who are volunteer firefighters as defined in subdivision one of section three of the volunteer firefighters' benefit law, responding to an emergency within the community for such periods as the volunteer firefighters are engaged in the actual performance of their duties as volunteer firefighters.

§ 7.23 Education and training.

(a) The commissioner shall have the power to establish such programs of training and education related to mental illness as he shall deem desirable.

(b) The director of each facility in the office of mental health with the approval of the commissioner of mental health may establish and supervise training and education programs for employees. Directors of such facilities authorized to establish education or training programs may enter into agreements with educational institutions to furnish such education and training in whole or in part.

(c) The commissioner may grant leaves of absence to employees of the office of mental health for the purpose of receiving training or

education for the better performance of their duties and, subject to the approval of the director of the budget, may continue the salaries of such employees, in full or in part, in an amount not to exceed reimbursement for the loss of earnings while receiving such training.

§ 7.24 Mental health disorder hospital discharge; policies and procedures.

(a) The office, in consultation with the department of health, shall develop or utilize existing educational materials to be provided to general hospitals to disseminate to individuals with a documented mental health disorder or who appear to have or be at risk for a mental health disorder during discharge planning pursuant to section twenty-eight hundred three-i of the public health law. Such materials shall include information regarding the various types of treatment and support services, including but not limited to: inpatient, outpatient treatment; how to recognize the need for treatment services; information for individuals to determine what type and level of treatment is most appropriate and what resources are available to individuals; and any other information the commissioner and the commissioner of health deem appropriate.

(b) The commissioner in collaboration with the commissioner of health shall assist and provide guidance for every general hospital to:

1. utilize existing, or in addition to current policies and procedures, develop, maintain and disseminate, written policies and procedures, for the identification, assessment and referral of individuals with a documented mental health disorder or who appear to have or be at risk for a mental health disorder; and

2. establish and implement training, within existing, or in addition to current training programs, for all individuals licensed or certified pursuant to title eight of the education law who provide direct patient care regarding the policies and procedures established pursuant to this section.

(c) If a general hospital does not directly provide mental health disorder services, then the commissioner, in consultation with the

commissioner of health, shall provide the necessary information to refer individuals in need of such services to and coordinate with mental health service programs that provide such services, and have been issued an operating certificate pursuant to article thirty-one of this chapter.

§ 7.25 Safety.

(a) The commissioner and the directors of in-patient facilities in the office of mental health may designate safety officers to act as special police officers whose duty it shall be, under orders of the appropriate officer, to preserve peace and good order in facilities of such office and to fully protect the grounds, buildings, and patients. Such safety officers acting as special police officers shall possess all the powers of peace officers, as set forth in section 2.20 of the criminal procedure law, while performing duties in or arising out of the course of their employment. Such peace officers when acting pursuant to their special duties may issue and serve a simplified traffic information and appearance ticket, in the form prescribed by the commissioner of motor vehicles pursuant to section two hundred seven of the vehicle and traffic law, upon a person when he or she has reasonable cause to believe that such person has committed a traffic infraction in his or her presence, and shall have the power to issue and serve an appearance ticket as defined in section 150.10 of the criminal procedure law for an offense other than a felony in lieu of an arrest.

(b) The commissioner shall cause to be developed and implemented a comprehensive training program for such safety officers. Such a program is to be provided to persons hired as safety officers within five weeks after such hiring, and shall include, but need not be limited to training in the following areas:

1. fire prevention;
2. basic criminal law;
3. first aid and cardio pulmonary resuscitation;
4. conducting investigations;

5. rudimentary police work, including issuance of summons, traffic control, and lawful use of force;

6. proper use of restraint; and

7. any other training deemed necessary to augment such person's skills in providing necessary safety and security services for the facility.

§ 7.27 Facility services.

(a) Chapels. The commissioner may permit any religious or missionary corporation or society or combination of such corporations and societies to erect a building on the grounds of any in-patient facility in the office of mental health for the holding of religious service, to be used exclusively for the benefit of the patients and employees of such facility, subject to such conditions as may be imposed by the commissioner.

(b) Fire mutual aid. In cooperation with the development and operation of plans for mutual aid in cases of fire and other public emergencies, the director of an in-patient facility in the office of mental health, with the approval of the commissioner of mental health, may authorize the fire department of the facility to furnish aid to such territory surrounding the facility as may be practical in cases of fire and such emergencies, having due regard to the safety of the patients and property of the facility and to engage in practice and training programs in connection with the development and operation of such mutual aid plans.

(c) Community stores. The commissioner may authorize the director of any facility in the office of mental health to operate a community store or to lease space in any of its buildings not inconsistent with the requirements of the facility for the operation of a community store for the use and benefit of the patients, visitors, and personnel of such facility. The moneys received by the director of such facility under or pursuant to any such operation shall be deposited in a special fund to be known as the community store fund and shall be used for the general purposes of the facility, subject to the provisions of section

fifty-three of the state finance law.

(d) Laboratory services. Subject to the regulations of the commissioner, the director of a facility in the office of mental health may agree to make the laboratory service of such facility available to adjacent local governments and may receive, apply, and spend money for the extension of laboratory service according to the terms of the agreement as approved by such commissioner.

(e) Special employment programs. The director of any facility operated by the office of mental health may purchase goods and services produced by special employment programs, sheltered workshop programs or supported work programs, which are operated by any facility within such office, subject to the provisions of section one hundred seventy-five-c of the state finance law.

§ 7.29 Gifts.

(a) The commissioner, on behalf of the state and if in the public interest, shall accept, hold in trust, administer, apply, execute, or use gifts, devises, bequests, grants, powers, or trusts of personal or real property made to the state, the office of mental health, a facility within the office, the commissioner, or the directors or visitors of facilities which are to be used or may be used for purposes of the office of mental health, including, but not limited to, the maintenance, support, or benefit of one or more patients in a facility.

(b) The commissioner, in carrying out the provisions of subdivision (a) of this section, may create or provide separate and distinct funds, investments, and deposits and regulate their use, transfer, and withdrawal. He may dispose of a power or trust upon its expiration and according to its terms.

(c) Subdivisions (a) and (b) of this section apply to gifts, devises, bequests, grants, powers, or trusts given to, received, or applied by the state, the commissioner, the office of mental health, or facilities thereof and predecessor officers, agencies, or facilities prior to as well as subsequent to the enactment of this section.

§ 7.31 Disposition of moneys and securities.

(a) The commissioner, or the officer or employee of the office designated by him, shall:

1. Receive and turn over to the comptroller for liquidation all bonds, notes, mortgages, trust funds, and other securities and obligations belonging to the office of mental health or any subdivision thereof, except such as may have come into the possession of the said office or any subdivision thereof on account of or for the payment of charges for the care, maintenance, and treatment after January first, nineteen hundred sixty-four of patients at those mental hygiene facilities as defined in section three of the facilities development corporation act, which are under his jurisdiction, in which case the same shall be turned over to the commissioner of taxation and finance as agent for the facilities development corporation for liquidation, and he shall have the authority to transfer all such securities and evidences of indebtedness and to execute on behalf of the office of mental health or any of its facilities or the facilities development corporation a satisfaction and release thereof.

2. Notwithstanding the provisions of sections one hundred six and one hundred twenty-one of the state finance law, pay over all moneys received for the care, maintenance, and treatment after January first, nineteen hundred sixty-four of patients at those mental hygiene facilities as defined in section three of the facilities development corporation act which are under his jurisdiction, less refunds made on account thereof pursuant to section 43.11 of this chapter, to the commissioner of taxation and finance as agent for the facilities development corporation, for the corporate purposes of such corporation, and deposit all other moneys received in a bank designated by the comptroller. He shall submit a statement each month to the comptroller and to the directors of the facilities development corporation showing the amounts so received for the care, maintenance, and treatment of patients at such facilities, the refunds made on account thereof pursuant to section 43.11 of this chapter, and the dates when any such payments were made to the commissioner of taxation and finance. Such statement shall be certified to by the commissioner of taxation and finance. He shall also submit each month to the comptroller and the

directors of the facilities development corporation a separate statement showing the amount of all other moneys received and deposited in a bank designated by the comptroller as aforesaid, the persons from whom and for what purposes received, and the dates when any deposits of such moneys were made. All statements of deposit shall be certified to by the proper officer of the bank receiving the deposits therein specified. He shall make an affidavit each month that the sums so paid over to the commissioner of taxation and finance and deposited in such bank are all the moneys received by him from any source of institutional income to the date of the last payment, or deposit, appearing on either statement and such affidavit shall be filed with the comptroller and the directors of the facilities development corporation. A bank designated by the comptroller to receive the aforesaid deposits shall, before any deposit is made, execute a bond to the people of the state, in a sum approved by the comptroller, for the safekeeping of the funds deposited.

(b) The provisions of this section shall not be applicable to community mental health and developmental disabilities facilities, as defined in section three of the facilities development corporation act, nor to payments made for the care, maintenance, and treatment of patients at such community mental health and developmental disabilities facilities.

§ 7.33 Boards of visitors.

(a) Each hospital in the department shall have a board of visitors consisting of seven members; provided, however, that a hospital at the Pilgrim psychiatric center and a hospital at the Rochester psychiatric center shall have a board of visitors consisting of at least seven, but not more than ten members. Members appointed or reappointed after the effective date of this chapter shall be appointed by the governor, by and with the advice and consent of the senate. Members shall be appointed for four year terms to expire on the thirty-first day of December of the fourth year of the term of office provided however, when more than three terms expire in any one year, members may be appointed for terms of fewer years as designated by the governor so that no more than three members' terms expire in any one year. All terms of office shall expire on the thirty-first day of December of the designated year.

A member whose term has expired shall, however, remain in office until such member's successor has been appointed and has taken office, or until such members shall have resigned or have been removed from office in the manner hereinafter provided. Should any member resign or be removed from office, the governor shall promptly submit, for senate consent, a successor candidate to fill the remaining term of the vacated office. A visitor may be removed by the governor for cause after notice and an opportunity for a hearing on the charges. In making appointments to boards of visitors, the governor shall endeavor to ensure that the membership of each such board shall adequately reflect the composition of the community or communities served by the facility, that the membership of each such board includes at least three individuals who are parents or relatives of patients or of former patients and that the remainder includes only those persons, including former patients, who shall have expressed an active interest in, or shall have obtained professional knowledge in the care of the mentally ill or in mental health endeavors generally.

(b) No elected state officer or member of the legislature may serve as a visitor.

(c) If the hospital serves an area, as established by the regulations of the commissioner, the visitors shall reside at the time of appointment or reappointment in such area. If no specific area is designated but mental health regions have been duly established, the visitors shall reside at the time of appointment or reappointment in the mental health region in which the department facility is located.

(d) Each board shall, at the first meeting of each calendar year elect one member to serve as president of the board and one member to serve as secretary; provided however, that no member may serve for more than two consecutive years as president.

(e) Visitors shall not receive compensation but shall be reimbursed for their actual expenses in connection with their service as visitors.

(f) (1) Each board of visitors shall hold six bi-monthly regular meetings annually, but a greater number of regular meetings may be scheduled by the board. Each board of visitors shall establish in their by-laws or otherwise, in writing, whether these six meetings shall be held during months represented by odd numbers or months represented by even numbers. The president of the board shall notify the chairman of

the commission on quality of care for the mentally disabled and the facility director of the determination made concerning the designated months for the six bi-monthly regular meetings. The president of the board, the commissioner, the director, or the members as determined by the rules of the board may call special meetings. The board may require the director to submit a report at each meeting. Each board shall keep a record of its proceedings and activities. A member of a board of visitors who has failed to attend three consecutive bi-monthly regular meetings shall be considered to have vacated his office unless otherwise ordered by the governor. The board shall cause notice of any of its public meetings to be sent to the mental hygiene legal service located in the same judicial department as the hospital. The mental hygiene legal service may send a representative to any such public meeting, and may request the board to review patient complaints or investigate alleged incidents of abuse or mistreatment. The board shall notify the appropriate representative of the mental hygiene legal service of the board's actions and findings in relation to any such request.

(2) The president of the board of visitors shall notify a member by certified or registered mail with return receipt requested when such member of the board has failed to attend any two consecutive bi-monthly regular meetings. This notice shall be sent within ten days following the second meeting and shall include the dates of the two meetings which were missed, the date of the next bi-monthly regular meeting, and a statement concerning the consequences of failure to attend the next bi-monthly meeting.

(3) Within three days after the third consecutive absence at a bi-monthly regular meeting by a member, the president of the board of visitors shall notify, in writing, the governor, the commissioner, the chairman of the commission on quality of care for the mentally disabled and the facility director of such absences. The president of the board of visitors shall send a copy of this notice to the member by registered or certified mail return receipt requested. The member may petition the governor to excuse his absences. If the governor does not excuse the absences within forty-five days of the date of the third consecutive meeting absence, the office of the member shall be deemed vacated.

(g) Upon the request of the commissioner or the director, or upon the board's initiative, the board shall consult, advise, and work with the

director with respect to community relations, conditions at the department facility, preliminary plans for construction and alterations, and programs and activities of the department facility.

(h) Each board or any member of the board may visit and inspect the department facility at any time without prior notice and may report on conditions to the governor, to the commissioner and to the chairman of the state commission on quality of care for the mentally disabled. In addition, each board shall ensure that a member or committee of members shall inspect the department facility once every three months without prior notice. A report on conditions may be submitted to the governor, to the commissioner or to the chairman of the state commission on quality of care for the mentally disabled. Each board member shall visit and inspect the facility at least twice during each calendar year. Within thirty days after the conclusion of each calendar year the president of the board of visitors shall notify the governor, the commissioner, the chairman of the commission on quality of care for the mentally disabled and the facility director, if any member of the board has failed to visit and inspect the facility at least twice during that year. The president of the board of visitors shall send a copy of this notice by certified or registered mail return receipt requested to the member to whom it pertains. A member of a board of visitors who has failed to visit and inspect the facility at least twice a year shall be considered to have vacated his office unless otherwise ordered by the governor within forty-five days after the end of the calendar year. The board shall have the power to investigate all charges against the director and all cases of alleged patient abuse or mistreatment made against any employee and shall have the power to interview patients and employees of the facility in pursuit of such investigations. In conducting such an investigation, the board shall have the power, in accordance with the civil practice law and rules, to subpoena witnesses, compel their testimony, administer oaths to witnesses, examine witnesses under oath, and require the production of any books or papers deemed relevant to the investigation. A board or a member may include in the report or separately at any time any matter pertaining to the management and affairs of the facility and may make recommendations to the governor, to the commissioner and to the chairman of the state commission on quality of care for the mentally disabled. Each board

member shall enter in a book, kept at each facility for that purpose, the date of each visit.

(i) (1) Any member or members of the board may visit and inspect a family care home, which is within the catchment area of the hospital on the board of which such member or members serve. Such member or members shall be granted access to such facility and to all books, records and data pertaining to such facility deemed necessary for carrying out the purposes of such visit. Information, books, records or data which are confidential as provided by law shall be kept confidential and any limitations on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to such member or members of the board. After any such visits or inspection, a report containing findings and recommendations may be submitted to the governor, to the commissioner or to the state commission on quality of care for the mentally disabled.

(2) Any member or members of the board may visit and inspect a community residence or residential care center for adults, operated by the office of mental health, which is within the catchment area of the hospital on the board of which such member or members serve. Such member or members shall be granted access to such facility and to all books, records and data pertaining to such facility deemed necessary for carrying out the purposes of such visit and inspection. Information, books, records or data which are confidential as provided by law shall be kept confidential and any limitations on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to such member or members of the board. After any such visits or inspection, a report containing findings and recommendations shall be submitted promptly to the commissioner and to the chairman of the state commission on quality of care for the mentally disabled.

(j) Once each year, each board shall make an independent assessment of conditions at the facility and shall submit a report on the assessment and recommendations to the governor, to the commissioner and to the chairman of the state commission on quality of care for the mentally disabled.

(k) The commissioner shall notify the board of visitors of a hospital of the proposed appointment of a director to such facility or the proposed transfer of a director from such facility, with a request that

the board report an expression of its opinion of the appointment or transfer and, if it objects thereto, the reasons for such objection.

(l) The commissioner shall appoint representatives of the office to serve as liaison between the office and the boards of visitors. At least once each year such commissioner shall meet with the boards collectively. The commissioner, or his designee, shall meet quarterly with representatives of boards of visitors.

(m) Members of the boards of visitors shall be considered officers of the department for the purposes of sections seventy-three, to the extent provided therein, and seventy-four of the public officers law relating to business or professional activities by state officers and employees and the code of ethics.

(n) Each member shall attend, within one year of the initial appointment or any subsequent reappointment, an orientation training program provided by the commission on quality of care for the mentally disabled for members of boards of visitors. The chairman of the commission on quality of care for the mentally disabled shall notify the governor and the appointed member of any such member's failure to attend such a training program. A member who has failed to attend such a training program scheduled for such member shall be considered to have vacated his office unless otherwise ordered by the governor within forty-five days after the notice.

§ 7.35 Actions against persons rendering professional services at the request of the office; defense and indemnification.

The provisions of section seventeen of the public officers law shall apply to any physician, dentist, psychologist, nurse, optometrist, licensed master social worker, or licensed clinical social worker, licensed to practice pursuant to the education law, who is rendering professional treatment authorized under such license at the request of the office or an office facility to patients receiving care or professional consultation from the office while rendering such professional treatment.

§ 7.37 Powers of the office and commissioner in relation to the planning and referral of mentally ill children for adult services.

(a) As used in this section:

1. "report" means a report submitted to the office pursuant to subparagraph five of paragraph b of subdivision one of section forty-four hundred two of the education law or subdivision thirteen of section three hundred ninety-eight of the social services law.

2. "child" means the child who is the subject of a report.

3. "local governmental unit" means a governmental unit as defined and used in article forty-one of this chapter.

4. "voluntary agency" shall have the same meaning as that used in article forty-one of this chapter.

(b) Upon receipt of a report, the commissioner shall review the report and shall determine if the child will likely need adult services. If necessary and appropriate, the commissioner may conduct an evaluation of the child to determine if adult services will be needed. Such evaluation shall include, but not be limited to, the medical, vocational or day services and social needs of the child, the desires of the child and of his or her parents or guardian, and the availability of appropriate services. If the child will likely need adult services, the commissioner shall develop a plan for continued care which shall include any evaluation and shall identify those adult programs or services which may be available and which are operated or licensed by the office and by the local governmental unit of the county in which the child resides, or in the event that the child resides in a county within the city of New York, the local governmental unit of the city of New York. Such written plan shall be made available to the individual, unless the individual objects, and his or her parents or guardian as soon as practicable but not later than one year before the individual attains the age of twenty-one. If such recommendation has been made prior to one year before the individual attains the age of twenty, the office shall provide yearly updates until the individual attains the age of twenty-one.

(c) If the commissioner determines, pursuant to subdivision (b) of this section, that such child will not require adult services, the commissioner shall notify the child's parent or guardian in writing of such determination. Such notice shall be given as soon as practicable but no later than six months before the child attains the age of twenty-one.

(d) Notwithstanding subdivisions (b) and (c) of this section, the commissioner may determine that the office is not responsible for determining and recommending adult services for the child. When such a determination is made it shall be made as soon as practicable after receiving the report and the commissioner shall promptly notify in writing the committee on special education, multidisciplinary team or social services official who sent the report that such determination has been made. Such notice shall state the reasons for the determination and may recommend a state agency which may be responsible for determining and recommending adult services.

(e) The commissioner may designate any qualified employee of the office or any psychiatric center to carry out the functions described in subdivisions (b), (c) and (d) of this section. The commissioner may enter agreements with local governmental units and voluntary agencies to provide the services described in subdivisions (b), (c) and (d) of this section. Consistent with these agreements, the commissioner may designate a local governmental unit or voluntary agency to carry out the functions of the commissioner described in this section and the local governmental unit or voluntary agency shall perform those functions.

(f) All information received by a local governmental unit or voluntary agency pursuant to this section shall be subject to the confidentiality requirements of the office.

(g) Nothing in this section shall be construed to create an entitlement to adult services.

§ 7.37-a Transitional care.

(a) For purposes of this section, "transitional care" shall mean care and maintenance of persons:

1. who were placed in foster care by a social services district

pursuant to article six of the social services law and who have become twenty-one years of age, or who were placed in a residential educational placement by a school district pursuant to article eighty-nine of the education law and who are no longer eligible for free educational services because they have completed the school year in which they became twenty-one;

2. who were disabled and in need of residential care prior to becoming age twenty-one or prior to becoming ineligible for free education services and who have since remained continuously disabled and continuously in need of residential care;

3. who became twenty-one or became ineligible for free educational services prior to July first, nineteen hundred ninety-six;

4. with respect to whom the office has approved a plan of continued out of home care for the person but has not yet identified a currently available appropriate placement;

5. whose residential needs can be met by the facility in which the persons resided prior to becoming age twenty-one or becoming ineligible for free educational services; and

6. who on July first, nineteen hundred ninety-eight are in receipt of transitional care, or who have continuously remained in the foster care or residential education placement where they had received transitional care.

(b) The office shall expend funds to provide transitional care as described in this section.

(c) Expenditures pursuant to subdivision (b) of this section shall be approved only if and to the extent that:

1. the office has an agreement with the residential facility for continued care of qualified persons at rates which are no greater than the rates that would have been available if such persons were under age twenty-one;

2. the facility understands and agrees to the right of the office and such other state offices as the office may deem appropriate to visit and inspect the facilities and residents and to have access to any records or information necessary to assure that the care provided is safe and appropriate to the needs of any persons residing in the facility for whom transitional care is being provided;

3. the payments are made subject to any other requirements identified by the office; and

4. an application for supplemental security income benefits has been submitted, and any supplemental security income benefits received by the person, in excess of any reserved personal allowance amounts, shall be applied to reduce the cost of transitional care.

(d) The office shall periodically forward to each facility that is providing transitional care a statement of the obligations the facility assumes by accepting payment pursuant to this section. The statement of obligations shall be established by the office and provided to each facility.

(e) The office shall discontinue payment for transitional care, in accordance with procedures established by the office, for any individual:

1. who has been offered an appropriate, available adult placement or adult services, when such an offer has been made and accepted, or has been made and upheld by an administrative hearing, or has been made and the time to request an administrative appeal has expired;

2. whose continued placement in a child care facility or residential school may adversely affect the health, safety or welfare of children residing in the facility, based upon a determination by the education department, or by the department of social services, and that the office will, if necessary and appropriate, offer an adult placement to the individual on an expedited basis; or

3. who is residing in a facility which has failed or refused to meet its obligations pursuant to this section as a condition of funding, and

that the office will, if necessary and appropriate, offer an adult placement to the individual on an expedited basis.

§ 7.38 Additional duties of the office with respect to persons receiving transitional care.

(a) The office shall, in consultation with the department of social services, the education department, the office for people with developmental disabilities, and the council on children and families, develop a plan and implement procedures to help assure that all persons who are at the age or time to first qualify for transitional care as described in section 7.37-a of this article, and for whom the office has accepted planning responsibilities, receive assistance in locating an appropriate and available residential placement or plan of services, within the state and within the system of care subject to the jurisdiction of the office, prior to the age or time at which they would otherwise have qualified for transitional care, if such individual had become twenty-one or become ineligible for educational services prior to July first, nineteen hundred ninety-six. For purposes of this section, the age or time at which a person would qualify for transitional care is twenty-one for persons in foster care, and the end of the school year in which they become twenty-one for persons in residential schools.

(b) The office shall, in consultation with the department of social services, the education department, the office for people with developmental disabilities, and the council on children and families, develop a plan and implement procedures to help assure that all persons in transitional care receive assistance in locating appropriate and available placements or services within the adult care systems supervised or funded by the office, and to monitor the health and safety of persons receiving transitional funding pursuant to section 7.37-a of this article. In connection with the plans and procedures, the office shall establish standards governing the quality of care provided to such persons by the residential programs, including standards relating to the development and monitoring of written individual services plans for each such person, the involvement of the individual and, unless the individual objects, parents, guardians or other persons interested in the care of such persons in the development of written individual

services plans, and the investigation of complaints relating to the quality of care or services provided to such persons. In appropriate circumstances, the office shall work with the individual and, unless the individual objects, the parents, guardians or other family members to help determine what services would be necessary to enable the family to provide care for the person at their home or in an independent community setting, and shall provide or assist in arranging for those services to the extent funds are available for that purpose.

(c) The office shall enter into a memorandum of understanding with the department of social services to facilitate access by the office to child care facilities providing transitional care to young adults as may be necessary for the office to meet its responsibilities for monitoring the care of the young adults.

(d) The office shall enter into memorandums of understanding with the department of social services and the department of education to address any requirements of those departments relating to the removal of any person receiving transitional care from a child care facility or residential school whose continuation in such facility or school may adversely affect the health, safety or welfare of children residing in the facility or school. The memorandum shall set forth the procedures the office will follow in offering a placement or services in the adult care system, if necessary and appropriate, on an expedited basis, or any other procedures for assuring alternative care and services are available to the young adult, and the manner in which the department of social services or state education department will be informed of the progress of those efforts.

(e) Upon making a determination that a person who is receiving transitional care can be appropriately cared for in an available adult care facility or service licensed, certified or approved by the office, and whose removal from a child care facility is not required on an expedited basis, the office shall notify the person and the person's guardian, if one has been appointed, or another individual who has been involved in the care of the person and who can represent the person's interests, of the availability of an administrative appeal to review the determination, and of the need to request such an appeal within thirty days of the notice. If the person, guardian or other individual requests an administrative appeal within the time required, the office shall

schedule a hearing and the commissioner or his or her designee shall issue a determination within thirty days of the adjournment of the hearing on whether the adult placement identified by the office is appropriate to the needs of the person and is available or will become available on an identified date certain. If the person, guardian or other individual does not request a hearing within the time required, or if the hearing results in a determination that the proposed adult services or placement is appropriate to the needs of the person and is available or will be available on an identified date certain, the office shall discontinue transitional care funding for the person as of a date certain.

(f) In any case where an individual receiving transitional funding is about to be transferred from one facility to another, a transfer plan shall be prepared by the sending facility and forwarded to the receiving facility and the individual, and unless the individual objects, parents, guardians or other persons interested in the care of such person prior to the transfer. The transfer plan shall include any information necessary to facilitate a safe transfer, such as specific problems, a schedule for administering medications and behavior unique to the individual.

(g) The office may make payments necessary to maintain individuals described in subdivision (a) of this section in a child care facility or residential school on an emergency basis where circumstances temporarily prevent the transfer of individuals to adult services or placements.

§ 7.39 Registration and notification of boards of directors or trustees of certain voluntary not-for-profit facilities or corporations.

(a) Notwithstanding any other law, rule or regulation, the executive director, chairperson or president of a voluntary, not-for-profit corporation or facility which is subject to the jurisdiction of the office of mental health shall furnish annually to the commissioner a list of the names and addresses of the current members of the board of directors or trustees of such facility or corporation. Failure to furnish such annual list shall remove such facility or corporation from consideration for recertification.

(b) In the event that such facility or corporation is found to be in

violation of the provisions of this chapter or of rules and regulations promulgated by the commissioner pursuant to this chapter which could result in the revocation, cancellation, limitation or suspension of the operating certificate of such facility and if notice of such violation is provided to the facility pursuant to such regulations, a copy of such notice shall be provided to each of the current members of the board of directors or trustees of such facility or corporation by the commissioner.

(c) The commissioner is authorized to promulgate such rules and regulations as are necessary to implement the provisions of this section.

§ 7.41 Geriatric service demonstration program.

(a) The office shall establish a geriatric service demonstration program to provide grants, within appropriations therefor, to providers of mental health care, substance use disorder services, compulsive gambling services, or any combination thereof, to the elderly, including organizations that provide health and aging services as well as mental health, substance use disorder, and compulsive gambling organizations. The office is also authorized, under the demonstration program, to foster and support collaboration between providers of home care services licensed or certified under article thirty-six of the public health law and mental health providers for the integration of health and mental health care, and for all other enumerated goals of this section. Such program shall be administered by the office in cooperation with the office of alcoholism and substance abuse services, the state office for the aging and such other state agencies as the commissioner shall determine are necessary for the operation of the program.

(b) Grants may be awarded by the office to providers of care to older adults with mental disabilities, substance use disorder, compulsive gambling, or any combination thereof, for the purposes which may include one or more of the following:

(1) Community integration. Programs which enable older adults with mental disabilities or older adults suffering from substance use disorder or compulsive gambling to age safely in the community and prevent the unnecessary use of institutional care;

(2) Improved quality of treatment. Programs for older adults which improve the quality of mental health care, substance use disorder or compulsive gambling services in the community or in residential facilities;

(3) Integration of services. Programs which integrate mental health and aging services with alcohol, drug, health and other support services;

(4) Workforce. Programs which make more efficient use of mental health, substance use disorder, compulsive gambling, health and aging services professionals by developing alternative service roles for paraprofessionals and volunteers, including peers, and programs more effective in recruitment and retention of bi-lingual, bi-cultural or culturally competent staff;

(5) Family support. Programs which provide support for family caregivers, to include the provision of care to older adults by younger family members and by older adults to younger family members;

(6) Finance. Programs which have developed and implemented innovative financing methodologies to support the delivery of best practices;

(7) Specialized populations. Programs which concentrate on outreach to, engagement of and effective treatment of cultural minorities or veterans as defined in section eighty-five of the civil service law;

(8) Information clearinghouse. Programs which compile, distribute and make available information on clinical developments, program innovations and policy developments which improve the care to older adults with mental disabilities or suffering from substance use disorder or compulsive gambling; and

(9) Staff training. Programs which offer on-going training initiatives including improved clinical and cultural skills, evidence based geriatric mental health, substance use disorder and compulsive gambling treatment skills, and the identification and management of mental, behavioral and substance abuse disorders among older adults.

(c) The commissioner may adopt rules and regulations necessary to implement the provisions of this section.

§ 7.43 The children's plan.

The commissioner of mental health, in consultation with the state council on children and families pursuant to section four hundred eighty-three-f of the social services law, shall oversee the implementation of the children's plan, developed pursuant to chapter six hundred sixty-seven of the laws of two thousand six, and shall assist such council with the development of future reports and plans. Both short-term and long-term recommendations of such report shall also be made a discrete part of the office of mental health's statewide comprehensive five year plan.

§ 7.45 Retaliatory personnel actions.

Employees of facilities, programs and providers operated, licensed, certified, authorized or funded by the office shall have protection from retaliatory action from employers as provided for in sections seven hundred forty and seven hundred forty-one of the labor law.

§ 7.47 Mental illness anti-stigma grants.

(a) The office shall develop and implement a program which provides grants to organizations engaged in activities which eliminate the stigma attached to mental illness and those with mental health needs.

(b) On or before the first day of February each year, the comptroller shall certify to the governor, temporary president of the senate, speaker of the assembly, chair of the senate finance committee and chair of the assembly ways and means committee, the amount of money deposited in the mental illness anti-stigma fund during the preceding calendar year as the result of revenue derived pursuant to section six hundred twenty-nine-a of the tax law.

(c) On or before the first day of February each year, the commissioner of mental health shall provide a written report to the temporary president of the senate, speaker of the assembly, chair of the senate finance committee, chair of the assembly ways and means committee, chair of the senate committee on mental health and developmental disabilities, and chair of the assembly mental health committee. Such report shall include how the monies of the fund were utilized during the preceding

calendar year and shall include:

- (1) the amount of money dispersed from the fund;
- (2) recipients of awards from the fund;
- (3) the amount awarded to each; and
- (4) the purposes for which such awards were granted.

*** § 7.49 Reporting obligations.**

The office shall post annually on or before January first on its website:

- (a) the number of defendants committed to the custody of the commissioner by a final order of observation issued pursuant to section 730.40 of the criminal procedure law;
- (b) the originating counties for such orders;
- (c) the institutions to which the office designated such defendants for observation;
- (d) for defendants observed at a hospital operated by the office, the rate of inpatient admission, the average length of stay, the number of defendants who were referred to additional services, the number of defendants who were not referred to additional services, and whether discharge planning was conducted; and
- (e) for defendants observed at a hospital not operated by the office, the number of defendants admitted to the inpatient psychiatric unit and the number of defendants evaluated and discharged without inpatient admission.

* NB Effective January 1, 2027

ARTICLE 9

HOSPITALIZATION OF PERSONS WITH A MENTAL ILLNESS

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§ 9.01 Definitions.

As used in this article:

(a) "in need of care and treatment" means that a person has a mental illness for which in-patient care and treatment in a hospital is appropriate.

(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 the person 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 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 themselves, 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.

(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 appointed pursuant to article forty-one of this chapter.

(g) "qualified psychiatrist" means a physician licensed to practice medicine in New York state who: 1. is a diplomate of the American board of psychiatry and neurology or is eligible to be certified by that board; or 2. is certified by the American osteopathic board of neurology and psychiatry or is eligible to be certified by that board.

§ 9.03 Admission to a hospital.

Unless otherwise specifically provided for by statute, a person with a mental illness shall be admitted to a hospital as an in-patient only pursuant to the provisions of this article, except that chemically dependent patients may be admitted to chemical dependence facilities operated by such hospitals under contract or agreement with the office of alcoholism and substance abuse services in accordance with the provisions of article twenty-two of this chapter. The section of the mental hygiene law under which a patient is admitted or under which any change of legal status is subsequently effected shall be stated in the patient's record.

§ 9.05 Examining physicians, examining psychiatric nurse practitioners and medical certificates.

(a) A person is disqualified from acting as an examining physician or examining psychiatric nurse practitioner in the following cases:

1. if they are a relative of the person applying for the admission or of the person alleged to be mentally ill.

2. if they are 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 they have 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 they are 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 physician or psychiatric nurse practitioner is based and shall show that the condition of the person examined is such that they need involuntary care and treatment in a hospital and such other information as the commissioner may by regulation require.

§ 9.07 Notice to all patients of their rights and of the availability of the mental hygiene legal service.

(a) Immediately upon the admission of any patient to a hospital or upon his conversion to a different status, the director shall inform the patient in writing of his status, including the section of this chapter under which he is hospitalized, and of his rights under this article, including the availability of the mental hygiene legal service. At any time thereafter, upon the request of the patient or of anyone on the patient's behalf, the patient shall be permitted to communicate with the mental hygiene legal service and avail himself of the facilities thereof.

(b) The director of every hospital shall post copies of a notice, in a form and manner to be determined by the commissioner, at places

throughout the hospital where such notice will be conspicuous and visible to all patients, stating the following:

1. the availability of the mental hygiene legal service.
2. a general statement of the rights of patients under the various admission or retention provisions of this article.
3. the right of the patient to communicate with the director, the board of visitors, the commissioner of mental health, and the mental hygiene legal service.

§ 9.09 Notices to mental hygiene legal service concerning minors.

When any person under the age of eighteen years is admitted to or is converted from one admission status to another in any hospital, written notice of such admission or conversion shall be given to the mental hygiene legal service within three days thereof and such notice shall specify the age of and admission procedure applicable to such person. No such person shall be transferred to any other hospital without the prior consent of such person and the prior written consent of his parent or legal guardian unless three days prior written notice of such proposed transfer is given to the mental hygiene legal service and an opportunity is afforded to the service to see such person and to review the proposed transfer. Immediately upon release or transfer of any such person, the director of the hospital shall give the mental hygiene legal service written notice thereof.

*** § 9.11 Patients' records.**

Except as to informal patients and patients admitted pursuant to section 9.39 or 9.40, the director of a hospital shall within five days, excluding Sunday and holidays, after the admission of any patient forward to the mental hygiene legal service a record of such patient and shall simultaneously forward to the department such information from the

record as the commissioner by regulation shall require. Such information from the record in the department shall be accessible only in the manner set forth in section 33.13.

* NB Effective until July 1, 2027

* § 9.11 Patients' records.

Except as to informal patients and patients admitted pursuant to section 9.39, the director of a hospital shall within five days, excluding Sunday and holidays, after the admission of any patient forward to the mental hygiene legal service a record of such patient and shall simultaneously forward to the department such information from the record as the commissioner by regulation shall require. Such information from the record in the department shall be accessible only in the manner set forth in section 33.13.

* NB Effective July 1, 2027

§ 9.13 Voluntary admissions.

(a) The director of any hospital may receive as a voluntary patient any suitable person in need of care and treatment, who voluntarily makes written application therefor. If the person is under sixteen years of age, the person may be received as a voluntary patient only on the application of the parent, legal guardian, or next-of-kin of such person, or, subject to the terms of any court order or any instrument executed pursuant to section three hundred eighty-four-a of the social services law, a social services official or authorized agency with care and custody of such person pursuant to the social services law, the director of the division for youth, acting in accordance with section five hundred nine of the executive law, or a person or entity having custody of the person pursuant to an order issued pursuant to section seven hundred fifty-six or one thousand fifty-five of the family court act. If the person is over sixteen and under eighteen years of age, the director may, in his discretion, admit such person either as a voluntary patient on his own application or on the application of the person's parent, legal guardian, next-of-kin, or, subject to the terms of any court order or any instrument executed pursuant to section three hundred eighty-four-a of the social services law, a social services official or

authorized agency with care and custody of such person pursuant to the social services law, the director of the division for youth, acting in accordance with section five hundred nine of the executive law, provided that such person knowingly and voluntarily consented to such application in accordance with such section, or a person or entity having custody of the person pursuant to an order issued pursuant to section seven hundred fifty-six or one thousand fifty-five of the family court act.

(b) If such voluntary patient gives notice in writing to the director of the patient's desire to leave the hospital, the director shall promptly release the patient; provided, however, that if there are reasonable grounds for belief that the patient may be in need of involuntary care and treatment, the director may retain the patient for a period not to exceed seventy-two hours from receipt of such notice. Before the expiration of such seventy-two hour period, the director shall either release the patient or apply to the supreme court or the county court in the county where the hospital is located for an order authorizing the involuntary retention of such patient. The application and proceedings in connection therewith shall be in the manner prescribed in this article for a court authorization to retain an involuntary patient, except that notice of such application shall be served forthwith and, if a hearing be demanded, the date for hearing to be fixed by the court shall be at a time not later than three days from the date such notice has been received by the court. If it be determined by the court that the patient is mentally ill and in need of retention for involuntary care and treatment in the hospital, the court shall forthwith issue an order authorizing the retention of such patient for care and treatment in the hospital, or, if requested by the patient, his guardian, or committee, in such other non-public hospital as may be within the financial means of the patient, for a period not exceeding sixty days from the date of such order. Further application for retention of the patient for periods not exceeding six months, one year, and two year periods thereafter, respectively, may thereafter be made in accordance with the provisions of this article.

In the case of a patient under eighteen years of age, such notice requesting release of the patient may be given by the patient, by the person who made application for his admission, by a person of equal or

closer relationship, or by the mental hygiene legal service. If such notice be given by any other person, the director may in his discretion refuse to discharge the patient and in the event of such refusal, such other person or the mental hygiene legal service may apply to the supreme court or to a county court for the release of the patient.

§ 9.15 Informal admissions.

The director of any hospital approved by the commissioner for such purpose may receive therein as an informal patient any suitable person in need of care and treatment requesting admission thereto. Such person may be admitted as a patient without making formal or written application therefor and any such patient shall be free to leave such hospital at any time after such admission.

§ 9.17 Voluntary and informal admissions; suitability.

(a) In order for a person to be suitable for admission to a hospital as a voluntary or informal patient, or for conversion to such status he must be notified of and have the ability to understand the following:

1. that the hospital to which he is requesting admission is a hospital for the mentally ill.

2. that he is making an application for admission.

3. the nature of the voluntary or informal status, as the case may be and the provisions governing release or conversion to involuntary status.

(b) The department shall have the power to examine the patients admitted pursuant to this section and determine if they belong to the voluntary or informal class. If it be determined that any such patient does not belong to the voluntary or informal class, the department shall determine whether the patient shall be discharged or whether procedures shall be commenced for the admission of such patient to a hospital pursuant to other sections of this article. The decision of the

department shall be forthwith complied with by the director or person in charge of any such hospital. Any failure to conform to the requirements of this section shall be considered a sufficient cause for revocation of an operating certificate theretofore issued to a hospital.

§ 9.19 Voluntary and informal admissions; notices.

The director shall cause all patients admitted as voluntary or informal patients to be informed once during each one hundred twenty days of hospitalization 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 as a voluntary or informal patient shall be obtained and a copy thereof shall be given to the mental hygiene legal service.

§ 9.21 Voluntary and informal admissions; encouragement of.

(a) It shall be the duty of all state and local officers having duties to perform relating to the mentally ill to encourage any person suitable therefor and in need of care and treatment for mental illness to apply for admission as a voluntary or informal patient.

(b) No requirement shall be made by rule, regulation, or otherwise as a condition to admission or retention that any person applying for admission shall have the legal capacity to contract.

(c) A person requesting admission to a hospital, who is suitable for admission on a voluntary or informal status, shall be admitted only on such a voluntary or informal status. The hospital shall, in such case, have the discretion to admit the person on either such status, except that, if the person specifically requests admission on an informal status and is suitable therefor, he shall be admitted only on such informal status.

§ 9.23 Voluntary and informal admissions; conversion to.

(a) Nothing contained in this article shall be construed to prohibit

any director from converting, and it shall be his duty to convert, the admission of any involuntary patient suitable and willing to apply therefor to a voluntary status. The mental hygiene legal service shall be given notice of every conversion from an involuntary status to a voluntary status.

(b) Any patient converted from an involuntary status to a voluntary status shall have the right to a judicial hearing before the supreme court or a county court on the questions of his suitability for such conversion and on his willingness to be so converted. The procedure for requesting such a hearing, except as to time limitations and questions to be determined, shall be pursuant to subdivisions (a) and (b) of section 9.31 of this article.

§ 9.25 Voluntary and informal admissions; review of status.

(a) No voluntary or informal patient, whether admitted on such status or converted thereto, shall be continued in 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 in 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 in a voluntary or informal 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 hospital, 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 in a voluntary or informal status, it shall so certify and the patient may be continued in the hospital in such status. A copy of such certification

of review shall be filed in the patient's record.

(b) If an application for a court order has been made and a hearing is requested, the provisions governing hearings contained in section 9.31 of this article shall be applicable.

(c) If an application for a court order has been made, the court, in determining the proceeding, may approve the continued hospitalization of the patient as a voluntary or informal patient or, if the court finds that the patient is not suitable or willing to continue as a voluntary or informal patient, it may order the discharge of the patient or make such other order as it may deem appropriate in the circumstances.

(d) Prior to the termination of twelve months from the date of the certification on such first review by the mental hygiene legal service 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 as a voluntary or informal patient as set forth in the foregoing subdivisions.

§ 9.27 Involuntary admission on medical certification.

(a) The director of a hospital may receive and retain therein as a patient any person alleged to be mentally ill and in need of involuntary care and treatment upon the certificates of two examining physicians, or upon the certificates of an examining physician and a psychiatric nurse practitioner. Such certificates shall be accompanied by an application for the admission of such person. The examination may be conducted jointly but each certifying practitioner shall execute a separate certificate.

(b) Such application must have been executed within ten days prior to such admission. It may be executed by any one of the following:

1. any person with whom the person alleged to be mentally ill resides.
2. the father or mother, husband or wife, brother or sister, or the child of any such person or the nearest available relative.

3. the committee of such person.

4. an officer of any public or well recognized charitable institution or agency or home, including but not limited to the superintendent of a correctional facility, as such term is defined in paragraph (a) of subdivision four of section two of the correction law, in whose institution the person alleged to be mentally ill resides and the designee authorized by the commissioner of the department of corrections and community supervision responsible for community supervision in the region where such person alleged to be mentally ill has been released to any form of supervision following incarceration.

5. the director of community services or social services official, as defined in the social services law, of the city or county in which any such person may be.

6. the director of the hospital or of a general hospital, as defined in article twenty-eight of the public health law, in which the patient is hospitalized.

7. the director or person in charge of a facility providing care to alcoholics, or substance abusers or substance dependent persons.

8. the director of the division for youth, acting in accordance with the provisions of section five hundred nine of the executive law.

9. subject to the terms of any court order or any instrument executed pursuant to section three hundred eighty-four-a of the social services law, a social services official or authorized agency which has, pursuant to the social services law, care and custody or guardianship and custody of a child over the age of sixteen.

10. subject to the terms of any court order a person or entity having custody of a child pursuant to an order issued pursuant to section seven hundred fifty-six or one thousand fifty-five of the family court act.

11. a qualified psychiatrist who is either supervising the treatment of or treating such person for a mental illness in a facility licensed or operated by the office of mental health.

(c) Such application shall contain a statement of the facts upon which the allegation of mental illness and need for care and treatment are based and shall be executed under penalty of perjury but shall not require the signature of a notary public thereon.

(d) Before an examining physician or psychiatric nurse practitioner completes the certificate of examination of a person for involuntary care and treatment, they shall consider alternative forms of care and treatment that might be adequate to provide for the person's needs without requiring involuntary hospitalization. If the examining physician or psychiatric nurse practitioner knows that the person they are examining for involuntary care and treatment has been under prior treatment, they shall, insofar as possible, consult with the physician or psychologist furnishing such prior treatment prior to completing their certificate. Nothing in this section shall prohibit or invalidate any involuntary admission made in accordance with the provisions of this chapter.

(e) The director of the hospital where such person is brought shall cause such person to be examined forthwith by a physician who shall be a member of the psychiatric staff of such hospital other than the original examining physicians or psychiatric nurse practitioner whose certificate or certificates accompanied the application and, if such person is found to be in need of involuntary care and treatment, they may be admitted thereto as a patient as herein provided.

(f) Following admission to a hospital, no patient may be sent to another hospital by any form of involuntary admission unless the mental hygiene legal service has been given notice thereof.

(g) Applications for involuntary admission of patients to residential treatment facilities for children and youth or transfer of involuntarily admitted patients to such facilities may be reviewed by the office or commissioner's designee serving such facility in accordance with section 9.51 of this article and in consultation with the residential treatment facility receiving an involuntary admission or transfer of an involuntarily admitted patient.

(h) 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.

(i) After an application for the admission of a person has been completed and both certifying practitioners have examined such person and separately certified that such person is mentally ill and in need of involuntary care and treatment in a hospital, either certifying practitioner is authorized to request peace officers, when 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 into custody and transport such person to a hospital for determination by the director whether such person qualifies for admission pursuant to this section. Upon the request of either certifying practitioner, an ambulance service, as defined by subdivision two of section three thousand one of the public health law, is authorized to transport such person to a hospital for determination by the director whether such person qualifies for admission pursuant to this section.

§ 9.29 Involuntary admission on medical certification; notice of admission to patients and others.

(a) The director shall cause written notice of a person's involuntary admission on an application supported by medical certification to be given forthwith to the mental hygiene legal service.

(b) The director shall cause written notice of the admission of such person, including such person's rights under this article, to be given personally or by mail not later than five days, excluding Sunday and holidays, after such admission to the following:

1. the nearest relative of the person alleged to be mentally ill, other than the applicant, if there be any such person known to the director.

2. as many as three additional persons, if designated in writing to receive such notice by the person so admitted.

§ 9.31 Involuntary admission on medical certification; patient's right to a hearing.

(a) If, at any time prior to the expiration of sixty days from the date of involuntary admission of a patient on an application supported by medical certification, 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 need for involuntary care and treatment, a hearing shall be held as herein provided. The patient or person requesting a hearing on behalf of the patient may designate the county where the hearing shall be held, which shall be either in the county where the hospital is located, the county of the patient's residence, or the county in which the hospital to which the patient was first admitted is located. Such hearing shall be held in the county so designated, subject to application by any interested party, including the director, for change of venue to any other county because of the convenience of parties or witnesses or the condition of the patient upon notice to the persons required to be served with notice of the patient's initial admission.

(b) 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 the county court in the county designated by the applicant, if one be designated, or if no designation be made, then to the supreme court or the county court in the county where such hospital is located. A copy of such notice and record shall also be given the mental hygiene legal service.

(c) The court which receives such notice shall fix the date of such hearing at a time not later than five days from the date such notice is received by the court and cause the patient, any 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. If it be determined that the patient is in need of retention, the court shall deny the application for the patient's release. If the patient is in a psychiatric hospital maintained by a political subdivision of the state or in a general hospital the court, upon notice to the patient and the

mental hygiene legal service and an opportunity to be heard, may order the patient transferred to the jurisdiction of the department for retention in a hospital operated by the state designated by the commissioner or to a private facility having an appropriate operating certificate for retention therein for the balance of the period for which the hospital is authorized to retain the patient. If it appears, however, that the relatives of the patient or a committee of his person are willing and able properly to care for him at some place other than a hospital, then, upon their written consent, the court may order the transfer of the patient to the care and custody of such relatives or such committee. If it be determined that the patient is not mentally ill or not in need of retention, the court shall order the release of the patient.

(d) If the court shall order the release of the patient, such patient shall forthwith be released.

(e) The department or the director of the hospital authorized to retain or receive and retain such patient, as the case may be, shall be immediately furnished with a copy of the order of the court and, if a transfer is ordered, shall immediately make provisions for the transfer of such patient.

(f) The papers in any proceeding under this article which are filed with the county clerk shall be sealed and shall be exhibited only to the parties to the proceeding or someone properly interested, upon order of the court.

§ 9.33 Court authorization to retain an involuntary patient.

(a) If the director shall determine that a patient admitted upon an application supported by medical certification, for whom there is no court order authorizing retention for a specified period, is in need of retention and if such patient does not agree to remain in such hospital as a voluntary patient, the director shall apply to the supreme court or the county court in the county where the hospital is located for an order authorizing continued retention. Such application shall be made no later than sixty days from the date of involuntary admission on application supported by medical certification or thirty days from the date of an order denying an application for patient's release pursuant

to section 9.31, whichever is later; and the hospital is authorized to retain the patient for such further period during which the hospital is authorized to make such application or during which the application may be pending. The director shall cause written notice of such application to be given the patient and a copy thereof shall be given personally or by mail to the persons required by this article to be served with notice of such patient's initial admission and to the mental hygiene legal service. Such notice shall state that a hearing may be requested and that failure to make such a request within five days, excluding Sunday and holidays, from the date that the notice was given to the patient will permit the entry without a hearing of an order authorizing retention.

(b) If no request is made for a hearing on behalf of the patient within five days, excluding Sunday and holidays, from the date such notice of such application was given such patient, and if the mental hygiene legal service has not requested a hearing, the court receiving the application may, if satisfied that the patient requires continued retention for care and treatment or transfer and continued retention, immediately issue an order authorizing continued retention of such patient in such hospital for a period not to exceed six months from the date of the order or, if such patient is in a psychiatric hospital operated by a political subdivision of the state or in a general hospital, such order may direct the transfer of such patient to the jurisdiction of the department for retention in a hospital operated by the state or to a private facility having an appropriate operating certificate, to be retained therein for a period not to exceed six months from the date of such order.

(c) Upon the demand of the patient or of anyone on his behalf or upon request of the mental hygiene legal service, the court shall, or may on its own motion, fix a date for the hearing of the application, in like manner as is provided for hearings in section 9.31. The provisions of such section shall apply to the procedure for obtaining and holding a hearing and to the granting or refusal to grant an order of retention by the court, except that if the patient has already had a hearing, he shall not have the right to designate initially the county in which the hearing shall be held.

(d) If the director of a hospital, in which a patient is retained

pursuant to the foregoing subdivisions of this section, shall determine that the condition of such patient requires his further retention in a hospital, he shall, if such patient does not agree to remain in such hospital as a voluntary patient, apply during the period of retention authorized by the last order of the court to the supreme court or the county court in the county where the hospital is located for an order authorizing further continued retention of such patient. 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 patient or anyone on his behalf or the mental hygiene legal service may request that the patient be brought personally before the court, in which case the court shall not grant an order for periods of one year or longer unless such patient shall have appeared personally before the court. The period for continued retention pursuant to the first order obtained under this subdivision shall authorize further continued retention of the patient for not more than one year from the date of the order. The period for the further continued retention of the patient authorized by any subsequent order under this subdivision shall be for periods not to exceed two years each from the date of the order.

§ 9.35 Review of court authorization to retain an involuntary patient.

If a person who has been denied release or whose retention, continued retention, or transfer and continued retention has been authorized pursuant to this article, or any relative or friend in his behalf, be dissatisfied with any such order he may, within thirty days after the making of any such order, obtain a rehearing and a review of the proceedings already had and of such order upon a petition to a justice of the supreme court other than the judge or justice presiding over the court making such order. Such justice shall cause a jury to be summoned and shall try the question of the mental illness and the need for retention of the patient so authorized to be retained. Any such patient or the person applying on his behalf for such review may waive the trial of the fact by a jury and consent in writing to trial of such fact by the court. No such petition for rehearing and review shall be made by

anyone other than the person so authorized to be retained or the father, mother, husband, wife, or child of such person, unless the petitioner shall have first obtained the leave of the court upon good cause shown. If the verdict of the jury, or the decision of the court when jury trial has been waived, be that such person does not have a mental illness or is not in need of retention the justice shall forthwith discharge him, but if the verdict of the jury, or the decision of the court where a jury trial has been waived, be that such person has a mental illness and is in need of retention the justice shall certify that fact and make an order authorizing continued retention under the original order. Such order shall be presented, at the time of authorization of continued retention of such mentally ill person, to, and filed with, the director of the hospital in which the person with a mental illness is authorized to be retained, and a copy thereof shall be forwarded to the department by such director and filed in the office thereof. Proceedings under the order shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court, made upon a notice and after a hearing, with provisions made therein for such temporary care or confinement of the alleged person with a mental illness as may be deemed necessary.

§ 9.37 Involuntary admission on certificate of a director of community services or his designee.

* (a) The director of a hospital, upon application by a director of community services or an examining physician duly designated by him or her, may receive and care for in such hospital as a patient any person who, in the opinion of the director of community services or the director's designee, 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 himself or herself or others.

The need for immediate hospitalization shall be confirmed by a staff physician of the hospital prior to admission. Within seventy-two hours, excluding Sunday and holidays, after such admission, if such patient is to be retained for care and treatment beyond such time and he or she does not agree to remain in such hospital as a voluntary patient, the

certificate of another examining physician who is a member of the psychiatric staff of the hospital that the patient is in need of involuntary care and treatment shall be filed with the hospital. From the time of his or her admission under this section the retention of such patient for care and treatment shall be subject to the provisions for notice, hearing, review, and judicial approval of continued retention or transfer and continued retention provided by this article for the admission and retention of involuntary patients, 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 in the hospital under this section.

* NB Effective until July 1, 2027

* (a) The director of a hospital, upon application by a director of community services or an examining physician duly designated by them, may receive and care for in such hospital as a patient any person who, in the opinion of the director of community services or their designee, 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 themselves or others. "Likelihood of serious harm" shall mean:

1. substantial risk of physical harm to themselves as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that they are dangerous to themselves, 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 or 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 need for immediate hospitalization shall be confirmed by a staff physician of the hospital prior to admission. Within seventy-two hours, excluding Sunday and holidays, after such admission, if such patient is to be retained for care and treatment beyond such time and they do not

agree to remain in such hospital as a voluntary patient, the certificate of another examining physician who is a member of the psychiatric staff of the hospital that the patient is in need of involuntary care and treatment shall be filed with the hospital. From the time of their admission under this section the retention of such patient for care and treatment shall be subject to the provisions for notice, hearing, review, and judicial approval of continued retention or transfer and continued retention provided by this article for the admission and retention of involuntary patients, 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 in the hospital under this section.

* NB Effective July 1, 2027

(b) The application for admission of a patient pursuant to this section shall be based upon a personal examination by a director of community services or his designee. It shall be in writing and shall be filed with the director of such hospital at the time of the patient's reception, together with a statement in a form prescribed by the commissioner giving such information as he may deem appropriate.

(c) Notwithstanding the provisions of subdivision (b) of this section, in counties with a population of less than two hundred thousand, a director of community services who is a licensed psychologist pursuant to article one hundred fifty-three of the education law or a licensed clinical social worker pursuant to article one hundred fifty-four of the education law but who is not a physician may apply for the admission of a patient pursuant to this section without a medical examination by a designated physician, if a hospital approved by the commissioner pursuant to section 9.39 of this article is not located within thirty miles of the patient, and the director of community services has made a reasonable effort to locate a designated examining physician but such a designee is not immediately available and the director of community services, after personal observation of the person, reasonably believes that he may have a mental illness which is likely to result in serious harm to himself or others and inpatient care and treatment of such person in a hospital may be appropriate. In the event of an application pursuant to this subdivision, a physician of the receiving hospital shall examine the patient and shall not admit the patient unless he or

she determines 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 himself or others. If the patient is admitted, the need for hospitalization shall be confirmed by another staff physician within twenty-four hours. An application pursuant to this subdivision shall be in writing and shall be filed with the director of such hospital at the time of the patient's reception, together with a statement in a form prescribed by the commissioner giving such information as he may deem appropriate, including a statement of the efforts made by the director of community services to locate a designated examining physician prior to making an application pursuant to this subdivision.

(d) After signing the application, the director of community services or the director's designee shall be authorized and empowered to take into custody, detain, transport, and provide temporary care for any such person. Upon the written request of such director or the director's designee it shall be the duty of peace officers, when acting pursuant to their special duties, or police officers who are members of the state police or of an authorized police department or force or of a sheriff's department to take into custody and transport any such person as requested and directed by such director or designee. Upon the written request of such director or designee, an ambulance service, as defined in subdivision two of section three thousand one of the public health law, is authorized to transport any such person.

(e) Reasonable expenses incurred by the director of community mental hygiene services or his designee for the examination and temporary care of the patient and his transportation to and from the hospital shall be a charge upon the county from which the patient was admitted and shall be paid from any funds available for such purposes.

(f) The provisions of this section shall not be applicable to continue any patient in a hospital who has already been admitted to the hospital under this or any other section of this article.

(g) 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.

§ 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 themselves or others. "Likelihood to result in serious harm" as used in this section shall mean:

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

*** § 9.40 Emergency observation, care and treatment in comprehensive psychiatric emergency programs.**

(a) The director of any comprehensive psychiatric emergency program may receive and retain therein for a period not to exceed seventy-two hours, any person alleged to have a mental illness for which immediate observation, care and treatment in such program is appropriate and which is likely to result in serious harm to the person or others. The director shall cause to be entered upon the program records the name of the person or persons, if any, who have brought the person alleged to have a mental illness to the program and the details of the circumstances leading the person or persons to bring the person alleged to have a mental illness to the program. The director shall, in accordance with section 33.13 of this chapter, upon receipt 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.

(a-1) The director shall cause triage and referral services to be provided by a psychiatric nurse practitioner or physician of the program as soon as such person is received into the comprehensive psychiatric emergency program. After receiving triage and referral services, such person shall be appropriately treated and discharged, or referred for further crisis intervention services including an examination by a physician as described in subdivision (b) of this section.

(b) The director shall cause examination of such persons not discharged after the provision of triage and referral services to be initiated by a staff physician 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 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 has been confirmed after examination by another physician 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 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.

(d) If at any time it is determined that the person is no longer in need of immediate observation, care and treatment in accordance with this section and is not in need of involuntary care and treatment in a hospital, such person shall be released without regard to the provisions of section 29.15 of this chapter, unless such person agrees to be admitted to another appropriate hospital as a voluntary or informal patient. Provided, however, the facility shall:

1. advise such person of clinically appropriate aftercare services; and

2. for individuals with complex needs, as defined by the regulations of the office:

- (i) for individuals in care management programs, coordinate discharge planning with the care management program; and

- (ii) provide referrals, if clinically appropriate and available, for

care management services, community-based services, residential services, or peerbased programs; and

3. comply with additional requirements as may be set forth by the regulations of the office of mental health.

(e) If at any time within the seventy-two hour period it is determined that such person continues to require immediate observation, care and treatment in accordance with this section and such requirement is likely to continue beyond the seventy-two hour period, such person shall be removed within a reasonable period of time to an appropriate hospital authorized to receive and retain patients pursuant to section 9.39 of this article and such person shall be evaluated for admission and, if appropriate, shall be admitted to such hospital in accordance with section 9.39 of this article, except that if the person is admitted, the fifteen day retention period of subdivision (b) of section 9.39 of this article shall be calculated from the time such person was initially registered into the emergency room of the comprehensive psychiatric emergency program. Any person removed to a hospital pursuant to this paragraph shall be removed without regard to the provisions of section 29.11 or 29.15 of this chapter and shall not be considered to have been transferred or discharged to another hospital.

(f) Nothing in this section shall preclude the involuntary admission of a person to an appropriate hospital pursuant to the provisions of this article if at any time during the seventy-two hour period it is determined that the person is in need of involuntary care and treatment in a hospital and the person does not agree to be admitted to a hospital as a voluntary or informal patient. Efforts shall be made to assure that any arrangements for such involuntary admissions in an appropriate hospital shall be made within a reasonable period of time.

(g) 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 receipt or retention under this section.

(h) All time periods referenced in this section shall be calculated from the time such person is initially registered into the emergency room of the comprehensive psychiatric emergency program.

* NB Repealed July 1, 2027

*** § 9.41 Emergency assessment for immediate observation, care, and treatment; powers of certain peace officers and police officers.**

(a) Any peace officer, when acting pursuant to their special duties, or police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department may take into custody any person who appears to be mentally ill and is conducting themselves in a manner which is likely to result in serious harm to the person or others. Such officer may direct the removal of such person or remove such person to any hospital specified in subdivision (a) of section 9.39 of this article, or any comprehensive psychiatric emergency program specified in subdivision (a) of section 9.40 of this article, or pending such person's examination or admission to any such hospital or program, temporarily detain any such person in another safe and comfortable place, in which event, such officer shall immediately notify the director of community services or, if there be none, the health officer of the city or county of such action. Provided, however, a peace officer or police officer directing the removal of a person who is conducting themselves in a manner which is likely to result in serious harm as defined by paragraph three of subdivision (c) of section 9.01 of this chapter, shall request the transport of such person be conducted by emergency medical services, if practicable based on: the person's potential medical needs and the capacity limits of the local emergency medical services agencies, as determined by the local emergency medical services agencies; and the safety of the person being removed, as determined by the officer.

(b) A person otherwise determined to meet the criteria for an emergency assessment pursuant to this section may voluntarily agree to be transported to a crisis stabilization center under section 36.01 of this chapter for care and treatment and, in accordance with this article, an assessment by the crisis stabilization center determines that they are able to meet the service needs of the person.

* NB Effective until July 1, 2027

*** § 9.41 Emergency admissions for immediate observation, care, and treatment; powers of certain peace officers and police officers.**

Any peace officer, when acting pursuant to their special duties, or police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department may take into custody any person who appears to be mentally ill and is conducting themselves in a manner which is likely to result in serious harm to themselves or others. Such officer may direct the removal of such person or remove such person to any hospital specified in subdivision (a) of section 9.39 of this article or, pending such person's examination or admission to any such hospital, temporarily detain any such person in another safe and comfortable place, in which event, such officer shall immediately notify the director of community services or, if there be none, the health officer of the city or county of such action. Provided, however, a peace officer or police officer directing the removal of a person who is conducting themselves in a manner which is likely to result in serious harm as defined by paragraph three of subdivision (c) of section 9.01 of this article, shall request the transport of such person be conducted by emergency medical services, if practicable based on: the person's potential medical needs and the capacity limits of the local emergency medical services agencies, as determined by the local emergency medical services agencies; and the safety of the person being removed, as determined by the officer.

* NB Effective July 1, 2027

*** § 9.43 Emergency assessment for immediate observation, care, and treatment; powers of courts.**

(a) Whenever any court of inferior or general jurisdiction is informed by verified statement that a person is apparently mentally ill and is conducting himself or herself in a manner which in a person who is not mentally ill would be deemed disorderly conduct or which is likely to result in serious harm to himself or herself, such court shall issue a warrant directing that such person be brought before it. If, when said person is brought before the court, it appears to the court, on the basis of evidence presented to it, that such person has or may have a mental illness which is likely to result in serious harm to himself or herself or others, the court shall issue a civil order directing his or

her removal to any hospital specified in subdivision (a) of section 9.39 of this article or any comprehensive psychiatric emergency program specified in subdivision (a) of section 9.40 of this article, or to any crisis stabilization center specified in section 36.01 of this chapter when the court deems such center is appropriate and where such person voluntarily agrees; that is willing to receive such person for a determination by the director of such hospital, program or center whether such person should be received therein pursuant to such section.

(b) Whenever a person before a court in a criminal action appears to have a mental illness which is likely to result in serious harm to himself or herself or others and the court determines either that the crime has not been committed or that there is not sufficient cause to believe that such person is guilty thereof, the court may issue a civil order as above provided, and in such cases the criminal action shall terminate.

* NB Effective until July 1, 2027

* § 9.43 Emergency admissions for immediate observation, care, and treatment; powers of courts.

(a) Whenever any court of inferior or general jurisdiction is informed by verified statement that a person is apparently mentally ill and is conducting himself in a manner which in a person who is not mentally ill would be deemed disorderly conduct or which is likely to result in serious harm to himself or others as defined in section 31.39, such court shall issue a warrant directing that such person be brought before it. If, when said person is brought before the court, it appears to the court, on the basis of evidence presented to it, that such person has or may have a mental illness which is likely to result in serious harm to himself or others, the court shall issue a civil order directing his removal to any hospital specified in subdivision (a) of section 31.39 willing to receive such person for a determination by the director of such hospital whether such person should be retained therein pursuant to such section.

(b) Whenever a person before a court in a criminal action appears to have a mental illness which is likely to result in serious harm to himself or others and the court determines either that the crime has not been committed or that there is not sufficient cause to believe that such person is guilty thereof, the court may issue a civil order as

above provided, and in such cases the criminal action shall terminate.

* NB Effective July 1, 2027

*** § 9.45 Emergency assessment for immediate observation, care, and treatment; powers of directors of community services.**

(a) The director of community services or the director's designee shall have the power to direct the removal of any person, within their jurisdiction, 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 pursuant to subdivision (a) of section 9.40 of this article, if the parent, adult sibling, spouse, domestic partner as defined in section twenty-nine hundred ninety-four-a of the public health law or child of the person, the committee or legal guardian of the person, a licensed psychologist, registered professional nurse or certified social worker currently responsible for providing treatment services to the person, a supportive or intensive case manager currently assigned to the person by a case management program which program is approved by the office of mental health for the purpose of reporting under this section, a licensed physician, health officer, peace officer or police officer reports to the director of community services or the director's designee that such person has a mental illness for which immediate care and treatment is appropriate and that is likely to result in serious harm to self or others. It shall be the duty of peace officers, when 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 assist representatives of such director to take into custody and transport any such person. Upon the request of a director of community services or the director's designee, an ambulance service, as defined in subdivision two of section three thousand one of the public health law, is authorized to transport any such person. Such person may then be retained in a hospital pursuant to the provisions of section 9.39 of this article or in a comprehensive psychiatric emergency program pursuant to the provisions of section 9.40 of this article.

(b) A person otherwise determined to meet the criteria for an emergency assessment pursuant to this section may voluntarily agree to

be transported to a crisis stabilization center under section 36.01 of this chapter for care and treatment and, in accordance with this article, an assessment by the crisis stabilization center determines that they are able to meet the service needs of the person.

* NB Effective until July 1, 2027

* § 9.45 Emergency admissions for immediate observation, care, and treatment; powers of directors of community services.

The director of community services or the director's designee shall have the power to direct the removal of any person, within their jurisdiction, to a hospital approved by the commissioner pursuant to subdivision (a) of section 9.39 of this article if the parent, spouse, domestic partner as defined in section twenty-nine hundred ninety-four-a of the public health law or child of the person, a licensed physician, health officer, peace officer or police officer reports to such director of community services or the director's designee that such person has a mental illness for which immediate care and treatment in a hospital is appropriate and which is likely to result in serious harm to self or others, as defined in section 9.39 of this article. It shall be the duty of peace officers, when 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 assist representatives of such director to take into custody and transport any such person. Upon the request of a director of community services or their designee an ambulance service, as defined in subdivision two of section three thousand one of the public health law, is authorized to transport any such person. Such person may then be retained pursuant to the provisions of section 9.39 of this article.

* NB Effective July 1, 2027

§ 9.46 Reports of substantial risk or threat of harm by mental health professionals.

(a) For purposes of this section, the term "mental health professional" shall include a physician, psychiatrist, psychologist, registered nurse, licensed clinical social worker, licensed master social worker, licensed mental health counselor, clinical nurse

specialist, certified nurse practitioner, licensed clinical marriage and family therapist, or a licensed professional nurse.

(b) Notwithstanding any other law to the contrary, when a mental health professional currently providing treatment services to a person determines, in the exercise of reasonable professional judgment, that such person is likely to engage in conduct that would result in serious harm to self or others, he or she shall be required to report, as soon as practicable, to the director of community services, or the director's designee, who shall report to the division of criminal justice services whenever he or she agrees that the person is likely to engage in such conduct. Information transmitted to the division of criminal justice services shall be limited to names and other non-clinical identifying information, which may only be used for determining whether a license issued pursuant to section 400.00 of the penal law should be suspended or revoked, or for determining whether a person is ineligible for a license issued pursuant to section 400.00 of the penal law, or is no longer permitted under state or federal law to possess a firearm.

(c) Nothing in this section shall be construed to require a mental health professional to take any action which, in the exercise of reasonable professional judgment, would endanger such mental health professional or increase the danger to a potential victim or victims.

(d) The decision of a mental health professional to disclose or not to disclose in accordance with this section, when made reasonably and in good faith, shall not be the basis for any civil or criminal liability of such mental health professional.

§ 9.47 Duties of local officers in regard to their persons with a mental illness.

* (a) All directors of community services, health officers, and social services officials, as defined by the social services law, are charged with the duty of seeing that all persons with a mental illness within their respective communities who are in need of care and treatment at a hospital are admitted to a hospital pursuant to the provisions of this article. Social services officials and health officers shall notify the director of community services of any such person coming to their attention. Pending the determination of the condition of an alleged

person with a mental illness, it shall be the duty of the director of community services and, if there be no such director, of the local health officer to provide for the proper care of such person in a suitable facility.

* NB Effective until June 30, 2027

* All directors of community services, health officers, and social services officials, as defined by the social services law, are charged with the duty of seeing that all persons with a mental illness within their respective communities who are in need of care and treatment at a hospital are admitted to a hospital pursuant to the provisions of this article. Social services officials and health officers shall notify the director of community services of any such person coming to their attention. Pending the determination of the condition of an alleged person with a mental illness, it shall be the duty of the director of community services and, if there be no such director, of the local health officer to provide for the proper care of such person in a suitable facility.

* NB Effective June 30, 2027

* (b) All directors of community services shall be responsible for:

- (1) receiving reports of persons who may be in need of assisted outpatient treatment and documenting the receipt date of such reports;
- (2) conducting timely investigations of such reports and providing written notice upon the completion of investigations to reporting persons and program coordinators, appointed by the commissioner of mental health pursuant to subdivision (f) of section 7.17 of this title, and documenting the initiation and completion dates of such investigations and the dispositions;
- (3) filing of petitions for assisted outpatient treatment pursuant to paragraph (vii) of subdivision (e) of section 9.60 of this article, and documenting the petition filing date and the date of the court order;
- (4) coordinating the timely delivery of court ordered services with program coordinators and documenting the date assisted outpatients begin to receive the services mandated in the court order; and
- (5) ensuring evaluation of the need for ongoing assisted outpatient treatment pursuant to subdivision (k) of section 9.60 of this article prior to the expiration of any assisted outpatient treatment order;
- (6) if he or she has been ordered to provide for or arrange for

assisted outpatient treatment pursuant to paragraph five of subdivision (j) of section 9.60 of this article or became the appropriate director pursuant to this paragraph or subdivision (c) of section 9.48 of this article, notifying the director of community services of the new county of residence when he or she has reason to believe that an assisted outpatient has or will change his or her county of residence during the pendency of an assisted outpatient treatment order. Upon such change of residence, the director of the new county of residence shall become the appropriate director, as such term is defined in section 9.60 of this article; and

(7) reporting on a quarterly basis to program coordinators the information collected pursuant to this subdivision.

* NB Repealed June 30, 2027

* (c) In discharge of the duties imposed by subdivision (b) of section 9.60 of this article, directors of community services may provide services directly, or may coordinate services with the offices of the department or may contract with any public or private provider to provide services for such programs as may be necessary to carry out the duties imposed pursuant to this subdivision.

* NB Repealed June 30, 2027

*** § 9.48 Duties of directors of assisted outpatient treatment programs.**

(a)(1) Directors of assisted outpatient treatment programs established pursuant to section 9.60 of this article shall provide a written report to the program coordinators, appointed by the commissioner of mental health pursuant to subdivision (f) of section 7.17 of this chapter, within three days of the issuance of a court order. The report shall demonstrate that mechanisms are in place to ensure the delivery of services and medications as required by the court order and shall include, but not be limited to the following:

(i) a copy of the court order;

(ii) a copy of the written treatment plan;

(iii) the identity of the case manager or assertive community treatment team, including the name and contact data of the organization which the case manager or assertive community treatment team member represents;

(iv) the identity of providers of services; and

(v) the date on which services have commenced or will commence.

(2) The directors of assisted outpatient treatment programs shall ensure the timely delivery of services described in paragraph one of subdivision (a) of section 9.60 of this article pursuant to any court order issued under such section. Directors of assisted outpatient treatment programs shall immediately commence corrective action upon receiving notice from program coordinators, that services are not being provided in a timely manner. Such directors shall inform the program coordinator of such corrective action.

(b) Directors of assisted outpatient treatment programs shall submit quarterly reports to the program coordinators regarding the assisted outpatient treatment program operated or administered by such director. The report shall include the following information:

(i) the names of individuals served by the program;

(ii) the percentage of petitions for assisted outpatient treatment that are granted by the court;

(iii) any change in status of assisted outpatients, including but not limited to the number of individuals who have failed to comply with court ordered assisted outpatient treatment;

(iv) a description of material changes in written treatment plans of assisted outpatients;

(v) any change in case managers;

(vi) a description of the categories of services which have been ordered by the court;

(vii) living arrangements of individuals served by the program including the number, if any, who are homeless;

(viii) any other information as required by the commissioner of mental health; and

(ix) any recommendations to improve the program locally or statewide.

(c) Directors of assisted outpatient treatment programs providing services described in paragraph one of subdivision (a) of section 9.60 of this article pursuant to any court order issued under such section shall evaluate the need for ongoing assisted outpatient treatment pursuant to subdivision (k) of section 9.60 of this article prior to the expiration of any assisted outpatient treatment order; and shall notify the director of community services of the new county of residence when

he or she has reason to believe that an assisted outpatient has or will change his or her county of residence during the pendency of an assisted outpatient treatment order. Upon such change of residence, the director of the new county of residence shall become the appropriate director, as such term is defined in section 9.60 of this article.

* NB Repealed June 30, 2027

§ 9.49 Transfer of juvenile delinquents.

(a) The commissioner shall receive and arrange the admission to the appropriate office facility of juvenile delinquents temporarily transferred to his custody pursuant to section 353.4 of the family court act.

(b) Immediately upon the admission of a juvenile to an office facility pursuant to this section, the director shall comply with the provisions of section 9.07 of this chapter, and the mental hygiene legal service shall contact such juvenile and explain and make available the facilities thereof. Any juvenile placed pursuant to this section shall be subject to the provisions of article nine of this chapter.

§ 9.51 Residential treatment facilities for children and youth; admissions.

(a) The director of a residential treatment facility for children and youth, as defined by section 1.03 of this chapter, may receive as a patient a person under the age of twenty-one in need of care and treatment in such a facility who has been determined appropriate for such care and treatment in accordance with standards and priorities for admission established by the office in regulations in accordance with federal regulations.

(b) Persons admitted as in-patients to hospitals operated by the office of mental health upon the application of the commissioner of the office of children and family services pursuant to section five hundred nine of the executive law or 353.4 of the family court act who are not subject to a restrictive placement pursuant to section 353.5 of the family court act, may, if appropriate, and subject to the provisions of subdivision (d) of this section, be transferred to a residential

treatment facility for children and youth. The commissioner of the office of children and family services shall be notified of any such transfer. When appropriate, the director of the residential treatment facility may arrange the return of a patient so transferred to the hospital or the transfer of a patient to another hospital or, in accordance with subdivision four of section five hundred nine of the executive law to the commissioner of the office of children and family services.

(c) The commissioner shall consult with the executive director of the council on children and families regarding the establishment of an advisory board. The advisory board shall include, as deemed appropriate by the commissioner and the executive director of the council on children and families, representatives of the members of the council on children and families as specified in section four hundred eighty-three of the social services law, local agency representatives under the jurisdiction of a member agency of the council on children and families, family representatives with lived experience with residential treatment facility services, medical directors from residential treatment facilities, and representatives from hospitals with pediatric inpatient psychiatric beds, that is not operated by the state office of mental health. Members of the advisory board shall be representative of the racial, ethnic, and geographic diversity of the state. Such board shall have the right to visit residential treatment facilities for children and youth and shall have the right to review clinical records and shall be bound by the confidentiality requirements of section 33.13 of this chapter. The advisory board shall issue an annual report on the disposition of applications for admission to residential treatment facilities. Such report shall include, but not be limited to: the number of children that applied to each residential treatment facility, the number of children admitted to each residential treatment facility, the number of children transferred from a hospital operated by the office of mental health and subsequently transferred to another hospital, the average length of stay for residents at each residential treatment facility, the number of children served at each residential treatment facility, and the number of involuntary placements and/or transfers from office of mental health operated inpatient facilities which occur each calendar year. Such annual report shall be posted on the office of

mental health's website and submitted to the governor, the speaker of the assembly and the temporary president of the senate by March first for the previous calendar year.

(d) Applications for admission or transfer of an individual to a residential treatment facility for children and youth must document that there has been an evaluation of the needs of the individual and a determination of the individual's need for treatment in a residential treatment facility for children and youth and the appropriateness of such treatment. In the case of individuals who are applicants or recipients of medical assistance pursuant to title eleven of article five of the social services law, such determination shall also include certification of need for residential treatment facility services in accordance with this section. Where certification is required, an individual will be certified for admission if:

(1) Available ambulatory care resources and other residential placements do not meet the treatment needs of the individual;

(2) Proper treatment of the individual's psychiatric condition requires in-patient care and treatment under the direction of a physician; and

(3) Care and treatment in a residential treatment facility for children and youth can reasonably be expected to improve the individual's condition or prevent further regression so that services will no longer be needed, provided that a poor prognosis shall not in itself constitute grounds for a denial of certification if treatment can be expected to effect a change in prognosis. Decisions to recommend admission or priority admission shall occur in consultation with the residential treatment facility and be based on a determination of appropriateness including consideration of facility staffing, patient mix and acuity and the impact on the safety of other residents. In the event the office evaluates a child who is the subject of a proceeding currently pending in the family court, the office shall report its decision to the family court. Prior to admission and no sooner than fourteen days after admission, the office or its designee may evaluate the medical necessity and quality of services for each Medicaid member. If the office or its designee determines that residential treatment services are no longer appropriate, the determination of the office or its designee shall be reported to the facility and the person, or the

person's legally authorized representative. Such determination shall not be effective retroactively.

No residential treatment facility for children and youth shall admit a person who has not been determined appropriate and where appropriate, certified for such admission. Residential treatment facilities shall admit individuals who have been designated as priority admissions by the office or commissioner's designee.

(e) Notwithstanding any inconsistent provision of law, no government agency shall make payments pursuant to title nineteen of the federal social security act or articles five and six of the social services law to a residential treatment facility for children and youth for service to a person whose need for care and treatment in such a facility was not certified pursuant to this section.

(f) No person shall be admitted to a residential treatment facility for children and youth who has a mental illness which presents a likelihood of serious harm to others; "likelihood of serious harm" shall mean a substantial risk of physical harm to other persons as manifested by recent homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

(g) Notwithstanding any other provision of law, the office or commissioner's designee shall be entitled to review clinical records maintained by any person or entity which pertain to an individual on whose behalf an application is made for admission to a residential treatment facility for children and youth. Any clinical records received by the office or commissioner's designee shall be kept confidential in accordance with the provisions of section 33.13 of this chapter.

Confidentiality of clinical records of treatment of a person in a residential treatment facility for children and youth shall be maintained as required in section 33.13 of this chapter. That portion of the clinical record maintained by a residential treatment facility for children and youth operated by an authorized agency specifically related to medical care and treatment shall not be considered part of the record required to be maintained by such authorized agency pursuant to section three hundred seventy-two of the social services law and shall not be discoverable in a proceeding under section three hundred fifty-eight-a

of the social services law or article ten-A of the family court act except upon order of the family court; provided, however, that all other information required by a local social services district or the office of children and family services for purposes of sections three hundred fifty-eight-a, four hundred nine-e and four hundred nine-f of the social services law and article ten-A of the family court act shall be furnished on request, and the confidentiality of such information shall be safeguarded as provided in section four hundred sixty-e of the social services law.

§ 9.53 Children in the custody of social services officials or the division for youth.

(a) Admission of a child in the care and custody of a social services official or authorized agency, the director of the division for youth or a person or entity granted such custody pursuant to section seven hundred fifty-six or one thousand fifty-five of the family court act to a hospital or residential treatment facility for children and youth shall not be considered to effect a change in custody of such child and the responsibilities of such person or entity having custody of the child shall continue as described in the social services law, the executive law, the family court act and in any court order granting such custody.

(b) Persons in the custody of a social services official, authorized agency, the division for youth or another person or entity pursuant to an outstanding and valid court order shall only be released to the custody of that person or entity.

(c) Prior to the discharge or release of a child who at the time of such release remains in the custody of a social services official, authorized agency, the division for youth, or a person or entity granted such custody pursuant to section seven hundred fifty-six or one thousand fifty-five of the family court act, the facility in which the child is receiving treatment shall plan the discharge of the child as required in section 29.15 of this chapter. The facility shall prepare the plan in collaboration with the person or entity having custody of the child and it shall be the duty of such person or entity to cooperate with the facility in that effort. Notwithstanding any inconsistent provision of

law, and subject to separate interagency agreements to be negotiated by the commissioner of mental health and the commissioner of social services and the commissioner of mental health and the director of the division for youth, information derived from the clinical record as required by this section may be revealed to the person or entity having custody of the child, to the extent release of such information is necessary to assure adequate discharge planning.

*** § 9.55 Emergency admissions for immediate observation, care and treatment; powers of qualified psychiatrists.**

A qualified psychiatrist 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, peace officers, when 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 shall take into custody and transport any such person. Upon the request of a qualified psychiatrist an ambulance service, as defined by subdivision two of section three thousand one of the public health law, is authorized to transport any such person. Such person may then be admitted to a hospital in accordance with the provisions of section 9.39 of this article or to a comprehensive psychiatric emergency program in accordance with the provisions of section 9.40 of this article.

* NB Effective until July 1, 2027

*** § 9.55 Emergency admissions for immediate observation, care and treatment; powers of qualified psychiatrists.**

A qualified psychiatrist shall have the power to direct the removal of any person, whose treatment for a mental illness he 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, if he 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 others, as defined in section 9.39 of this article. Upon the request of such qualified psychiatrist, peace officers, when 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 shall take into custody and transport any such person. Upon the request of a qualified psychiatrist an ambulance service, as defined by subdivision two of section three thousand one of the public health law, is authorized to transport any such person. Such person may then be admitted in accordance with the provisions of section 9.39 of this article.

* NB Effective July 1, 2027

*** § 9.57 Emergency admissions for immediate observation, care and treatment; powers of emergency room physicians.**

A physician who has examined a person in an emergency room or provided emergency medical services at a general hospital, as defined in article twenty-eight of the public health law, which does not have an inpatient psychiatric service, or a physician who has examined a person in a comprehensive psychiatric emergency program shall be authorized to request that the director of the program or hospital, or the director's designee, direct the removal of such person 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 the physician determines upon examination of such person that such person appears to have a mental illness for which immediate care and treatment in a hospital is appropriate and which is likely to result in serious

harm to himself or others. Upon the request of the physician, the director of the program or hospital or the director's designee, is authorized to direct peace officers, when 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 into custody and transport any such person. Upon the request of an emergency room physician or the director of the program or hospital, or the director's designee, an ambulance service, as defined by subdivision two of section three thousand one of the public health law, is authorized to take into custody and transport any such person. Such person may then be admitted to a hospital in accordance with the provisions of section 9.39 of this article or to a comprehensive psychiatric emergency program in accordance with the provisions of section 9.40 of this article.

* NB Effective until July 1, 2027

* § 9.57 Emergency admissions for immediate observation, care and treatment; powers of emergency room physicians.

A physician who has examined a person in an emergency room or provided emergency medical services at a general hospital, as defined in article twenty-eight of the public health law, which does not have an inpatient psychiatric service, shall be authorized to request that the director of the hospital, or his designee, direct the removal of such person to a hospital approved by the commissioner pursuant to subdivision (a) of section 9.39 of this article, if the physician determines upon examination of such person that such person appears to have a mental illness for which immediate care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or others, as defined in section 9.39 of this article. Upon the request of the physician, the director of the hospital or his designee, is authorized to direct peace officers, when 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 into custody and transport any such person. Upon the request of an emergency room physician or the director of the hospital, or his designee, an ambulance service, as defined by subdivision two of section three thousand one of the public health law, is authorized to take into custody and transport any such person. Such person may then be admitted

in accordance with the provisions of section 9.39 of this article.

* NB Effective July 1, 2027

§ 9.58 Transport for evaluation; powers of approved mobile crisis outreach teams.

(a) A physician or qualified mental health professional who is a member of an approved mobile crisis outreach team shall have the power to remove, or pursuant to subdivision (b) of this section, to direct the removal of any person who appears to be mentally ill and is conducting themselves in a manner which is likely to result in serious harm to themselves or others, to a hospital approved by the commissioner pursuant to subdivision (a) of section 9.39 or section 31.27 of this chapter or where the team physician or qualified mental health professional deems appropriate and where the person voluntarily agrees, to a crisis stabilization center specified in section 36.01 of this chapter.

(b) If the team physician or qualified mental health professional determines that it is necessary to effectuate transport, he or she shall direct peace officers, when 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 into custody and transport any persons identified in subdivision (a) of this section. Upon the request of such physician or qualified mental health professional, an ambulance service, as defined in subdivision two of section three thousand one of the public health law, is authorized to transport any such persons. Such persons may then be evaluated for admission in accordance with the provisions of section 9.27, 9.39, 9.40 or other sections of this article, provided that such admission decisions shall be made independent of the fact that the person was transported pursuant to the provisions of this section and, provided further, such transport shall not create a presumption that the person should be involuntarily admitted to a hospital.

(c) The commissioner shall be authorized to develop standards, in consultation with the commissioner of the division of criminal justice services, relating to the training requirements of teams established pursuant to this section. Such training shall, at a minimum, help to

ensure that the provision of crisis and emergency services are provided in a manner which protects the health and safety and respects the individual needs and rights of persons being evaluated or transported pursuant to this section.

(d) As used in this section:

(1) "Approved mobile crisis outreach team" shall mean a team of persons operating as part of a mobile crisis outreach program approved by the commissioner of mental health, which may include mobile crisis outreach teams funded pursuant to section 41.55 of this chapter.

(2) "Qualified mental health professional" shall mean a licensed psychologist, registered professional nurse, licensed clinical social worker or a licensed master social worker under the supervision of a physician, psychologist or licensed clinical social worker.

*** § 9.59 Immunity from liability.**

(a) Notwithstanding any inconsistent provision of any general, special or local law, an ambulance service as defined by subdivision two of section three thousand one of the public health law and any member thereof who is an emergency medical technician or an advanced emergency medical technician transporting a person to a hospital as authorized by this article, any peace officers, when acting pursuant to their special duties, any police officers, who are members of an authorized police department or force or of a sheriff's department, and any members of mobile crisis outreach teams approved by the commissioner pursuant to section 9.58 of this article, who are taking into custody and transporting a person to a hospital as authorized by this article, or to a hospital or other facility as authorized by section 22.09 of this chapter, and any employee of a licensed comprehensive psychiatric emergency program, specially trained in accordance with standards developed by the commissioner, who transports a person to a hospital, shall not be liable for damages for injuries alleged to have been sustained by such person or for the death of such person alleged to have occurred by reason of an act or omission unless it is established that such injuries or such death was caused by gross negligence on the part of such emergency medical technician, advanced emergency medical technician, peace officer, police officer, mobile crisis outreach team

member, or specially trained employee of a licensed comprehensive psychiatric emergency program.

(b) Nothing in this section shall be deemed to relieve or alter the liability of any such ambulance service or members thereof, peace officers, police officers or specially trained employees of a licensed comprehensive psychiatric emergency program for damages or injuries or death arising out of the operation of motor vehicles.

* NB Effective until July 1, 2027

* § 9.59 Immunity from liability.

(a) Notwithstanding any inconsistent provision of any general, special or local law, an ambulance service as defined by subdivision two of section three thousand one of the public health law and any member thereof who is an emergency medical technician or an advanced emergency medical technician transporting a person to a hospital as authorized by this article, any peace officers, when acting pursuant to their special duties, and any police officers, who are members of an authorized police department or force or of a sheriff's department, who are taking into custody and transporting a person to a hospital as authorized by this article, shall not be liable for damages for injuries alleged to have been sustained by such person or for the death of such person alleged to have occurred by reason of an act or omission unless it is established that such injuries or such death was caused by gross negligence on the part of such emergency medical technician, advanced emergency medical technician, peace officer or police officer.

(b) Nothing in this section shall be deemed to relieve or alter the liability of any such ambulance service or members thereof, peace officers, or police officers for damages or injuries or death arising out of the operation of motor vehicles.

* NB Effective July 1, 2027

*** § 9.60 Assisted outpatient treatment.**

(a) Definitions. For purposes of this section, the following definitions shall apply:

(1) "assisted outpatient treatment" shall mean categories of outpatient services which have been ordered by the court pursuant to this section. Such treatment shall include case management services or

assertive community treatment team services to provide care coordination, and may also include any of the following categories of services: medication; periodic blood tests or urinalysis to determine compliance with prescribed medications; individual or group therapy; day or partial day programming activities; educational and vocational training or activities; alcohol or substance abuse treatment and counseling and periodic tests for the presence of alcohol or illegal drugs for persons with a history of alcohol or substance abuse; supervision of living arrangements; and any other services within a local services plan developed pursuant to article forty-one of this chapter, prescribed to treat the person's mental illness and to assist the person in living and functioning in the community, or to attempt to prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization.

(2) "director" shall mean the director of community services of a local governmental unit, or the director of a hospital licensed or operated by the office of mental health which operates, directs and supervises an assisted outpatient treatment program.

(3) "director of community services" and "local governmental unit" shall have the same meanings as provided in article forty-one of this chapter. The "appropriate director" shall mean the director of community services of the county where the assisted outpatient resides, even if it is a different county than the county where the assisted outpatient treatment order was originally issued.

(4) "assisted outpatient treatment program" shall mean a system to arrange for and coordinate the provision of assisted outpatient treatment, to monitor treatment compliance by assisted outpatients, to evaluate the condition or needs of assisted outpatients, to take appropriate steps to address the needs of such individuals, and to ensure compliance with court orders.

(5) "assisted outpatient" shall mean the person under a court order to receive assisted outpatient treatment.

(6) "subject of the petition" or "subject" shall mean the person who is alleged in a petition, filed pursuant to the provisions of this section, to meet the criteria for assisted outpatient treatment.

(7) "correctional facility" and "local correctional facility" shall have the same meanings as provided in section two of the correction law.

(8) "health care proxy" and "health care agent" shall have the same meanings as provided in article twenty-nine-C of the public health law.

(9) "program coordinator" shall mean an individual appointed by the commissioner of mental health, pursuant to subdivision (f) of section 7.17 of this chapter, who is responsible for the oversight and monitoring of assisted outpatient treatment programs.

(b) Programs. The director of community services of each local governmental unit shall operate, direct and supervise an assisted outpatient treatment program. The director of a hospital licensed or operated by the office of mental health may operate, direct and supervise an assisted outpatient treatment program, upon approval by the commissioner. Directors of community services shall be permitted to satisfy the provisions of this subdivision through the operation of joint assisted outpatient treatment programs. Nothing in this subdivision shall be interpreted to preclude the combination or coordination of efforts between and among local governmental units and hospitals in providing and coordinating assisted outpatient treatment.

(c) Criteria. A person may be ordered to receive assisted outpatient treatment if the court finds that such person:

- (1) is eighteen years of age or older; and
- (2) is suffering from a mental illness; and
- (3) is unlikely to survive safely in the community without supervision, based on a clinical determination; and

(4) has a history of lack of compliance with treatment for mental illness that has:

(i) except as otherwise provided in subparagraph (iii) of this paragraph, prior to the filing of the petition, at least twice within the last thirty-six months been a significant factor in necessitating hospitalization in a hospital, or receipt of services in a forensic or other mental health unit of a correctional facility or a local correctional facility, not including any current period, or period ending within the last six months, during which the person was or is hospitalized or incarcerated; or

(ii) except as otherwise provided in subparagraph (iii) of this paragraph, prior to the filing of the petition, resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last

forty-eight months, not including any current period, or period ending within the last six months, in which the person was or is hospitalized or incarcerated; or

(iii) notwithstanding subparagraphs (i) and (ii) of this paragraph, resulted in the issuance of a court order for assisted outpatient treatment that has expired within the last six months, and since the expiration of the order; (a) the person has experienced a substantial increase in symptoms of mental illness that substantially interferes with or limits the person's ability to comply with recommended treatment; or (b) the person, due to a lack of compliance with recommended treatment, has undergone emergency observation, care, and treatment or has been admitted for inpatient care or has been incarcerated;

(5) is, as a result of his or her mental illness, unlikely to voluntarily participate in outpatient treatment that would enable him or her to live safely in the community; and

(6) in view of his or her treatment history and current behavior, is in need of assisted outpatient treatment in order to prevent a relapse or deterioration which would be likely to result in serious harm to the person or others as defined in section 9.01 of this article; and

(7) is likely to benefit from assisted outpatient treatment. Previous non-compliance with court oversight or mandated treatment shall not preclude a finding that the person is likely to benefit from assisted outpatient treatment.

(d) Health care proxy. Nothing in this section shall preclude a person with a health care proxy from being subject to a petition pursuant to this chapter and consistent with article twenty-nine-C of the public health law.

(e) Petition to the court. (1) A petition for an order authorizing assisted outpatient treatment may be filed in the supreme or county court in the county in which the subject of the petition is present or reasonably believed to be present. Such petition may be initiated only by the following persons:

(i) any person eighteen years of age or older with whom the subject of the petition resides; or

(ii) the parent, spouse, domestic partner, sibling eighteen years of age or older, or child eighteen years of age or older of the subject of

the petition; or

(iii) the director of a hospital in which the subject of the petition is hospitalized; or

(iv) the director of any public or charitable organization, agency or home providing mental health services to the subject of the petition or in whose institution the subject of the petition resides; or

(v) a qualified psychiatrist who is either supervising the treatment of or treating the subject of the petition for a mental illness; or

(vi) a psychologist, licensed pursuant to article one hundred fifty-three of the education law, or a social worker, licensed pursuant to article one hundred fifty-four of the education law, who is treating the subject of the petition for a mental illness; or

(vii) the director of community services, or his or her designee, or the social services official, as defined in the social services law, of the city or county in which the subject of the petition is present or reasonably believed to be present; or

(viii) a parole officer or probation officer assigned to supervise the subject of the petition.

(2) The petition shall state:

(i) each of the criteria for assisted outpatient treatment as set forth in subdivision (c) of this section;

(ii) facts which support the petitioner's belief that the subject of the petition meets each criterion, provided that the hearing on the petition need not be limited to the stated facts; and

(iii) that the subject of the petition is present, or is reasonably believed to be present, within the county where such petition is filed.

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

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

(ii) no more than ten days prior to the filing of the petition, such physician or his or her designee has made appropriate attempts but has not been successful in eliciting the cooperation of the subject of the petition to submit to an examination, such physician has reason to

suspect that the subject of the petition meets the criteria for assisted outpatient treatment, and such physician is willing and able to examine the subject of the petition and testify at the hearing on the petition.

(4) In counties with a population of less than eighty thousand, the affirmation or affidavit required by paragraph three of this subdivision may be made by a physician who is an employee of the office. The office is authorized to make available, at no cost to the county, a qualified physician for the purpose of making such affirmation or affidavit consistent with the provisions of such paragraph.

(f) Service. The petitioner shall cause written notice of the petition to be given to the subject of the petition and a copy thereof to be given personally or by mail to the persons listed in section 9.29 of this article, the mental hygiene legal service, the health care agent if any such agent is known to the petitioner, the appropriate program coordinator, and the appropriate director of community services, if such director is not the petitioner.

(g) Right to counsel. The subject of the petition shall have the right to be represented by the mental hygiene legal service, or privately financed counsel, at all stages of a proceeding commenced under this section.

(h) Hearing. (1) Upon receipt of the petition, the court shall fix the date for a hearing. Such date shall be no later than three days from the date such petition is received by the court, excluding Saturdays, Sundays and holidays. Adjournments shall be permitted only for good cause shown. In granting adjournments, the court shall consider the need for further examination by a physician or the potential need to provide assisted outpatient treatment expeditiously. The court shall cause the subject of the petition, any other person receiving notice pursuant to subdivision (f) of this section, the petitioner, the physician whose affirmation 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, 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 videoconference at the hearing. Provided however, a physician 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 testifying by video conference; or (ii) the court orders the physician to testify by video conference upon a finding of good cause. Such physician 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, the court may request the subject to consent to an examination by a physician 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. 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 whose affirmation or affidavit accompanied the petition pursuant to paragraph three of subdivision (e) of this section, if such physician is privileged by such hospital or otherwise authorized by such hospital to do so. If such examination is performed by another physician, the examining physician may consult with the physician whose affirmation or affidavit accompanied the petition as to whether the subject meets the criteria for assisted outpatient treatment.

(4) A physician 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 testimony shall describe the types or classes of medication which should be authorized, shall describe the beneficial and detrimental physical and mental effects of such medication, and shall recommend whether such medication should be self-administered or administered by authorized personnel.

(5) The subject of the petition shall be afforded an opportunity to present evidence, to call witnesses on his or her behalf, and to cross-examine adverse witnesses.

(i) Written treatment plan. (1) The court shall not order assisted outpatient treatment unless a physician appointed by the appropriate director, in consultation with such director, develops and provides to the court a proposed written treatment plan. The written treatment plan shall include case management services or assertive community treatment team services to provide care coordination. The written treatment plan also shall include all categories of services, as set forth in paragraph one of subdivision (a) of this section, which such physician recommends that the subject of the petition receive. All service providers shall be notified regarding their inclusion in the written treatment plan. If the written treatment plan includes medication, it shall state whether such medication should be self-administered or administered by authorized personnel, and shall specify type and dosage range of medication most likely to provide maximum benefit for the subject. If the written treatment plan includes alcohol or substance abuse counseling and treatment, such plan may include a provision requiring relevant testing for either alcohol or illegal substances provided the physician's clinical basis for recommending such plan provides sufficient facts for the court to find (i) that such person has a history of alcohol or substance abuse that is clinically related to the mental illness; and (ii) that such testing is necessary to prevent a relapse or deterioration which would be likely to result in serious harm to the person or others. If a director is the petitioner, the written treatment plan shall be provided to the court no later than the date of the

hearing on the petition. If a person other than a director is the petitioner, such plan shall be provided to the court no later than the date set by the court pursuant to paragraph three of subdivision (j) of this section.

(2) The physician appointed to develop the written treatment plan shall provide the following persons with an opportunity to actively participate in the development of such plan: the subject of the petition; the treating physician, if any; and upon the request of the subject of the petition, an individual significant to the subject including any relative, close friend or individual otherwise concerned with the welfare of the subject. If the subject of the petition has executed a health care proxy, the appointed physician shall consider any directions included in such proxy in developing the written treatment plan.

(3) The court shall not order assisted outpatient treatment unless a physician appearing on behalf of a director testifies to explain the written proposed treatment plan. Such physician shall state the categories of assisted outpatient treatment recommended, the rationale for each such category, facts which establish that such treatment is the least restrictive alternative, and, if the recommended assisted outpatient treatment plan includes medication, such physician shall state the types or classes of medication recommended, the beneficial and detrimental physical and mental effects of such medication, and whether such medication should be self-administered or administered by an authorized professional. If the subject of the petition has executed a health care proxy, such physician 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.

(j) Disposition. (1) If after hearing all relevant evidence, the court does not find by clear and convincing evidence that the subject of the petition meets the criteria for assisted outpatient treatment, the court shall dismiss the petition.

(2) If after hearing all relevant evidence, the court finds by clear

and convincing evidence that the subject of the petition meets the criteria for assisted outpatient treatment, and there is no appropriate and feasible less restrictive alternative, the court may order the subject to receive assisted outpatient treatment for an initial period not to exceed one year. In fashioning the order, the court shall specifically make findings by clear and convincing evidence that the proposed treatment is the least restrictive treatment appropriate and feasible for the subject. The order shall state an assisted outpatient treatment plan, which shall include all categories of assisted outpatient treatment, as set forth in paragraph one of subdivision (a) of this section, which the assisted outpatient is to receive, but shall not include any such category that has not been recommended in both the proposed written treatment plan and the testimony provided to the court pursuant to subdivision (i) of this section.

(3) If after hearing all relevant evidence presented by a petitioner who is not a director, the court finds by clear and convincing evidence that the subject of the petition meets the criteria for assisted outpatient treatment, and the court has yet to be provided with a written proposed treatment plan and testimony pursuant to subdivision (i) of this section, the court shall order the appropriate director to provide the court with such plan and testimony no later than the third day, excluding Saturdays, Sundays and holidays, immediately following the date of such order. Upon receiving such plan and testimony, the court may order assisted outpatient treatment as provided in paragraph two of this subdivision.

(4) A court may order the patient to self-administer psychotropic drugs or accept the administration of such drugs by authorized personnel as part of an assisted outpatient treatment program. Such order may specify the type and dosage range of such psychotropic drugs and such order shall be effective for the duration of such assisted outpatient treatment.

(5) If the petitioner is the director of a hospital that operates an assisted outpatient treatment program, the court order shall direct the hospital director to provide or arrange for all categories of assisted outpatient treatment for the assisted outpatient throughout the period of the order. In all other instances, the order shall require the appropriate director, as that term is defined in this section, to

provide or arrange for all categories of assisted outpatient treatment for the assisted outpatient throughout the period of the order.

(6) The director shall cause a copy of any court order issued pursuant to this section to be served personally, or by mail, facsimile or electronic means, upon the assisted outpatient, the mental hygiene legal service or anyone acting on the assisted outpatient's behalf, the original petitioner, identified service providers, and all others entitled to notice under subdivision (f) of this section.

(k) Petition for additional periods of treatment. (1) Prior to the expiration of an order pursuant to this section, the appropriate director shall review whether the assisted outpatient continues to meet the criteria for assisted outpatient treatment. If, as documented in the petition, the director determines that such criteria continue to be met or has made appropriate attempts to, but has not been successful in eliciting, the cooperation of the subject to submit to an examination, within thirty days prior to the expiration of an order of assisted outpatient treatment, such director may petition the court to order continued assisted outpatient treatment pursuant to paragraph two of this subdivision. Upon determining whether such criteria continue to be met, such director shall notify the program coordinator in writing as to whether a petition for continued assisted outpatient treatment is warranted and whether such a petition was or will be filed.

(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 who developed the written treatment plan or another physician designated by the director, and such physician shall be authorized to terminate such blood tests or urinalysis without further action by the court.

(l) Petition for an order to stay, vacate or modify. (1) In addition to any other right or remedy available by law with respect to the order for assisted outpatient treatment, the assisted outpatient, the mental hygiene legal service, or anyone acting on the assisted outpatient's behalf may petition the court on notice to the director, the original petitioner, and all others entitled to notice under subdivision (f) of this section to stay, vacate or modify the order.

(2) The appropriate director shall petition the court for approval before instituting a proposed material change in the assisted outpatient treatment plan, unless such change is authorized by the order of the court. Such petition shall be filed on notice to all parties entitled to notice under subdivision (f) of this section. Not later than five days after receiving such petition, excluding Saturdays, Sundays and holidays, the court shall hold a hearing on the petition; provided that if the assisted outpatient informs the court that he or she agrees to the proposed material change, the court may approve such change without a hearing. Non-material changes may be instituted by the director without court approval. For the purposes of this paragraph, a material change is an addition or deletion of a category of services to or from a current assisted outpatient treatment plan, or any deviation without the assisted outpatient's consent from the terms of a current order relating to the administration of psychotropic drugs.

(m) Appeals. Review of an order issued pursuant to this section shall be had in like manner as specified in section 9.35 of this article.

(n) Failure to comply with assisted outpatient treatment. Where in the clinical judgment of a physician, (i) the assisted outpatient, 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 may request the appropriate director of community services, the director's designee, or any physician 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 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, the appropriate director, the director's designee, or any physician designated pursuant to section 9.37 of this article, may direct 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 assisted outpatient into custody and transport him or her to the hospital operating the assisted outpatient treatment program or to any hospital authorized by the director of community services to receive such persons. Such law enforcement officials shall carry out such directive. Upon the request of such physician, the appropriate director, the director's designee, or any physician designated pursuant to section 9.37 of this article, an ambulance service, as defined by subdivision two of section three thousand one of the public health law, or an approved mobile crisis outreach team as defined in section 9.58 of this article shall be authorized to take into custody and transport any such person to the hospital operating the assisted outpatient treatment program, or to any other hospital authorized by the appropriate director of community services to receive such persons. Any director of community services, or designee, shall be authorized to direct the removal of an assisted outpatient who is present in his or her county to an appropriate hospital, in accordance with the provisions of this subdivision, based upon a determination of the appropriate director of community services directing the removal of such assisted outpatient pursuant to this

subdivision. Such person may be retained for observation, care and treatment and further examination in the hospital for up to seventy-two hours to permit a physician to determine whether such person has a mental illness and is in need of involuntary care and treatment in a hospital pursuant to the provisions of this article. Any continued involuntary retention in such hospital beyond the initial seventy-two hour period shall be in accordance with the provisions of this article 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 article, and does not agree to stay in the hospital as a voluntary or informal patient, he or she must be released. Failure to comply with an order of assisted outpatient treatment shall not be grounds for involuntary civil commitment or a finding of contempt of court.

(o) Effect of determination that a person is in need of assisted outpatient treatment. The determination by a court that a person is in need of assisted outpatient treatment shall not be construed as or deemed to be a determination that such person is incapacitated pursuant to article eighty-one of this chapter.

(p) False petition. A person making a false statement or providing false information or false testimony in a petition or hearing under this section shall be subject to criminal prosecution pursuant to article one hundred seventy-five or article two hundred ten of the penal law.

(q) Exception. Nothing in this section shall be construed to affect the ability of the director of a hospital to receive, admit, or retain patients who otherwise meet the provisions of this article regarding receipt, retention or admission.

(r) Education and training. (1) The office of mental health, in consultation with the office of court administration, shall prepare educational and training materials on the use of this section, which shall be made available to local governmental units, providers of services, judges, court personnel, law enforcement officials and the general public.

(2) The office, in consultation with the office of court administration, shall establish a mental health training program for supreme and county court judges and court personnel. Such training shall focus on the use of this section and generally address issues relating

to mental illness and mental health treatment.

(s) A director of community services or his or her designee may require a provider of inpatient psychiatric services operated or licensed by the office of mental health to provide contemporaneous information, including but not limited to relevant clinical records, documents, and other information concerning the person receiving assisted outpatient treatment pursuant to an active assisted outpatient treatment order, that is deemed necessary by such director or designee who is required to coordinate and monitor the care of any individual who was subject to an active assisted outpatient treatment order to appropriately discharge their duties pursuant to section 9.47 of this article, and where such provider of inpatient psychiatric services is required to disclose such information pursuant to paragraph twelve of subdivision (c) of section 33.13 of this chapter and such disclosure is in accordance with all other applicable state and federal confidentiality laws. None of the records or information obtained by the director of community services pursuant to this subdivision shall be public records, and the records shall not be released by the director to any person or agency, except as already authorized by law.

* NB Repealed June 30, 2027

*** § 9.63 Transportation of persons to or between hospitals.**

In carrying out the transportation of any person to or between a hospital, including a comprehensive psychiatric emergency program, pursuant to the provisions of this article appropriate attempts shall be made to elicit the cooperation of the person to be transported, prior to resorting to compulsory means of transportation.

* NB Effective until June 30, 2027

*** § 9.61 Transportation of persons to or between hospitals.**

In carrying out the transportation of any person to or between a hospital, including a comprehensive psychiatric emergency program, pursuant to the provisions of this article appropriate attempts shall be made to elicit the cooperation of the person to be transported, prior to resorting to compulsory means of transportation.

* NB Effective June 30, 2027

§ 9.64 Notice of admission determination to community provider.

Upon an admission to a hospital or received as a patient in a comprehensive psychiatric emergency program, the director of such hospital or program shall, in accordance with section 33.13 of this chapter, ensure that reasonable efforts are made to identify and promptly notify of such determination any community provider of mental health services that maintains such person on its caseload.

ARTICLE 10

SEX OFFENDERS REQUIRING CIVIL COMMITMENT OR SUPERVISION

Section 10.01 Legislative findings.

10.03 Definitions.

10.05 Notice and case review.

10.06 Petition and hearing.

10.07 Trial.

10.08 Procedures under this article.

10.09 Annual examinations and petitions for discharge.

10.10 Treatment and confinement.

10.11 Regimen of strict and intensive supervision and treatment.

10.13 Appeals.

10.15 Compensation, fees and expenses.

10.17 Release of information authorized.

§ 10.01 Legislative findings. The legislature finds as follows:

(a) That recidivistic sex offenders pose a danger to society that should be addressed through comprehensive programs of treatment and management. Civil and criminal processes have distinct but overlapping goals, and both should be part of an integrated approach that is based on evolving scientific understanding, flexible enough to respond to current needs of individual offenders, and sufficient to provide meaningful treatment and to protect the public.

(b) That some sex offenders have mental abnormalities that predispose them to engage in repeated sex offenses. These offenders may require long-term specialized treatment modalities to address their risk to reoffend. They should receive such treatment while they are incarcerated as a result of the criminal process, and should continue to receive treatment when that incarceration comes to an end. In extreme cases, confinement of the most dangerous offenders will need to be extended by civil process in order to provide them such treatment and to protect the public from their recidivistic conduct.

(c) That for other sex offenders, it can be effective and appropriate to provide treatment in a regimen of strict and intensive outpatient supervision. Accordingly, civil commitment should be only one element in a range of responses to the need for treatment of sex offenders. The goal of a comprehensive system should be to protect the public, reduce recidivism, and ensure offenders have access to proper treatment.

(d) That some of the goals of civil commitment - protection of society, supervision of offenders, and management of their behavior - are appropriate goals of the criminal process as well. For some recidivistic sex offenders, appropriate criminal sentences, including long-term post-release supervision, may be the most appropriate way to achieve those goals.

(e) That the system for responding to recidivistic sex offenders with civil measures must be designed for treatment and protection. It should be based on the most accurate scientific understanding available, including the use of current, validated risk assessment instruments. Ideally, effective risk assessment should begin to occur prior to sentencing in the criminal process, and it should guide the process of civil commitment.

(f) That the system should offer meaningful forms of treatment to sex offenders in all criminal and civil phases, including during incarceration, civil commitment, and outpatient supervision.

(g) That sex offenders in need of civil commitment are a different population from traditional mental health patients, who have different treatment needs and particular vulnerabilities. Accordingly, civil commitment of sex offenders should be implemented in ways that do not endanger, stigmatize, or divert needed treatment resources away from such traditional mental health patients.

§ 10.03 Definitions.

As used in this article, the following terms shall have the following meanings:

(a) "Agency with jurisdiction" as to a person means that agency which, during the period in question, would be the agency responsible for supervising or releasing such person, and can include the department of corrections and community supervision, the office of mental health, and the office for people with developmental disabilities.

(b) "Commissioner" means the commissioner of mental health or the commissioner of developmental disabilities.

(c) "Correctional facility" means a correctional facility as that term is defined in section two of the correction law.

(d) "Counsel for respondent" means any counsel that has been retained or appointed for respondent, or if no other counsel has been retained or appointed, or prior counsel cannot be located with reasonable efforts, then the mental hygiene legal service.

(e) "Dangerous sex offender requiring confinement" means a person who is a detained sex offender suffering from a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the person is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility.

(f) "Designated felony" means any felony offense defined by any of the following provisions of the penal law: assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10, gang assault in the second degree as defined in section 120.06, gang assault in the first degree as defined in section 120.07, stalking in the first degree as defined in section 120.60, strangulation in the second degree as defined in section 121.12, strangulation in the first degree as defined in section 121.13, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27,

kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25, burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10, robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, sex trafficking of a child as defined in section 230.34-a, disseminating indecent material to minors in the first degree as defined in section 235.22, use of a child in a sexual performance as defined in section 263.05, promoting an obscene sexual performance by a child as defined in section 263.10, promoting a sexual performance by a child as defined in section 263.15, or any felony attempt or conspiracy to commit any of the foregoing offenses.

(g) "Detained sex offender" means a person who is in the care, custody, control, or supervision of an agency with jurisdiction, with respect to a sex offense or designated felony, in that the person is either:

(1) A person who stands convicted of a sex offense as defined in subdivision (p) of this section, and is currently serving a sentence for, or subject to supervision by the division of parole, whether on parole or on post-release supervision, for such offense or for a related offense;

(2) A person charged with a sex offense who has been determined to be an incapacitated person with respect to that offense and has been committed pursuant to article seven hundred thirty of the criminal procedure law, but did engage in the conduct constituting such offense;

(3) A person charged with a sex offense who has been found not responsible by reason of mental disease or defect for the commission of that offense;

(4) A person who stands convicted of a designated felony that was sexually motivated and committed prior to the effective date of this article;

(5) A person convicted of a sex offense who is, or was at any time after September first, two thousand five, a patient in a hospital operated by the office of mental health, and who was admitted directly to such facility pursuant to article nine of this title or section four hundred two of the correction law upon release or conditional release from a correctional facility, provided that the provisions of this article shall not be deemed to shorten or lengthen the time for which such person may be held pursuant to such article or section respectively; or

(6) A person who has been determined to be a sex offender requiring civil management pursuant to this article.

(h) "Licensed psychologist" means a person who is registered as a psychologist under article one hundred fifty-three of the education law.

(i) "Mental abnormality" means a congenital or acquired condition, disease or disorder that affects the emotional, cognitive, or volitional capacity of a person in a manner that predisposes him or her to the commission of conduct constituting a sex offense and that results in that person having serious difficulty in controlling such conduct.

(j) "Psychiatric examiner" means a qualified psychiatrist or a licensed psychologist who has been designated to examine a person pursuant to this article; such designee may, but need not, be an employee of the office of mental health or the office for people with developmental disabilities.

(k) "Qualified psychiatrist" means a physician licensed to practice medicine in New York state who: (1) is a diplomate of the American board of psychiatry and neurology or is eligible to be certified by that board; or (2) is certified by the American osteopathic board of neurology and psychiatry or is eligible to be certified by that board.

(l) "Related offenses" include any offenses that are prosecuted as part of the same criminal action or proceeding, or which are part of the same criminal transaction, or which are the bases of the orders of commitment received by the department of correctional services in connection with an incarcerated individual's current term of incarceration.

(m) "Release" and "released" means release, conditional release or discharge from confinement, from community supervision by the department of corrections and community supervision, or from an order of

observation, commitment, recommitment or retention.

(n) "Respondent" means a person referred to a case review team for evaluation, a person as to whom a sex offender civil management petition has been recommended by a case review team and not yet filed, or filed by the attorney general and not dismissed, or sustained by procedures under this article.

(o) "Secure treatment facility" means a facility or a portion of a facility, designated by the commissioner, that may include a facility located on the grounds of a correctional facility, that is staffed with personnel from the office of mental health or the office for people with developmental disabilities for the purposes of providing care and treatment to persons confined under this article, and persons defined in paragraph five of subdivision (g) of this section. Personnel from these same agencies may provide security services, provided that such staff are adequately trained in security methods and so equipped as to minimize the risk or danger of escape.

(p) "Sex offense" means an act or acts constituting: (1) any felony defined in article one hundred thirty of the penal law, including a sexually motivated felony; (2) patronizing a person for prostitution in the first degree as defined in section 230.06 of the penal law, aggravated patronizing a minor for prostitution in the first degree as defined in section 230.13 of the penal law, aggravated patronizing a minor for prostitution in the second degree as defined in section 230.12 of the penal law, aggravated patronizing a minor for prostitution in the third degree as defined in section 230.11 of the penal law, incest in the second degree as defined in section 255.26 of the penal law, or incest in the first degree as defined in section 255.27 of the penal law; (3) a felony attempt or conspiracy to commit any of the foregoing offenses set forth in this subdivision; or (4) a designated felony, as defined in subdivision (f) of this section, if sexually motivated and committed prior to the effective date of this article.

(q) "Sex offender requiring civil management" means a detained sex offender who suffers from a mental abnormality. A sex offender requiring civil management can, as determined by procedures set forth in this article, be either (1) a dangerous sex offender requiring confinement or (2) a sex offender requiring strict and intensive supervision.

(r) "Sex offender requiring strict and intensive supervision" means a

detained sex offender who suffers from a mental abnormality but is not a dangerous sex offender requiring confinement.

(s) "Sexually motivated" means that the act or acts constituting a designated felony were committed in whole or in substantial part for the purpose of direct sexual gratification of the actor.

§ 10.05 Notice and case review.

(a) The commissioner of mental health, in consultation with the commissioner of the department of corrections and community supervision and the commissioner of developmental disabilities, shall establish a case review panel consisting of at least fifteen members, any three of whom may sit as a team to review a particular case. At least two members of each team shall be professionals in the field of mental health or the field of developmental disabilities, as appropriate, with experience in the treatment, diagnosis, risk assessment or management of sex offenders. To the extent practicable, the workload of the case review panel should be evenly distributed among its members. Members of the case review panel and psychiatric examiners should be free to exercise independent professional judgment without pressure or retaliation for the exercise of that judgment from any source.

(b) When it appears to an agency with jurisdiction that a person who may be a detained sex offender is nearing an anticipated release from confinement, the agency shall give notice of that fact to the attorney general and to the commissioner of mental health. When it appears to the department of corrections and community supervision that a person who may be a detained sex offender is nearing an anticipated release from community supervision, the agency may give such notice. The agency with jurisdiction shall seek to give such notice at least one hundred twenty days prior to the person's anticipated release, but failure to give notice within such time period shall not affect the validity of such notice or any subsequent action, including the filing of a sex offender civil management petition.

(c) The notice to the attorney general and the commissioner of mental health shall, to the extent possible, contain the following:

(1) The person's name, aliases, and other identifying information such as date of birth, sex, physical characteristics, and anticipated future

residence;

(2) A photograph and a set of fingerprints;

(3) A description of the act or acts that constitute the sex offense and a description of the person's criminal history, including the person's most recent sentence and any supervisory terms that it includes;

(4) The presentence reports prepared pursuant to article three hundred ninety of the criminal procedure law and other available materials concerning the person's sex offense; and

(5) A description of the person's institutional history, including his or her participation in any sex offender treatment program; and

(6) Records of parole release interviews prepared pursuant to subparagraph (ii) of paragraph (a) of subdivision six of section two hundred fifty-nine-i of the executive law.

(d) The commissioner shall be authorized to designate multidisciplinary staff, including clinical and other professional personnel, to provide a preliminary review of the need for detained sex offenders to be evaluated under the procedures of this section. When the commissioner receives notice pursuant to subdivision (b) of this section, such staff shall review and assess relevant medical, clinical, criminal, and institutional records, actuarial risk assessment instruments and other records and reports, including records of parole release interviews where applicable, and records and reports provided by the district attorney of the county where the person was convicted, or in the case of persons determined to be incapacitated or not responsible by reason of mental disease or defect, the county where the person was charged. Upon such review and assessment, the staff shall determine whether the person who is the subject of the notice should be referred to a case review team for evaluation.

(e) If the person is referred to a case review team for evaluation, notice of such referral shall be provided to the respondent. Upon such referral, the case review team shall review relevant records, including those described in subdivisions (c) and (d) of this section, and may arrange for a psychiatric examination of the respondent. Based on the review and assessment of such information, the case review team shall consider whether the respondent is a sex offender requiring civil management.

(f) If the case review team determines that the respondent is not a sex offender requiring civil management, it shall so notify the respondent and the attorney general, and the attorney general shall not file a sex offender civil management petition.

(g) If the case review team finds that the respondent is a sex offender requiring civil management, it shall so notify the respondent and the attorney general, in writing. The written notice must be accompanied by a written report from a psychiatric examiner that includes a finding as to whether the respondent has a mental abnormality. Where the notice indicates that a respondent stands convicted of or was charged with a designated felony, it shall also include the case review team's finding as to whether the act was sexually motivated. The case review team shall provide its written notice to the attorney general and the respondent within forty-five days of the commissioner receiving the notice of anticipated release. However, failure to do so within that time period shall not affect the validity of such notice or finding or any subsequent action, including the attorney general's filing of a sex offender civil management petition subsequent to receiving the finding of the case review team.

§ 10.06 Petition and hearing.

(a) If the case review team finds that a respondent is a sex offender requiring civil management, then the attorney general may file a sex offender civil management petition in the supreme court or county court of the county where the respondent is located. In determining whether to file such a petition, the attorney general shall consider information about any continuing supervision to which the respondent will be subject as a result of criminal conviction, and shall take such supervision into account when assessing the need for further management as provided by this article. If the attorney general elects to file a sex offender civil management petition, he or she shall serve a copy of the petition upon the respondent. The petition shall contain a statement or statements alleging facts of an evidentiary character tending to support the allegation that the respondent is a sex offender requiring civil management. The attorney general shall seek to file the petition within thirty days after receiving notice of the case review team's finding,

but failure to do so within that period shall not affect the validity of the petition.

(b) Within ten days after the attorney general files a sex offender civil management petition, the respondent may file in the same court a notice of removal to the county of the underlying criminal sex offense charges. The attorney general may, in the court in which the petition is pending, move for a retention of venue. Such motion shall be made within five days after the attorney general is served with a notice of removal, which time may be extended for good cause shown. The court shall grant the motion if the attorney general shows good cause for such retention. If the attorney general does not timely move for a retention of venue, or does so move and the motion is denied, then the proceedings shall be transferred to the county of the underlying criminal sex offense charges. If the respondent does not timely file a notice of removal, or the attorney general moves for retention of venue and such motion is granted, then the proceedings shall continue where the petition was filed.

(c) Promptly upon the filing of a sex offender civil management petition, or upon a request to the court by the attorney general for an order pursuant to subdivision (d) of this section that a respondent submit to an evaluation by a psychiatric examiner, whichever occurs earlier, the court shall appoint counsel in any case where the respondent is financially unable to obtain counsel. The court shall appoint the mental hygiene legal service if possible. In the event that the court determines that the mental hygiene legal service cannot accept appointment, the court shall appoint an attorney eligible for appointment pursuant to article eighteen-B of the county law, or an entity, if any, that has contracted for the delivery of legal representation services under subdivision (c) of section 10.15 of this article. Counsel for the respondent shall be provided with copies of the written notice made by the case review team, the petition and the written reports of the psychiatric examiners.

(d) At any time after receiving notice pursuant to subdivision (b) of section 10.05 of this article, and prior to trial, the attorney general may request the court in which the sex offender civil management petition could be filed, or is pending, to order the respondent to submit to an evaluation by a psychiatric examiner. Upon such a request,

the court shall order that the respondent submit to an evaluation by a psychiatric examiner chosen by the attorney general and, if the respondent is not represented by counsel, the court shall appoint counsel for the respondent. Following the evaluation, such psychiatric examiner shall report his or her findings in writing to the attorney general, to counsel for the respondent, and to the court.

(e) At any time after the filing of a sex offender civil management petition, and prior to trial, the respondent may request the court in which the petition is pending to order that he or she be evaluated by a psychiatric examiner. Upon such a request, the court shall order an evaluation by a psychiatric examiner. If the respondent is financially unable to obtain an examiner, the court shall appoint an examiner of the respondent's choice to be paid within the limits prescribed by law. Following the evaluation, such psychiatric examiner shall report his or her findings in writing to the respondent or counsel for the respondent, to the attorney general, and to the court.

(f) Notwithstanding any other provision of this article, if it appears that the respondent may be released prior to the time the case review team makes a determination, and the attorney general determines that the protection of public safety so requires, the attorney general may file a securing petition at any time after receipt of written notice pursuant to subdivision (b) of section 10.05 of this article. In such circumstance, there shall be no probable cause hearing until such time as the case review team may find that the respondent is a sex offender requiring civil management. If the case review team determines that the respondent is not a sex offender requiring civil management, the attorney general shall so advise the court and the securing petition shall be dismissed.

(g) Within thirty days after the sex offender civil management petition is filed, or within such longer period as to which the respondent may consent, the supreme court or county court before which the petition is pending shall conduct a hearing without a jury to determine whether there is probable cause to believe that the respondent is a sex offender requiring civil management.

(h) If the respondent was released subsequent to notice under subdivision (b) of section 10.05 of this article, and is therefore at liberty when the petition is filed, the court shall order the

respondent's return to confinement, observation, commitment, recommitment or retention, as applicable, for purposes of the probable cause hearing. When a court issues such an order, the hearing shall commence no later than seventy-two hours from the date of the respondent's return. If the respondent is not at liberty when the petition is filed, but becomes eligible to be released prior to the probable cause hearing, the court shall order the stay of such release pending the probable cause hearing. When a court issues such an order, the hearing shall commence no later than seventy-two hours from the date of the respondent's anticipated release date. In either case, the release of the respondent shall be in accordance with other provisions of law if the hearing does not commence within such period of seventy-two hours, unless: (i) the failure to commence the hearing was due to the respondent's request, action or condition, or occurred with his or her consent; or (ii) the court is satisfied that the attorney general has shown good cause why the hearing could not so commence. Any failure to commence the probable cause hearing within the time periods specified shall not result in the dismissal of the petition and shall not affect the validity of the hearing or the probable cause determination.

(i) The provisions of subdivision (g) of section 10.08 of this article shall be applicable to the hearing. The hearing should be completed in one session but, in the interest of justice, may be adjourned by the court.

(j) The respondent's commission of a sex offense shall be deemed established and shall not be relitigated at the probable cause hearing, whenever it appears that: (i) the respondent stands convicted of such offense; (ii) the respondent previously has been found not responsible by reason of mental disease or defect for the commission of such offense or for an act or acts constituting such offense; or (iii) the respondent was indicted for such offense by a grand jury but found to be incompetent to stand trial for such offense. Whenever the petition alleges the respondent's commission of a designated felony prior to the effective date of this article, the issue of whether there is probable cause to believe that the commission of such offense was sexually motivated shall be determined by the court.

(k) At the conclusion of the hearing, the court shall determine

whether there is probable cause to believe that the respondent is a sex offender requiring civil management. If the court determines that probable cause has not been established, the court shall issue an order dismissing the petition, and the respondent's release shall be in accordance with other applicable provisions of law. If the court determines that probable cause has been established: (i) the court shall order that the respondent be committed to a secure treatment facility designated by the commissioner for care, treatment and control upon his or her release, provided, however, that a respondent who otherwise would be required to be transferred to a secure treatment facility may, upon a written consent signed by the respondent and his or her counsel, consent to remain in the custody of the department of corrections and community supervision pending the outcome of the proceedings under this article, and that such consent may be revoked in writing at any time; (ii) the court shall set a date for trial in accordance with subdivision (a) of section 10.07 of this article; and (iii) the respondent shall not be released pending the completion of such trial.

(l) (1) If a respondent who is transferred to a secure treatment facility pursuant to subdivision (k) of this section, has not yet reached his or her maximum expiration date on the underlying determinate or indeterminate sentence of imprisonment, is significantly disruptive of the treatment program at such secure treatment facility, the person in charge of treatment programs at such facility may initiate a proceeding to obtain an order that the respondent shall be transferred to the custody of the department of corrections and community supervision for such conduct.

(2) Such a proceeding shall be initiated by a written notice served upon the respondent, and provided by mail to his or her counsel (or by electronic mail or facsimile to a destination identified by such counsel for such purpose). Such notice shall identify in detail the dates, times and nature of the alleged misconduct pursuant to paragraph one of this subdivision, the possible sanctions, and the date, time and location of the hearing.

(3) A hearing on the allegations shall be held no less than ten days nor more than sixty days after such notice is served on the respondent and provided to his or her counsel. The hearing shall be conducted by the director of the secure treatment facility, or his or her designee.

The respondent may be represented by counsel. Evidence shall be introduced through witnesses and documents, if any, and both the person in charge of the treatment program presenting the case and the respondent may call and cross-examine witnesses and present documentary evidence relevant to the question of whether the respondent has been significantly disruptive of the treatment program. The presiding officer may accept such evidence without applying formal state or federal rules of evidence. The hearing shall be recorded or a stenographic record of the proceeding shall be kept. When hearing the matter and, if the allegations are sustained, the presiding officer shall consider the respondent's mental health condition and its effect, if any, on his or her conduct.

(4) At the conclusion of the hearing, if the presiding officer is satisfied that there is a preponderance of evidence that the respondent has been significantly disruptive of the treatment program at the secure treatment facility, the presiding officer shall so find. In such event, the presiding officer may order the respondent's transfer back to the custody of the department of corrections and community supervision for a period of up to six months, provided however, that when such respondent reaches the maximum expiration date of his or her underlying sentence he or she shall be returned to a secure treatment facility unless he or she consents in writing as provided in subdivision (k) of this section to remaining in the custody of the department of corrections and community supervision and provided further that he or she shall be returned to a secure treatment facility if the final order issued pursuant to subdivision (f) of section 10.07 of this article requires placement in a secure treatment facility.

(5) At the conclusion of the hearing, the presiding officer shall prepare a written statement, to be made available to the respondent and his or her counsel, indicating the evidence relied on, the reasons for the determination and specifying the procedures and time frame for administrative appeal to the commissioner. The determination may be appealed to the commissioner in accordance with procedures established in writing by the department. The respondent shall be given at least ten days after notice of the determination has been served and the transcript or recording of the proceeding (with appropriate access equipment) has been provided to perfect the appeal. The respondent may

be represented by counsel on the administrative appeal.

§ 10.07 Trial.

(a) Within sixty days after the court determines, pursuant to subdivision (k) of section 10.06 of this article, that there is probable cause to believe that the respondent is a sex offender requiring civil management, the court shall conduct a jury trial to determine whether the respondent is a detained sex offender who suffers from a mental abnormality. The trial shall be held before the same court that conducted the probable cause hearing unless either the attorney general or counsel for the respondent has moved for a change of venue and the motion has been granted by the court.

(b) The provisions of article forty-one of the civil practice law and rules shall apply to the formation and conduct of jury trial under this section, except that the provisions of the following sections of the criminal procedure law shall govern to the extent that the provisions of article forty-one of the civil practice law and rules are inconsistent therewith: sections 270.05, 270.10, 270.15, 270.20, subdivision one of section 270.25, and subdivision one of section 270.35 (except for the provisions thereof requiring consent for the replacement of a discharged juror with an alternate). Each side shall have ten peremptory challenges for the regular jurors and two for each alternate juror to be selected. The right to a trial by jury may be waived by the respondent, and upon such waiver, the court shall conduct a trial in accordance with article forty-two of the civil practice law and rules, excluding provisions for decision-making by referees.

(c) The provisions of subdivision (g) of section 10.08 of this article and article forty-five of the civil practice law and rules shall be applicable to trials conducted pursuant to this section. The jury may hear evidence of the degree to which the respondent cooperated with the psychiatric examination. If the court finds that the respondent refused to submit to a psychiatric examination pursuant to this article, upon request it shall so instruct the jury. The respondent's commission of a sex offense shall be deemed established and shall not be relitigated at the trial, whenever it is shown that: (i) the respondent stands convicted of such offense; or (ii) the respondent previously has been

found not responsible by reason of mental disease or defect for the commission of such offense or for an act or acts constituting such offense. Whenever the petition alleges the respondent's commission of a designated felony prior to the effective date of this article, the issue of whether such offense was sexually motivated shall be determined by the jury.

(d) The jury, or the court if a jury trial is waived, shall determine by clear and convincing evidence whether the respondent is a detained sex offender who suffers from a mental abnormality. The burden of proof shall be on the attorney general. A determination, if made by the jury, must be by unanimous verdict. In charging the jury, the court's instructions shall include the admonishment that the jury may not find solely on the basis of the respondent's commission of a sex offense that the respondent is a detained sex offender who suffers from a mental abnormality. In the case of a respondent committed pursuant to article seven hundred thirty of the criminal procedure law for a sex offense, the attorney general shall have the burden of proving by clear and convincing evidence that the respondent did engage in the conduct constituting such offense.

(e) If the jury unanimously, or the court if a jury trial is waived, determines that the attorney general has not sustained his or her burden of establishing that the respondent is a detained sex offender who suffers from a mental abnormality, the court shall dismiss the petition and the respondent shall be released if and as warranted by other provisions of law. If the jury is unable to render a unanimous verdict, the court shall continue any commitment order previously issued and schedule a second trial to be held within sixty days in accordance with the provisions of subdivision (a) of this section. If the jury in such second trial is unable to render a unanimous verdict as to whether the respondent is a detained sex offender who suffers from a mental abnormality, the court shall dismiss the petition.

(f) If the jury, or the court if a jury trial is waived, determines that the respondent is a detained sex offender who suffers from a mental abnormality, then the court shall consider whether the respondent is a dangerous sex offender requiring confinement or a sex offender requiring strict and intensive supervision. The parties may offer additional evidence, and the court shall hear argument, as to that issue. If the

court finds by clear and convincing evidence that the respondent has a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the respondent is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility, then the court shall find the respondent to be a dangerous sex offender requiring confinement. In such case, the respondent shall be committed to a secure treatment facility for care, treatment, and control until such time as he or she no longer requires confinement. If the court does not find that the respondent is a dangerous sex offender requiring confinement, then the court shall make a finding of disposition that the respondent is a sex offender requiring strict and intensive supervision, and the respondent shall be subject to a regimen of strict and intensive supervision and treatment in accordance with section 10.11 of this article. In making a finding of disposition, the court shall consider the conditions that would be imposed upon the respondent if subject to a regimen of strict and intensive supervision, and all available information about the prospects for the respondent's possible re-entry into the community.

§ 10.08 Procedures under this article.

(a) When a respondent submits to an examination pursuant to an order issued in accordance with this article, any statement made by the respondent for the purpose of the examination shall be kept confidential in accordance with the provisions of section 33.13 of this chapter and shall be inadmissible in evidence against him or her in any criminal action or proceeding, provided that such statements may be used in proceedings under this article.

(b) A psychiatric examiner chosen by the attorney general shall have reasonable access to the respondent for the purpose of such examination, as well as to the respondent's relevant medical, clinical, criminal or other records and reports. A psychiatric examiner chosen by or appointed on behalf of the respondent shall have reasonable access to the respondent's relevant medical, clinical or criminal records and reports, except that such psychiatric examiner shall not have access without court order and for good cause shown to the name of, address of, or any other identifying information about the victim or victims. To the extent

possible, such identifying information should be redacted so as to provide the examiner with access to the balance of the document. In conducting examinations under this article, psychiatric examiners may employ any method that is accepted by the medical profession for the examination of persons alleged to be suffering from a mental disability or mental abnormality.

(c) Notwithstanding any other provision of law, the commissioner, the case review panel and the attorney general shall be entitled to request from any agency, office, department or other entity of the state, and such entity shall be authorized to provide upon such request, any and all records and reports relating to the respondent's commission or alleged commission of a sex offense, the institutional adjustment and any treatment received by such respondent, and any medical, clinical or other information relevant to a determination of whether the respondent is a sex offender requiring civil management. Otherwise confidential materials obtained for purposes of proceedings pursuant to this article shall not be further disseminated or otherwise used except for such purposes. Nothing in this article shall be construed to restrict any right of a respondent to obtain his or her own records pursuant to other provisions of law.

(d) The attorney general shall make records in his or her possession and relevant to the respondent available for inspection or copying by counsel for the respondent for purposes of hearing, trial, and appeal provided, however, that counsel shall not have access to the name of, address of, or any other identifying information about the victim or victims, or to any investigative or other reports that relate to matters beyond the scope of the proceedings and are confidential or privileged from disclosure. To the extent possible, such identifying information should be redacted so as to provide counsel with access to the balance of the document.

(e) At any hearing or trial pursuant to the provisions of this article, the court may change the venue of the trial to any county for good cause, which may include considerations relating to the convenience of the parties or witnesses or the condition of the respondent.

(e-1) Records or reports provided to the respondent in accordance with this article shall be disclosed in the circumstances and in the same manner as records and reports disclosed pursuant to the provisions of

section 33.16 of this chapter.

(f) Time periods specified by provisions of this article for actions by state agencies are goals that the agencies shall try to meet, but failure to act within such periods shall not invalidate later agency action except as explicitly provided by the provision in question. The court may extend any time period at the request, or on the consent, of the respondent. No provision of this article shall be interpreted so as to prevent a respondent, after opportunity to consult with counsel for respondent, from consenting to the relief which could be sought by an agency with jurisdiction by means of a court proceeding under this article.

(g) In preparing for or conducting any hearing or trial pursuant to the provisions of this article, and in preparing any petition under the provisions of this article, the respondent shall have the right to have counsel represent him or her, provided that the respondent shall not be entitled to appointment of counsel prior to the time provided in section 10.06 of this article. The attorney general shall represent the state. Any relevant written reports of psychiatric examiners shall be admissible, regardless of whether the author of the report is called to testify, so long as they are certified pursuant to subdivision (c) of rule forty-five hundred eighteen of the civil practice law and rules, in any proceeding or hearing held pursuant to subdivision (g) or (h) of section 10.06 of this article, paragraph two of subdivision (a), or paragraph four of subdivision (d), or subdivision (e), (g) or (h) of section 10.11 of this article. In all other proceedings or hearings held pursuant to this article, such admissibility shall require a showing of the author's unavailability to testify, or other good cause. All plea minutes and prior trial testimony from the underlying criminal proceeding, and records from previous proceedings under this article, shall be admissible. Each witness, whether called by the attorney general or the respondent, must, unless he or she would be authorized to give unsworn evidence at a trial, testify under oath, and may be cross-examined. The respondent may, as a matter of right, testify in his or her own behalf, call and examine other witnesses, and produce other evidence in his or her behalf. The respondent may not, however, cause a subpoena to be served on the person against whom the sex offense was committed or alleged to have been committed by the respondent, except

upon order of the court for good cause shown. Either party may request closure of the courtroom, or sealing of papers, for good cause shown.

(h) The procedures and standards set forth in this article governing the imposition of conditions upon the respondent are intended to be the minimum required to provide for the protection of the public and treatment of the respondent. Nothing in this article shall be construed to require the availability or imposition of forms of treatment or supervision other than those for which this article specifically provides.

(i) * (1) At a proceeding conducted pursuant to subdivision (g) or (h) of section 10.06 of this article, a psychiatric examiner called to testify may be permitted, upon good cause shown, to testify by electronic appearance in the court, as that phrase is defined in section 182.10 of the criminal procedure law. It shall constitute good cause to permit such an electronic appearance that such proposed witness is currently employed by the state at a secure treatment facility or another work location unless there are compelling circumstances requiring the witness' personal presence at the court proceeding.

* NB Effective until September 1, 2028

* (1) At a proceeding conducted pursuant to subdivision (g) or (h) of section 10.06 of this article, a psychiatric examiner called to testify may be permitted, upon good cause shown, to testify by electronic appearance in the court by means of an independent audio-visual system, as that phrase is defined in subdivision one of section 182.10 of the criminal procedure law. It shall constitute good cause to permit such an electronic appearance that such proposed witness is currently employed by the state at a secure treatment facility or another work location unless there are compelling circumstances requiring the witness' personal presence at the court proceeding.

* NB Effective September 1, 2028

(2) A copy of any clinical record or other document that the party calling such psychiatric examiner intends to present to the witness or introduce during the direct testimony of such psychiatric examiner by electronic appearance shall be provided to opposing counsel and, in a manner consistent with section 33.16 of this chapter, the respondent:
(i) five days or more before the date such person is called to testify by electronic appearance at a proceeding conducted pursuant to

subdivision (g) of section 10.06 of this article, and (ii) twenty-four hours or more before the date such person is called to testify by electronic appearance at a proceeding conducted pursuant to subdivision (h) of such section 10.06.

(3) Except as provided in paragraph four of this subdivision, copies of clinical records and documents not made available to opposing counsel and, where applicable, the respondent as required by paragraph two of this subdivision shall not be permitted to be presented to the witness on direct examination or introduced in evidence without the consent of opposing counsel provided, however, that where good cause is shown why such clinical record or other document was not provided sufficiently in advance as required by this subdivision, the court shall allow such clinical record or other document to be provided by appropriate means, including but not limited to facsimile or electronic means, and then used or considered in the same manner as if timely advance disclosure had been made.

(4) The court shall order that copies of clinical records and other documents relevant for cross-examination, re-direct examination or re-cross examination of such witness testifying by electronic means, not otherwise provided pursuant to this subdivision, be provided to opposing counsel and, in a manner consistent with section 33.16 of this chapter, the respondent, by appropriate means, including but not limited to facsimile or other electronic means.

(5) For purposes of this subdivision, an "electronic appearance" means an appearance at which a participant is not present in the court, but in which all of the participants are able to see and hear the simultaneous reproductions of the voices and images of the judge, counsel, respondent and any other appropriate participant. When a witness makes an electronic appearance pursuant to this subdivision, the court stenographer shall record any statements in the same manner as if the witness had made a personal appearance.

§ 10.09 Annual examinations and petitions for discharge.

(a) The commissioner shall provide the respondent and counsel for respondent with an annual written notice of the right to petition the court for discharge. The notice shall contain a form for the waiver of

the right to petition for discharge.

(b) The commissioner shall also assure that each respondent committed under this article shall have an examination for evaluation of his or her mental condition made at least once every year (calculated from the date on which the supreme or county court judge last ordered or confirmed the need for continued confinement pursuant to this article or the date on which the respondent waived the right to petition for discharge pursuant to this section, whichever is later, as applicable) conducted by a psychiatric examiner who shall report to the commissioner his or her written findings as to whether the respondent is currently a dangerous sex offender requiring confinement. At such time, the respondent also shall have the right to be evaluated by an independent psychiatric examiner. If the respondent is financially unable to obtain an examiner, the court shall appoint an examiner of the respondent's choice to be paid within the limits prescribed by law. Following such evaluation, each psychiatric examiner shall report his or her findings in writing to the commissioner and to counsel for respondent. The commissioner shall review relevant records and reports, along with the findings of the psychiatric examiners, and shall make a determination in writing as to whether the respondent is currently a dangerous sex offender requiring confinement.

(c) The commissioner shall annually forward the notice and waiver form, along with a report including the commissioner's written determination and the findings of the psychiatric examination, to the supreme or county court where the respondent is located.

(d) The court shall hold an evidentiary hearing as to retention of the respondent within forty-five days if it appears from one of the annual submissions to the court under subdivision (c) of this section (i) that the respondent has petitioned, or has not affirmatively waived the right to petition, for discharge, or (ii) that even if the respondent has waived the right to petition, and the commissioner has determined that the respondent remains a dangerous sex offender requiring confinement, the court finds on the basis of the materials described in subdivision (b) of this section that there is a substantial issue as to whether the respondent remains a dangerous sex offender requiring confinement. At an evidentiary hearing on that issue under this subdivision, the attorney general shall have the burden of proof.

(e) If, at any time, the commissioner determines that the respondent no longer is a dangerous sex offender requiring confinement, the commissioner shall petition the court for discharge of the respondent or for the imposition of a regimen of strict and intensive supervision and treatment. The petition shall be served upon the attorney general and the respondent, and filed in the supreme or county court where the person is located. The court, upon review of the petition, shall either order the requested relief or order that an evidentiary hearing be held.

(f) The respondent may at any time petition the court for discharge and/or release to the community under a regimen of strict and intensive supervision and treatment. Upon review of the respondent's petition, other than in connection with annual reviews as described in subdivisions (a), (b) and (d) of this section, the court may order that an evidentiary hearing be held, or may deny an evidentiary hearing and deny the petition upon a finding that the petition is frivolous or does not provide sufficient basis for reexamination prior to the next annual review. If the court orders an evidentiary hearing under this subdivision, the attorney general shall have the burden of proof as to whether the respondent is currently a dangerous sex offender requiring confinement.

(g) In connection with any evidentiary hearing held pursuant to subdivision (d), (e), or (f) of this section, upon the request of either party or upon its own motion, the court may direct the submission of evidence, and may order a psychiatric evaluation if the court finds that any available examination reports are not current or otherwise not sufficient.

(h) At the conclusion of an evidentiary hearing, if the court finds by clear and convincing evidence that the respondent is currently a dangerous sex offender requiring confinement, the court shall continue the respondent's confinement. Otherwise the court, unless it finds that the respondent no longer suffers from a mental abnormality, shall issue an order providing for the discharge of the respondent to a regimen of strict and intensive supervision and treatment pursuant to section 10.11 of this article.

§ 10.10 Treatment and confinement.

(a) If the respondent is found to be a dangerous sex offender requiring confinement and committed to a secure treatment facility, that facility shall provide care, treatment, and control of the respondent until such time that a court discharges the respondent in accordance with the provisions of this article.

(b) The commissioner shall, for persons committed pursuant to this article, develop and implement a treatment plan in accordance with the provisions of section 29.13 of this chapter. The commissioner shall give due regard to any relevant standards, guidelines, and best practices recommended by the office of sex offender management.

(c) The commissioner, or the commissioner of the department of corrections and community supervision, or other government entity responsible for the care and custody of respondents, shall be authorized to employ appropriate safety and security measures, as he or she deems necessary to ensure the safety of the public, during court proceedings and in the transport of persons committed or undergoing any proceedings under this article. Such commissioner shall provide training in the use of safe and appropriate security interventions to employees responsible for transporting persons under this article.

(d) The commissioner shall have the discretion to enter into agreements with the department of corrections and community supervision for the provision of security services relating to this article.

(e) Persons in the custody of the commissioner pursuant to this article shall be kept separate from other persons in the care, custody and control of the commissioner, and shall be segregated from such other persons, provided, however, that persons committed or subject to proceedings under this article need not be segregated from other sex offenders committed or subject to proceedings under this article, article nine of this title, or section four hundred two of the correction law. If any dangerous sex offenders requiring confinement are committed to a secure treatment facility located on the grounds of a correctional facility, they shall be kept separate from persons in custody as a result of criminal cases, and shall be segregated from such persons. Occasional instances of supervised, incidental contact between persons required by this subdivision to be segregated shall not be considered a violation of such segregation requirements.

(f) In accordance with security procedures developed by the

commissioner, a person committed under this article may be granted an escorted privilege by the director of the secure treatment facility in which he or she is receiving care and treatment but only for the purposes of allowing the person to receive medical or dental care or treatment not available at the facility, to visit a family member who is seriously ill or to attend the funeral of a family member. A person granted an escorted privilege shall be under the constant supervision of one or more facility employees who have been designated by the commissioner or other specially trained personnel approved by the commissioner to provide care and supervision of such persons.

(g) If a person is in the custody of the commissioner pursuant to an order issued under this article, and such person escapes from custody, notice of such escape shall be given as soon as the facility staff learns of such escape, and shall include such information as will adequately identify the escaped individual, any person or persons believed to be in danger, and the nature of the danger. Such notice shall be given by any means reasonably calculated to give prompt actual notice, and shall be given to:

(1) the district attorney of the county where the person was convicted, adjudicated, or charged; the attorney general; and counsel for respondent or the mental hygiene legal service;

(2) the superintendent of the state police;

(3) the sheriff of the county where the escape occurred;

(4) the police department having jurisdiction of the area where the escape occurred;

(5) any victim or victims who submitted the notification form described in subdivision four of section 380.50 of the criminal procedure law;

(6) any person the facility staff reasonably believes could be in danger;

(7) any law enforcement agency and any person the facility staff believes would be able to apprise such victim or victims that the person escaped from the facility; and

(8) any other person the committing court may designate.

(h) The person may be apprehended, restrained, transported, and returned to the facility from which he or she escaped by any police officer or peace officer, and it shall be the duty of such officer to

assist any representative of the commissioner to take the person into custody upon the request of such representative.

(i) The commissioner shall submit to the governor and the legislature no later than December first of each year, a report on the implementation of this article. Such report shall include, but not be limited to, the census of each existing treatment facility, the number of persons reviewed by the case review teams for proceedings under this article, the number of persons committed pursuant to this article, their crimes of conviction, and projected future capacity needs.

§ 10.11 Regimen of strict and intensive supervision and treatment.

(a) (1) Before ordering the release of a person to a regimen of strict and intensive supervision and treatment pursuant to this article, the court shall order that the department of corrections and community supervision recommend supervision requirements to the court. These supervision requirements, which shall be developed in consultation with the commissioner, may include but need not be limited to, electronic monitoring or global positioning satellite tracking for an appropriate period of time, polygraph monitoring, specification of residence or type of residence, prohibition of contact with identified past or potential victims, strict and intensive supervision by a parole officer, and any other lawful and necessary conditions that may be imposed by a court. In addition, after consultation with the psychiatrist, psychologist or other professional primarily treating the respondent, the commissioner shall recommend a specific course of treatment. A copy of the recommended requirements for supervision and treatment shall be given to the attorney general and the respondent and his or her counsel a reasonable time before the court issues its written order pursuant to this section.

(2) Before issuing its written order, the court shall afford the parties an opportunity to be heard, and shall consider any additional submissions by the respondent and the attorney general concerning the proposed conditions of the regimen of strict and intensive supervision and treatment. The court shall issue an order specifying the conditions of the regimen of strict and intensive supervision and treatment, which shall include specified supervision requirements and compliance with a

specified course of treatment. A written statement of the conditions of the regimen of strict and intensive supervision and treatment shall be given to the respondent and to his or her counsel, any designated service providers or treating professionals, the commissioner, the attorney general and the supervising parole officer. The court shall require the department of corrections and community supervision to take appropriate actions to implement the supervision plan and assure compliance with the conditions of the regimen of strict and intensive supervision and treatment. A regimen of strict and intensive supervision does not toll the running of any form of supervision in criminal cases, including but not limited to post-release supervision and parole.

(b) (1) Persons ordered into a regimen of strict and intensive supervision and treatment pursuant to this article shall be subject to a minimum of six face-to-face supervision contacts and six collateral contacts per month. Such minimum contact requirements shall continue unless subsequently modified by the court or the department of corrections and community supervision.

(2) Any agency, organization, professional or service provider designated to provide treatment to the person shall, unless otherwise directed by the court, submit every four months to the court, the commissioner, the attorney general and the supervising parole officer a report describing the person's conduct while under a regimen of strict and intensive supervision and treatment.

(c) An order for a regimen of strict and intensive supervision and treatment places the person in the custody and control of the department of corrections and community supervision. A person ordered to undergo a regimen of strict and intensive supervision and treatment pursuant to this article is subject to lawful conditions set by the court and the department of corrections and community supervision.

(d) (1) A person's regimen of strict and intensive supervision and treatment may be revoked if such a person violates a condition of strict and intensive supervision. If a parole officer has reasonable cause to believe that the person has violated a condition of the regimen of strict and intensive supervision and treatment or, if there is an oral or written evaluation or report by a treating professional indicating that the person may be a dangerous sex offender requiring confinement, a parole officer authorized in the same manner as provided in subparagraph

(i) of paragraph (a) of subdivision three of section two hundred fifty-nine-i of the executive law may take the person into custody and transport the person for lodging in a secure treatment facility or a local correctional facility for an evaluation by a psychiatric examiner, which evaluation shall be conducted within five days. A parole officer may take the person, under custody, to a psychiatric center for prompt evaluation, and at the end of the examination, return the person to the place of lodging. A parole officer, as authorized by this paragraph, may direct a peace officer, acting pursuant to his or her special duties, or a police officer who is a member of an authorized police department or force or of a sheriff's department, to take the person into custody and transport the person as provided in this paragraph. It shall be the duty of such peace officer or police officer to take into custody and transport any such person upon receiving such direction. The department of corrections and community supervision shall promptly notify the attorney general and the mental hygiene legal service, when a person is taken into custody pursuant to this paragraph. No provision of this section shall preclude the board of parole from proceeding with a revocation hearing as authorized by subdivision three of section two hundred fifty-nine-i of the executive law.

(2) After the person is taken into custody for the evaluation, the attorney general may file: (i) a petition for confinement pursuant to paragraph four of this subdivision and/or (ii) a petition pursuant to subdivision (e) of this section to modify the conditions of a regimen of strict and intensive supervision and treatment. Either petition shall be filed in the court that issued the order imposing the regimen of strict and intensive supervision and treatment. The attorney general shall seek to file the petition within five days after the person is taken into custody for evaluation. If no petition is filed within that time, the respondent shall be released immediately, subject to the terms of the previous order imposing the regimen of strict and intensive supervision, but failure to file a petition within such time shall not affect the validity of such petition or any subsequent action.

(3) A petition filed under paragraph two of this subdivision shall be served promptly on the respondent and the mental hygiene legal service. The court shall appoint legal counsel in accordance with subdivision (c) of section 10.06 of this article. Counsel for respondent shall be

provided with a copy of the written report, if any, of the psychiatric examiner who conducted the evaluation pursuant to this section.

(4) A petition for confinement shall contain the parole officer's sworn allegations demonstrating reasonable cause to believe that the respondent violated a condition of his or her strict and intensive supervision, and shall be accompanied by any written evaluations or reports by a treating professional indicating that the respondent may be a dangerous sex offender requiring confinement. If a petition is filed within the five-day period seeking the respondent's confinement, then the court shall promptly review the petition and, based on the allegations in the petition and any accompanying papers, determine whether there is probable cause to believe that the respondent is a dangerous sex offender requiring confinement. Upon the finding of probable cause, the respondent may be retained in a local correctional facility or a secure treatment facility pending the conclusion of the proceeding. In the absence of such a finding, the respondent shall be released, but the court may impose revised conditions of supervision and treatment pending completion of the hearing. Within thirty days after a petition for confinement is filed under paragraph two of this subdivision, the court shall conduct a hearing to determine whether the respondent is a dangerous sex offender requiring confinement. Any failure to commence the hearing within the time period specified shall not result in the dismissal of the petition and shall not affect the validity of the hearing or the determination. The court shall make its determination of whether the respondent is a dangerous sex offender requiring confinement in accordance with the standards set forth in subdivision (f) of section 10.07 of this article. If the court finds that the attorney general has not met the burden of showing by clear and convincing evidence that the respondent is a dangerous sex offender requiring confinement, but finds that the respondent continues to be a sex offender requiring strict and intensive supervision, the court shall order the person to be released under the previous order imposing a regimen of strict and intensive supervision and treatment, unless it modifies the order imposing a regimen of strict and intensive supervision and treatment pursuant to subdivision (f) of this section. If the court determines that the attorney general has met the burden of showing by clear and convincing evidence that the respondent is a

dangerous sex offender requiring confinement, the court shall order that the respondent be committed to a secure treatment facility immediately. The respondent shall not be released pending the completion of the hearing.

(e) If the attorney general files only a petition for modification under paragraph two of subdivision (d) of this section, the respondent shall be released but the court may impose revised conditions of supervision and treatment pending completion of the hearing. Within five days after filing of the petition for modification, the court shall conduct a hearing to determine whether the respondent's conditions of treatment and supervision should be modified. The attorney general shall have the burden of showing that the modifications sought are warranted, and the court shall order such modifications to the extent that it finds that the attorney general has met that burden.

(f) The court may modify or terminate the conditions of the regimen of strict and intensive supervision and treatment on the petition of the supervising parole officer, the commissioner or the attorney general. Such petition shall be served on the respondent and the respondent's counsel. A person subject to a regimen of strict and intensive supervision and treatment pursuant to this article may petition every two years for modification or termination, commencing no sooner than two years after the regimen of strict and intensive supervision and treatment commenced, with service of such petition on the attorney general, the department of corrections and community supervision, and the commissioner. Upon receipt of a petition for modification or termination pursuant to this section, the court may require the department of corrections and community supervision and the commissioner to provide a report concerning the person's conduct while subject to a regimen of strict and intensive supervision and treatment. If more than one petition is filed, the petitions may be considered in a single hearing.

(g) Upon receipt of a petition for modification pursuant to this section, the court may hold a hearing on such petition. The party seeking modification shall have the burden of showing that those modifications are warranted, and the court shall order such modifications to the extent that it finds that the party has met that burden.

(h) Upon receipt of a petition for termination pursuant to this section, the court may hold a hearing on such petition. When the petition is filed by the respondent, the attorney general shall have the burden of showing by clear and convincing evidence that the respondent is currently a sex offender requiring civil management. If the court finds that the attorney general has not sustained that burden, it shall order the respondent's discharge from the regimen of strict and intensive supervision and treatment. Otherwise the court shall continue the regimen of strict and intensive supervision and treatment but may revise conditions of supervision and treatment as warranted.

§ 10.13 Appeals.

(a) The attorney general may, in the appellate division of the supreme court, seek a stay of any order under this article releasing a person under this article.

(b) The attorney general may appeal as of right from an order entered pursuant to subdivision (k) of section 10.06 of this article dismissing the petition following a determination that probable cause to believe that the respondent is a sex offender requiring civil management has not been established. No appeal may be taken from an order entered pursuant to subdivision (k) of section 10.06 of this article determining that probable cause has been established to believe the respondent is a sex offender requiring civil management. Both the respondent and the attorney general may appeal from any final order entered pursuant to this article. The provisions of articles fifty-five, fifty-six, and fifty-seven of the civil practice law and rules shall govern appeals taken from orders entered pursuant to this article.

(c) In connection with any appeal, a respondent who is or becomes financially unable to obtain counsel shall have the right to have appellate counsel appointed on his or her behalf. Such counsel shall be appointed by the court to which an appeal is taken. If possible, the court shall appoint the mental hygiene legal service. In the event that the court determines that the mental hygiene legal service cannot accept appointment, the court shall appoint an attorney eligible for appointment pursuant to article eighteen-B of the county law, or an entity, if any, that has contracted for the delivery of legal

representation services under subdivision (c) of section 10.15 of this article.

§ 10.15 Compensation, fees and expenses.

(a) Any compensation, fee or expense paid pursuant to the provisions of this article and article eighteen-B of the county law shall be a state charge payable on vouchers approved by the court which fixed the same, after audit by and on the warrant of the comptroller. Any compensation, fee or expense paid to such counsel so appointed shall be paid out of funds appropriated to the administrative office for the courts. Each claim for compensation and reimbursement shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source. The appropriate court shall review and determine the reasonableness of the claims, including the number of hours expended out of court by counsel and psychiatric examiners. When a court appoints counsel pursuant to article eighteen-B of the county law, such counsel shall be compensated in accordance with the provisions of that article. Notwithstanding any other provision of law, psychiatric examiners who are appointed by a court under this article, and who perform such examinations other than as government employees, shall be compensated at an hourly rate to be set by the administrative board of the judicial conference.

(b) Members of the case review panel established by subdivision (a) of section 10.05 of this article shall be entitled to reimbursement for expenses reasonably incurred for the performance of duties under this article.

(c) The state may contract with entities for the provision of legal representation services to respondents in proceedings under this article, within the amounts appropriated therefor.

§ 10.17 Release of information authorized.

The commissioner is authorized to release information in accordance with subparagraph (vii) of paragraph nine of subdivision (c) of section

33.13 of this chapter to appropriate persons and entities when necessary to protect the public concerning a specific sex offender requiring civil management under this article, and to release information in accordance with subparagraph (viii) of paragraph nine of subdivision (c) of section 33.13 of this chapter to the attorney general and case review panel when such persons or entities request such information in the exercise of their statutory functions, powers, and duties under this article.

TITLE C

DEVELOPMENTAL DISABILITIES ACT

- Article 13 Office for people with developmental disabilities
 - 15 Admission of people with developmental disabilities to schools
 - 16 Regulation and Quality of Services

ARTICLE 13

OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

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§ 13.01 Declaration of policy.

The state of New York and its local governments have a responsibility for the prevention and early detection of developmental disabilities and for the comprehensively planned provision of services including care, treatment habilitation and rehabilitation of their citizens with developmental disabilities.

Therefore, it shall be the policy of the state to conduct research and to develop programs to further the prevention and early detection of developmental disabilities; to develop a comprehensive, integrated system of services which has as its primary purposes the promotion and attainment of independence, inclusion, individuality and productivity for persons with developmental disabilities; to serve the full range of needs of persons with developmental disabilities by expanding the number and types of community based services and developing new methods of service delivery; and to improve the equity, effectiveness and efficiency of services for persons with developmental disabilities by serving persons in the community as well as those in developmental centers, by improving the conditions in developmental centers, and by establishing accountability for carrying out the policies of the state with regard to such persons.

To accomplish these goals and meet the particular needs of individuals with developmental disabilities, a new autonomous agency to be known as the office for people with developmental disabilities has been established. The office and its commissioner shall plan and work with local governments and voluntary organizations and all providers of services, and individuals with developmental disabilities and their families and representatives, to develop an effective, integrated, comprehensive system for the delivery of all necessary supports and services to all individuals with developmental disabilities and to create financing procedures and mechanisms to support such a system of supports and services to ensure that all individuals with developmental disabilities in need of supports and services receive appropriate and timely supports and services close to their families and community. In carrying out these responsibilities, the office and its commissioner shall make full use of existing services in the community, including those provided by voluntary and other service organizations, and within annual amounts made available shall add in-home, residential and day service and support capacity, to address the needs of individuals with developmental disabilities.

Any provisions of this article which explicitly or implicitly apply

to, or reference, persons who are mentally retarded, shall be deemed to apply to, or reference, persons with developmental disabilities.

§ 13.03 Definitions.

As used in this title:

1. "office" means the office for people with developmental disabilities.
2. "commissioner" means the head of the office for people with developmental disabilities.

§ 13.05 Developmental disabilities advisory council.

(a) There is hereby established a developmental disabilities advisory council. The council shall consist of the commissioner, the chairman of the conference of local mental hygiene directors or his or her designee, and at least thirty-three members to be appointed by the governor. Beginning on and after June thirtieth, two thousand twenty-two, the council shall consist of thirty-five members, including the commissioner, the chairman of the conference of local mental hygiene directors or his or her designee, four members to be appointed by the temporary president of the senate, four members to be appointed by the speaker of the assembly, one member to be appointed by the minority leader of the senate, one member to be appointed by the minority leader of the assembly and twenty-three members to be appointed by the governor. Any current member shall be allowed to finish his or her term. The commissioner shall oversee and assist with the transition to the makeup of the council after such date, ensuring that as current members' terms expire, the council appoints members in the manner set forth in this subdivision. Members shall be appointed only if they have demonstrated an active interest in or have obtained professional knowledge in the care of persons with developmental disabilities or in the field of developmental disabilities generally. The governor shall designate one of the appointed members as chair. The council shall at

all times include in its membership representatives of community service board developmental disabilities subcommittees, providers of services and non-governmental organizations concerned with services for persons with developmental disabilities. At least one-third of the membership of the advisory council shall consist of consumer representatives including persons with developmental disabilities, or their parents or guardians.

(b) Members shall be appointed for terms of three years provided, however, that of the members first appointed, one-third shall be appointed for one year terms and one-third shall be appointed for two year terms. Vacancies shall be filled in the same manner as prescribed in subdivision (a) of this section. The designation of a member as chair shall be made bi-annually.

(c) The developmental disabilities advisory council shall have no executive, administrative or appointive duties. The council shall have the duty to foster public understanding and acceptance of developmental disabilities. It shall, in cooperation with the commissioner of developmental disabilities, provide recommendations for statewide priorities and goals for services for individuals with developmental disabilities and shall advise the commissioner on matters related to development and implementation of the statewide comprehensive plan as required under section 5.07 of this chapter. The advisory council shall have the power to consider any matter relating to the improvement of the state developmental disabilities program and shall advise the commissioner of developmental disabilities thereon and on any matter relating to the performance of their duties with relation to individuals with developmental disabilities and on policies, goals, budget and operation of developmental disabilities services.

1. The council shall establish such committees as deemed necessary by the chair with advice from the commissioner. Such committees shall consider matters related to the various service populations served, and programs certified by the office, as well as other matters, including planning, fiscal, and consumer affairs. The council shall prepare and issue such reports on its activities as deemed necessary.

2. The council shall meet at least four times in each full calendar year. The council shall meet at the request of its chair or the

commissioner.

(d) Members of the advisory council shall receive no compensation for their services but shall be reimbursed for all expenses actually and necessarily incurred by them in the performance of their duties.

(e) At least thirty days prior to his or her final approval of regulations, other than emergency regulations, the commissioner shall submit proposed regulations to the council for its review. The council shall review all proposed regulations and report its recommendations on the proposed regulations to the commissioner within thirty days. Such period may be extended upon the agreement of the commissioner.

(f) The council shall assist the commissioner of developmental disabilities with the development and assessment of the triennial state developmental disabilities plan issued by the office. To ensure the full use of existing specialized and generic services in the community, to ensure that all providers and appropriate local governmental agencies are involved, and to ensure that local services to persons with developmental disabilities and their families are readily available and accessible, the council shall periodically assess the local planning process and make recommendations thereon to the commissioner and to the council for mental hygiene planning.

* (g) The developmental disabilities advisory council shall produce a report to review the impact and the state's response to the COVID-19 state disaster emergency, as declared by executive order two hundred two of two thousand twenty, as it relates to individuals with intellectual or developmental disabilities. The office and the department of health shall provide technical assistance and access to data as is required for the council to effectuate such review and produce such report. The report shall include, but not be limited to:

(i) a timeline and inventory of any and all relevant executive orders, guidance and regulations put forth by the department of health, the office, the executive or any other agency between March first, two thousand twenty and April first, two thousand twenty-one in response to the COVID-19 outbreak;

(ii) a timeline of any outreach conducted by the office with stakeholders, including self-advocates, family advocates and voluntary providers and what, if any, changes to guidance were made as a result of such communication with stakeholders;

(iii) any actions or guidance the office, the department of health and/or any other agency took to minimize exposure of COVID-19 between residents and staff;

(iv) an inventory of actions the office, the department of health and/or any other agency took to assist in the procurement or provisioning of personal protective equipment for residents and staff in state operated facilities, and facilities operated by voluntary providers. For purposes of this section, "personal protective equipment" shall mean all equipment worn or used to minimize exposure to a communicable disease, including but not limited to gloves, masks and face shields;

(v) an inventory of costs incurred by the office related to responding to COVID-19;

(vi) an inventory of actions the office, the department of health and/or any other agency took to assist underserved communities including but not limited to racial and ethnic minority communities; and

(vii) specific challenges that were faced with regards to individuals with intellectual and developmental disabilities.

(2) The developmental disabilities advisory council shall also evaluate policies, procedures, and programs that were implemented during the course of the COVID-19 pandemic to determine the efficacy on safety.

(3) The developmental disabilities advisory council shall provide recommendations of changes to any laws or regulations that impeded response to COVID-19 to the legislature.

(4) Such report shall be submitted to the governor, the temporary president of the senate and the speaker of the assembly no later than nine months from the effective date of this subdivision and shall be made publicly available online.

* NB Repealed 10 days after transmission of the report of the findings by the developmental disabilities advisory council to the governor, the temporary president of the senate and the speaker of the assembly

(h) The developmental disabilities advisory council shall publish a comprehensive summary of information about their activities to the office's website annually, in an accessible format. Such information shall include, at minimum:

1. actions taken to foster public understanding and acceptance of

developmental disabilities;

2. recommendations made to the commissioner related to statewide priorities and goals for services for individuals with developmental disabilities, and the implementation of the statewide comprehensive plan as required under section 5.07 of this chapter; and

3. any other actions taken by the council related to their duties.

§ 13.06 Annual plan.

The commissioner shall submit an annual plan to the director of the budget for his review and approval. Such annual plan shall also be filed with the chairman of the assembly ways and means committee and the senate finance committee. Such plan shall identify those community residences to be converted to intermediate care facilities for persons with developmental disabilities. In developing such plan, the commissioner shall utilize specific criteria, including client eligibility criteria, fiscal criteria and such other relevant criteria as he may deem necessary, to assess the appropriateness of such conversion. The procedures contained in this plan shall be applied on a case by case basis to individual community residential sites. No community residence shall be so converted unless it meets such criteria.

§ 13.07 Office for people with developmental disabilities; scope of responsibilities.

(a) The office for people with developmental disabilities shall assure the development of comprehensive plans, programs, and services in the areas of research, prevention, and care, treatment, habilitation, rehabilitation, vocational and other education, and training of individuals with developmental disabilities. Such plans, programs, and services shall be developed by the cooperation of the office, other offices of the department where appropriate, other state departments and agencies, local governments, community organizations and agencies providing services to individuals with developmental disabilities, their

families and representatives. It shall provide appropriate facilities, programs, supports and services and encourage the provision of facilities, programs, supports and services by local government and community organizations and agencies.

(b) It shall advise and assist the governor in developing policies designed to meet the needs of persons with developmental disabilities and encourage their full inclusion and participation in society.

(c) The office shall have the responsibility for seeing that persons with developmental disabilities specified in the foregoing subdivision are provided with services including care and treatment, that such services are of high quality and effectiveness, and that the personal and civil rights of persons receiving such services are protected. The services provided shall seek to promote and attain independence, inclusion, individuality and productivity for persons with developmental disabilities.

(c-1) 1. In carrying out the responsibilities identified in subdivision (c) of this section, the office shall ensure that applications for eligibility determinations and service authorizations are processed in a timely manner. The office shall complete processing of the application within a processing period of one hundred twenty days of receipt of such application transmitted via the internet or electronic mail.

2. Where the application is not reasonably clear or omits required information, or where the office reasonably suspects fraud based on specific information available to the office, the office shall notify the applicant in writing within thirty calendar days of the receipt of such application and request the specific information needed to process such application. Provided, however, that the processing period shall be tolled from the date of notice to the applicant to the date of receipt of the complete application by the office.

3. Upon receipt of the information requested in paragraph two of this subdivision, the office shall complete processing of the complete application within the remaining days of the processing period.

(d) The office shall foster programs for the training and development of persons capable of providing the foregoing services.

(e) Consistent with the requirements of subdivision (b) of section 5.05 of this chapter, the office shall carry out the provisions of article thirty-one of this chapter as such article pertains to regulation and quality control of services for persons with developmental disabilities.

§ 13.09 Powers of the office and commissioner; how exercised.

(a) The commissioner shall exercise all powers vested in the office. He or she may delegate any function, power, or duty assigned to him or her or to the office to any officer or employee of the office, unless otherwise provided by law. He or she may enter into agreements with other commissioners of the department in order to ensure that programs and services are provided for all of the mentally disabled.

(b) The commissioner shall adopt rules and regulations necessary and proper to implement any matter under his jurisdiction. In promulgating rules and regulations, the commissioner shall comply with the requirements of subdivision (e) of section 13.05 of this article.

(c) The commissioner and directors of office facilities may request and upon such request the coroner, coroner's physician or medical examiner shall provide to such persons access to original autopsy slides, tissue materials and specimens derived from any autopsy or inquiry with respect to the death of a patient or resident in a mental hygiene facility, as defined in subdivision two of section five hundred fifty of the executive law. Such original materials shall be preserved intact, except for unavoidable changes due to necessary scientific testing and shall be returned to the coroner, coroner's physician or medical examiner.

(c-1) The commissioner shall accept custody of a juvenile under an order issued by the family court pursuant to the provisions of section 322.2 of the family court act. He or she may place the juvenile in any appropriate facility or program under his or her jurisdiction, but he or she shall comply with any order requiring treatment in a residential facility made pursuant to paragraph (c) of subdivision five of section 322.2 of the family court act, unless, after a hearing held in accordance with subdivision seven of section 322.2 of the family court act, the court modifies the order. In determining the appropriate

placement, the commissioner shall be furnished with a copy of the findings of the court pursuant to subdivision four or five of section 322.2 of the family court act and shall consider the nature of the act alleged in such findings and the level of the juvenile's mental disability. The commissioner shall review the condition of the juvenile in accordance with the requirements of section 322.2 of the family court act and he or she may petition the family court at any time for any relief authorized by such section.

(d) The commissioner shall work cooperatively with the commissioner of the office of mental health and the commissioner of the office of temporary and disability assistance to assist the commissioner of education in furnishing integrated employment services to individuals with severe disabilities, including the development of an integrated employment implementation plan, pursuant to article twenty-one of the education law.

(e) The commissioner shall promulgate rules and regulations to address the communications needs of non-English speaking individuals seeking or receiving services in facilities operated or licensed by the office in order to facilitate their access to services. Such rules and regulations shall include, but not be limited to, reasonable means to accommodate the language capabilities and preferences of non-English speaking individuals in such facilities where a significant number of non-English speaking individuals seek or receive services.

(f) Notwithstanding any other law, rule or regulation, on request by a representative of a cemetery organization or funeral establishment, the commissioner and directors of office facilities shall release to the representative the name, date of birth, or date of death of a person who was a patient at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release such person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subdivision only for the purpose of inscribing the name or date on a grave marker.

(g) (1) The commissioner, in cooperation with other applicable state agencies, shall collect, retain or modify data or records, and shall transmit such data or records to: (i) the division of criminal justice services, or to the criminal justice information services division of

the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 USC 921(a)(3), in accordance with applicable federal laws or regulations, or (ii) to the division of criminal justice services, for the purposes of determining whether a license issued pursuant to section 400.00 of the penal law should be denied, suspended or revoked, under subdivision eleven of such section, or for determining whether a person is no longer permitted under federal or state law to possess a firearm. Such records shall include only names and other non-clinical identifying information of persons who have had a guardian appointed for them pursuant to any provision of state law, based on a determination that as a result of marked subnormal intelligence, mental illness, incapacity, condition or disease, they lack the mental capacity to contract or manage their own affairs, and persons who have been involuntarily committed to a facility pursuant to article fifteen of this chapter, or article seven hundred thirty or section 330.20 of the criminal procedure law or sections 322.2 or 353.4 of the family court act.

(2) The commissioner shall establish within the office for people with developmental disabilities an administrative process to permit a person who has been or may be disqualified from possessing such a firearm pursuant to 18 USC 922(4)(d), or who has been or may be disqualified from continuing to have a license to carry, possess, repair, or dispose of a firearm under section 400.00 of the penal law because such person was involuntarily committed or civilly confined to a facility under the jurisdiction of the commissioner, to petition for relief from that disability where such person's record and reputation are such that such person will not be likely to act in a manner dangerous to public safety and where the granting of the relief would not be contrary to public safety. The commissioner shall promulgate regulations to establish the relief from disabilities program, which shall include, but not be limited to, provisions providing for: (i) an opportunity for a disqualified person to petition for relief in writing; (ii) the authority for the agency to require that the petitioner undergo a clinical evaluation and risk assessment; and (iii) a requirement that the agency issue a decision in writing explaining the reasons for a

denial or grant of relief. The denial of a petition for relief from disabilities may be reviewed de novo pursuant to the proceedings under article seventy-eight of the civil practice law and rules.

(h) The commissioner shall be authorized to have access to criminal history information, as defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, contained in the central data facility established by the division of criminal justice services, upon such terms and conditions as the commissioner and the commissioner of the division of criminal justice services shall agree. The report containing such criminal history information may be summarized for inclusion in the individual's clinical record, however, such report shall be destroyed within fourteen days of its receipt. Such information shall be used for purposes of making decisions regarding care and treatment, health and safety, privileges and discharge planning for individuals admitted to or retained in a school, as defined in section 15.03 of this title, operated by the office. The commissioner shall promulgate standards regarding the use of such information, which may include, but not be limited to, consideration of the type of offense and the date of conviction, and its relevance, if any, to care and treatment, health and safety and discharge planning. Individuals shall be given written notice that their criminal history information will be obtained by the school, that the opportunity exists to request such criminal history information and seek the correction of any inaccurate criminal history information in accordance with the regulations of the division of criminal justice services, and that the opportunity exists to challenge the accuracy of such information maintained in the individual's clinical record to the extent authorized by section 33.16 of this chapter. Such information shall be kept confidential to the extent required under applicable federal and state law, including section 33.13 of this chapter.

(i) The commissioner, in consultation with the commissioner of mental health, shall develop and implement a public awareness campaign that combats the discrimination, stigma and stereotyping of individuals with developmental disabilities across the state. Such campaign shall utilize public forums, social media and mass media, including but not limited to internet, radio, and print advertising and shall include educational materials and information on the office's website. The campaign shall be

tailored to educate the general public about developmental disabilities and shall also highlight the accomplishments and contributions of individuals with developmental disabilities to the state and their respective communities. The office shall consult with stakeholders and consumer advocates to ensure such campaign is culturally competent and linguistically appropriate. Such campaign shall end on December thirty-first, two thousand twenty-three.

§ 13.11 Organization and administration of the office for people with developmental disabilities and its facilities.

(a) The commissioner shall have the professional jurisdiction, supervision, and control of the office and all department facilities for persons with developmental disabilities.

(b) The commissioner shall control the organization of the office and may continue, establish, discontinue, expand, and contract facilities under his or her jurisdiction. The facilities set forth in section 13.17 in state operations offices may not be discontinued by the commissioner. Units and facilities shall have such functions, duties, and responsibilities as may be assigned to them by the commissioner.

(c) The commissioner may, within the amounts appropriated therefor, lease space or facilities in which services for persons with developmental disabilities are to be provided. He may delegate this authority to the facilities development corporation.

§ 13.13 Local services.

Local services for persons with developmental disabilities shall be planned, financed and implemented in accordance with the provisions of article forty-one of this chapter.

§ 13.15 Programs of the office for people with developmental disabilities.

(a) The commissioner shall plan, promote, establish, develop, coordinate, evaluate, and conduct programs and services of prevention,

diagnosis, examination, care, treatment, rehabilitation, training, and research for the benefit of individuals with developmental disabilities. Such programs shall include but not be limited to in-patient, out-patient, partial hospitalization, day care, emergency, rehabilitative, and other appropriate treatments and services. He shall take all actions that are necessary, desirable, or proper to implement the purposes of this chapter and to carry out the purposes and objectives of the office within the amounts made available therefor by appropriation, grant, gift, devise, bequest, or allocation from the mental health services fund established under section ninety-seven-f of the state finance law.

(b) The activities described in subdivision (a) of this section may be undertaken in cooperation and agreement with other offices, departments or agencies of the state, local or federal government, or with other organizations and individuals.

§ 13.16 Fiscal year report.

(a) Every provider of service furnishing services to persons defined in paragraph (e) of subdivision three of section two hundred nine of the social services law, which is required to have operating certificates pursuant to article sixteen of this chapter, shall within one hundred twenty days after the end of its fiscal year, file an annual report with the commissioner. Said report shall be in such form and shall contain such information as shall be prescribed by the commissioner, including the following:

1. a balance sheet of the facility as of the end of its fiscal year, setting forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation and similar accounts.

2. a statement of operations of the facility for its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges.

3. The name and address of each of the following persons:

- (a) the operator of the facility;

(b) any person who, directly or indirectly, beneficially owns any interest in the land on which the facility is located;

(c) any person who, directly or indirectly, beneficially owns any interest in the building in which the facility is located;

(d) any person who, directly or indirectly, beneficially owns any interest in or any mortgage, note, deed of trust or other obligation secured in whole or in part by the land on which or building in which the facility is located; and

(e) any person who, directly or indirectly, has any interest as lessor or lessee in any lease or sub-lease of the land on which or the building in which the facility is located.

4. If the facility or any person named in response to subparagraph (c) of paragraph three of this subdivision is a partnership, then the name and address of each partner.

5. If the facility or any person named in response to subparagraph (c) of paragraph three of this subdivision is a corporation, other than a corporation whose shares are traded on a national securities exchange or are regularly quoted in an over-the-counter market or which is a commercial bank, savings bank or savings and loan association, then the name and address of each officer, director, stockholder, and, if known, each principal stockholder and controlling person of such corporation.

6. If any corporation named in response to subparagraph (c) of paragraph three of this subdivision is a corporation whose shares are traded on a national securities exchange or are regularly quoted in an over-the-counter market or which is a commercial bank, savings bank or savings and loan association, then the name and address of the principal executive officers and each director and, if known, each principal stockholder of such corporation.

7. If the facility paid or received an aggregate of five hundred dollars or more during the fiscal year in connection with transactions with any person named in response to subparagraph (c), (d) or (e) of paragraph three of this subdivision or any affiliate of said person, a description of the transactions, naming the parties thereto and

describing the relationships which require the transactions to be described and the goods, services, payment or other consideration received by each party to the transactions.

8. If known, the nature and amount of any interest in, or relationship with, any other residential facility for persons with developmental disabilities, held by any person named in response to subparagraph (c) of paragraph three of this subdivision or by any affiliate of such person.

(b) The following definitions shall be applicable to this section and to any reports filed pursuant hereto:

1. "Affiliate" means:

(a) with respect to a partnership, each partner thereof;

(b) with respect to a corporation, each officer, director, principal stockholder and controlling person thereof;

(c) with respect to a natural person (i) each member of said person's immediate family, (ii) each partnership and each partner thereof, and (iii) each corporation in which said person or any affiliate of said person is an officer, director, principal stockholder or controlling person.

2. "Controlling person" of any corporation, partnership or other entity means any person who by reason of a direct or indirect ownership interest (whether of record or beneficial) has the ability, acting either alone or in concert with others with ownership interest, to direct or cause the direction of the management or policies of said corporation, partnership or other entity. Neither the commissioner nor any employee of the department nor any member of a local legislative body of a county or municipality, nor any county or municipal official except when acting as the administrator of a residential facility for persons with developmental disabilities, shall by reason of his or her official position, be deemed a controlling person of any corporation, partnership or other entity nor shall any person who serves as an officer, administrator or other employee of any corporation, partnership or other entity or as a member of a board of directors or trustees of any corporation be deemed to be a controlling person of such

corporation, partnership or other entity as a result of such position or his or her official actions in such position.

3. "Immediate family" means brother, sister, first cousin, aunt and uncle of such person, whether such relationship arises by reason of birth, marriage or adoption.

4. "Principal stockholder" of a corporation means any person who beneficially owns, holds or has the power to vote, ten percent or more of any class of securities issued by said corporation.

(c) Every report filed by a facility pursuant to this section shall contain a written statement, sworn to by or on behalf of such facility and the operator of such facility, to the effect that the report is, to the best of such person's knowledge, true and complete and prepared in accordance with the provisions of this section.

§ 13.17 Programs, services, and operations in the office for people with developmental disabilities.

(a) The commissioner shall establish policy and procedures for the organization, administration, and service delivery system under his or her jurisdiction and shall make provision for the effective rendition of supports and services to individuals with developmental disabilities.

(b) There shall be, within the state operations offices of the office, the developmental disabilities services offices named below serving the areas either currently or previously served by a school, for the care and treatment of persons with developmental disabilities and for research and teaching in the science and skills required for the care and treatment of such persons with developmental disabilities:

Bernard M. Fineson Developmental Disabilities Services Office

Brooklyn Developmental Disabilities Services Office

Broome Developmental Disabilities Services Office

Capital District Developmental Disabilities Services Office

Central New York Developmental Disabilities Services Office

Finger Lakes Developmental Disabilities Services Office

Institute for Basic Research in Developmental Disabilities

Hudson Valley Developmental Disabilities Services Office

Metro New York Developmental Disabilities Services Office

Long Island Developmental Disabilities Services Office

Sunmount Developmental Disabilities Services Office

Taconic Developmental Disabilities Services Office

Western New York Developmental Disabilities Services Office

Staten Island Developmental Disabilities Services Office

The New York State Institute for Basic Research in Developmental Disabilities is designated as an institute for the conduct of medical research and other scientific investigation directed towards furthering knowledge of the etiology, diagnosis, treatment and prevention of developmental disabilities.

* (c) The commissioner shall establish, at his or her discretion, developmental disabilities regional offices and shall establish state operations offices that provide for the direct delivery of supports and services by the office for people with developmental disabilities.

* NB There are 2 sb (c)'s

* (c) The commissioner may authorize other offices of the department and any public or private non-profit organization or political subdivision of the state to deliver supports and services to individuals with developmental disabilities, not inconsistent with the programs and objectives of the office in any facility under his jurisdiction. The commissioner may permit any facility under his jurisdiction to operate

programs for persons with mental disabilities, not inconsistent with programs and objectives of the department, under contracts or agreements with other offices within the department.

* NB There are 2 sb (c)'s

* (d) In the event of a closure or transfer of a state-operated individualized residential alternative (IRA), the commissioner shall:

1. provide appropriate and timely notification to the temporary president of the senate, and the speaker of the assembly, and to appropriate representatives of impacted labor organizations. Such notification to the representatives of impacted labor organizations shall be made as soon as practicable, but no less than ninety days prior to such closure or transfer except in the case of exigent circumstances impacting the health, safety, or welfare of the residents of the IRA as determined by the office. Provided, however, that nothing herein shall limit the ability of the office to effectuate such closure or transfer; and

2. make reasonable efforts to confer with the affected workforce and any other party he or she deems appropriate to inform such affected workforce, the residents of the IRA, and their family members, where appropriate, of the proposed closure or transfer plan.

* NB Repealed March 31, 2028

§ 13.19 Personnel of the office; regulations.

(a) The commissioner may, within the amounts appropriated therefor, appoint and remove in accordance with law and applicable rules of the state civil service commission, such officers and employees of the office for people with developmental disabilities as are necessary for efficient administration. The commissioner shall, in exercising his or her appointing authority, take, consistent with article twenty-three-A of the correction law, all reasonable and necessary steps to ensure that any such person so appointed has not previously engaged in any act in violation of any law which indicates a propensity to act in a manner that would compromise the health and safety of individuals with developmental disabilities.

(b) The director of a hospital or institute in the office shall have professional qualifications and experience to be prescribed by the commissioner.

(c) Notwithstanding the provisions of any other law, the position of deputy director in an office facility may be filled by new hire or by promotion open to employees who possess the minimum qualifications for the position.

(c) The use of volunteers in the office for people with developmental disabilities shall be encouraged. The commissioner may establish regulations governing such volunteer services.

(d) Where, and to the extent that, an agreement between the state and an employee organization entered into pursuant to article fourteen of the civil service law so provides, the commissioner is authorized to implement the provisions of such agreement relating to discipline consistent with the terms thereof.

§ 13.21 Directors of state operations offices and developmental disabilities regional offices in the office for people with developmental disabilities.

(a) The directors of both the state operations offices and developmental disabilities regional offices in the office for people with developmental disabilities shall be appointed by the commissioner. Each such director shall be in the non-competitive class and designated as confidential as defined by subdivision two-a of section forty-two of the civil service law and shall serve at the pleasure of the commissioner. He or she shall in exercising his or her appointing authority take, consistent with article twenty-three-A of the correction law, all reasonable and necessary steps to insure that any such person so appointed has not previously engaged in any act in violation of any law which indicates a propensity to act in a manner that would compromise the health and safety of patients in the facility of which he or she is director. He or she shall manage the state operations office or developmental disabilities regional office and administer its personnel system subject to applicable law, the regulations of the commissioner, and the rules of the state civil service commission. The directors of the developmental disabilities regional offices and state

operations offices shall maintain effective supervision of all parts of their respective offices. The directors of state operations offices shall generally provide for the administration of supports and services to individuals with developmental disabilities in state operated programs. Directors of regional offices shall generally oversee the administration of supports and services to individuals with developmental disabilities in settings outside the state operated programs.

(b) Such directors shall have the responsibility of seeing that there is humane treatment of individuals with developmental disabilities receiving services in settings operated, licensed, certified, funded or approved by this office and shall investigate, or cause to be investigated, every reportable incident in accordance with article eleven of the social services law. Also in accordance with article eleven of the social services law, the director shall require allegations of reportable incidents to be reported to the vulnerable persons' central register, which shall screen and immediately forward reports that appear to allege crimes to the appropriate law enforcement agency. The vulnerable persons' central register shall notify immediately, and in any event within three working days, the board of visitors of the facility and the mental hygiene legal service located in the same judicial department as the state operations office of every complaint of patient abuse or mistreatment and shall inform the board and the mental hygiene legal service of the results of his or her investigation.

(c) In any investigation into the treatment and care of individuals with developmental disabilities or the conduct, performance, or neglect of duty of officers or employees, the commissioner or his or her designee shall be authorized to subpoena witnesses, compel their attendance, administer oaths to witnesses, examine witnesses under oath, and require the production of any books or papers deemed relevant to the inquiry or investigation. A subpoena issued under this section shall be regulated by the civil practice law and rules.

(d) The director of a state operations office shall be responsible for the provision of state operated community developmental disabilities services in those areas that the commissioner may assign. Such responsibility shall, consistent with article forty-one of this chapter,

include the operation of state operated facilities and the development of needed facilities. The director of a developmental disabilities regional office shall be responsible for the provision of community developmental disabilities services to individuals in settings other than state operated programs. Such regional director's responsibility shall, consistent with article forty-one of this chapter, include the oversight of facilities and programs other than those operated by the state.

(e) Each state operations director of the office shall, upon notice from the commissioner or upon knowledge that programs of such facility may be contracted or terminated, implement procedures to ensure timely notification to affected employees. Such procedures shall include, but not be limited to:

(1) dissemination and posting of all decisions, policies and procedures with respect to all aspects of such actions and their impact on facility staff; and

(2) compliance with all requirements and protection of employee rights pursuant to collective bargaining agreements with the designated legal representative of the employees and the civil service law.

§ 13.23 Education and training programs.

(a) The commissioner shall have the power to establish such programs of training and education related to developmental disabilities as he shall deem desirable.

(b) The director of each facility with the approval of the commissioner may establish and supervise training and education programs for employees. Directors of facilities authorized to establish training and education programs may enter into agreements with educational institutions to furnish such training in whole or in part.

(c) The commissioner may grant leaves of absence to employees of the office for the purpose of receiving training or education for the better performance of their duties and, with the approval of the director of the budget, may continue the salaries of such employees, in full or in part, in an amount not to exceed reimbursement for the loss of earnings while receiving such training.

§ 13.24 Sheltered workshops, work activity and day training services.

1. As used in this section, the following terms shall have the following meanings.

a. "Sheltered workshops" means a program operated for the purpose of providing sheltered employment to persons with developmental disabilities.

b. "Work activity and day training services" means pre-vocational activities defined by regulation of the commissioner designed to enhance the ability of a person with a developmental disability to receive vocational rehabilitation services.

2. The commissioner shall develop methods to fund by agreement the reasonably related cost of services, subject to the approval of the director of the budget, provided in sheltered workshops, work activity and day training services. The commissioner shall determine those facilities and agencies providing such services and shall describe characteristics of clients receiving such services. The commissioner shall determine methods of improving the current financing system for such services.

3. The methods of improving the current financing system shall include, but not be limited to, the following:

a. Provision of equitable funding to all individuals with developmental disabilities which is not dependent upon prior residence in facilities of the office.

b. Establishment of systems of provider accountability for units of service rendered in return for payments made and development of an advanced payment mechanism.

c. Recommendation of rules, regulations and standards for the payment for provision of services.

4. The commissioner shall report to the legislature on the progress of determining methods of improving the current financing system on or before April first, nineteen hundred eighty-two.

§ 13.25 Safety.

(a) The commissioner and the directors of facilities under his or her jurisdiction may designate safety officers to act as special police officers whose duty it shall be, under orders of the appropriate officer, to preserve peace and good order in such facilities and to fully protect the grounds, buildings, and patients. Such safety officers acting as special police officers shall possess all the powers of peace officers, as set forth in section 2.20 of the criminal procedure law, while performing duties in or arising out of the course of their employment. Such peace officers when acting pursuant to their special duties may issue and serve a simplified traffic information and appearance ticket, in the form prescribed by the commissioner of motor vehicles pursuant to section two hundred seven of the vehicle and traffic law, upon a person when he or she has reasonable cause to believe that such person has committed a traffic infraction in his or her presence, and shall have the power to issue and serve an appearance ticket as defined in section 150.10 of the criminal procedure law for an offense other than a felony in lieu of an arrest.

(b) The commissioner shall cause to be developed and implemented a comprehensive training program for such safety officers. Such a program is to be provided to persons hired as safety officers within five weeks after such hiring, and shall include, but need not be limited to training in the following areas:

1. fire prevention;
2. basic criminal law;
3. first aid and cardio pulmonary resuscitation;
4. conducting investigations;

5. rudimentary police work, including issuance of summons, traffic control, and lawful use of force;

6. the proper use of restraint; and

7. any other training deemed necessary to augment such person's skills in providing necessary safety and security services for the facility.

§ 13.27 Facility services.

(a) Chapels. The commissioner may permit any religious or missionary corporation or society or combination of such corporations and societies to erect a building on the grounds of any facility in the office for the holding of religious service, to be used exclusively for the benefit of the patients and employees of such facility, subject to such conditions as may be imposed by the commissioner.

(b) Fire mutual aid. In cooperation with the development and operation of plans for mutual aid in cases of fire and other public emergencies, the director of a facility in the office for people with developmental disabilities, with the approval of the commissioner, may authorize the fire department of the facility to furnish aid to such territory surrounding the facility as may be practical in cases of fire and such emergencies, having due regard to the safety of the patients and property of the facility and to engage in practice and training programs in connection with the development and operation of such mutual aid plans.

(c) Community stores. The commissioner may authorize the director of any facility under his jurisdiction to operate a community store or to lease space in any of its buildings not inconsistent with the requirements of the facility for the operation of a community store for the use and benefit of the patients, visitors, and personnel of such facility. The moneys received by the director of such facility under or pursuant to any such operation shall be deposited in a special fund to be known as the community store fund and shall be used for the general purposes of the facility, subject to the provisions of section fifty-three of the state finance law.

(d) Laboratory services. Subject to the commissioner's regulations, the director may agree to make the laboratory service of a facility in the office for people with developmental disabilities available to adjacent local governments and may receive, apply, and spend money for the extension of laboratory service according to the terms of the agreement as approved by the commissioner.

§ 13.29 Gifts.

(a) The commissioner, on behalf of the state and if in the public interest, shall accept, hold in trust, administer, apply, execute, or use gifts, devises, bequests, grants, powers, or trusts of personal or real property made to the state, the office for people with developmental disabilities, a facility within the office, the commissioner, or the directors or visitors of facilities which are to be used or may be used for purposes of the office for people with developmental disabilities, including, but not limited to, the maintenance, support, or benefit of one or more patients in a facility.

(b) The commissioner, in carrying out the provisions of subdivision (a) of this section, may create or provide separate and distinct funds, investments, and deposits and regulate their use, transfer, and withdrawal. He may dispose of a power or trust upon its expiration and according to its terms.

(c) Subdivisions (a) and (b) of this section apply to gifts, devises, bequests, grants, powers, or trusts given to, received, or applied by the state, the commissioner, the office for people with developmental disabilities, or facilities thereof and predecessor officers, agencies, or facilities prior to as well as subsequent to the enactment of this section.

§ 13.31 Disposition of moneys and securities.

(a) The commissioner, or the officer or employee of the office designated by him or her, shall:

1. Receive and turn over to the comptroller for liquidation all bonds, notes, mortgages, trust funds, and other securities and obligations

belonging to the office for people with developmental disabilities or any subdivision thereof, except such as may have come into the possession of the said office or any subdivision thereof on account of or for the payment of charges for the care, maintenance, and treatment after January first, nineteen hundred sixty-four of patients at those mental hygiene facilities as defined in section three of the facilities development corporation act which are under his or her jurisdiction, in which case the same shall be turned over to the commissioner of taxation and finance as agent for the facilities development corporation for liquidation, and he or she shall have the authority to transfer all such securities and evidences of indebtedness and to execute on behalf of the office for people with developmental disabilities or any of its facilities or the facilities development corporation a satisfaction and release thereof.

2. Notwithstanding the provisions of sections one hundred six and one hundred twenty-one of the state finance law, pay over all moneys received for the care, maintenance, and treatment after January first, nineteen hundred sixty-four of patients at those mental hygiene facilities as defined in section three of the facilities development corporation act which are under his jurisdiction, less refunds made on account thereof pursuant to section 43.11 of this chapter, to the commissioner of taxation and finance as agent for the facilities development corporation, for the corporate purposes of such corporation, and deposit all other moneys received in a bank designated by the comptroller. He shall submit a statement each month to the comptroller and to the directors of the facilities development corporation showing the amounts so received for the care, maintenance, and treatment of patients at such facilities, the refunds made on account thereof pursuant to section 43.11 of this chapter, and the dates when any such payments were made to the commissioner of taxation and finance. Such statement shall be certified to by the commissioner of taxation and finance. He shall also submit each month to the comptroller and the directors of the facilities development corporation a separate statement showing the amount of all other moneys received and deposited in a bank designated by the comptroller as aforesaid, the persons from whom and for what purposes received, and the dates when any deposits of such

moneys were made. All statements of deposit shall be certified to by the proper officer of the bank receiving the deposits therein specified. He shall make an affidavit each month that the sums so paid over to the commissioner of taxation and finance and deposited in such bank are all the moneys received by him from any source of institutional income to the date of the last payment, or deposit, appearing on either statement and such affidavit shall be filed with the comptroller and the directors of the facilities development corporation. A bank designated by the comptroller to receive the aforesaid deposits shall, before any deposit is made, execute a bond to the people of the state, in a sum approved by the comptroller, for the safekeeping of the funds deposited.

(b) The provisions of this section shall not be applicable to community mental health and developmental disabilities facilities, as defined in section three of the facilities development corporation act, nor to payments made for the care, maintenance, and treatment of patients at such community mental health and developmental disabilities facilities.

§ 13.33 Boards of visitors.

(a) Each state operations office under the jurisdiction of the commissioner shall have a minimum of one board of visitors consisting of at least seven but not more than fourteen members. Members appointed or reappointed after the effective date of this chapter shall be appointed by the governor, by and with the advice and consent of the senate. Members shall be appointed for four year terms to expire on the thirty-first day of December of the fourth year of the term of office provided however, when more than three terms expire in any one year, members may be appointed for terms of fewer years as designated by the governor so that no more than three members' terms expire in any one year. All terms of office shall expire on the thirty-first day of December of the designated year. A member whose term has expired shall, however, remain in office until such member's successor has been appointed and has taken office, or until such member shall have resigned or have been removed from office in the manner hereinafter provided. Should any member resign or be removed from office, the governor shall promptly submit, for senate consent, a successor candidate to fill the

remaining term of the vacated office. A visitor may be removed by the governor for cause after notice and an opportunity for a hearing on the charges. In making appointments to boards of visitors, the governor shall endeavor to ensure that the membership of each such board shall adequately reflect the composition of the community or communities served by the state operations office, that the membership of each such board includes at least three individuals who are parents or relatives of patients or of former patients and that the remainder includes only those persons, including former patients, who shall have expressed an active interest in, or shall have obtained professional knowledge in the care of persons with developmental disabilities or in developmental disability endeavors generally.

(b) No elected state officer or member of the legislature may serve as a visitor.

(c) Each visitor shall reside, at the time of appointment or reappointment, in the area, as established by the regulations of the commissioner, served by the state operated office that it oversees.

(d) Each board shall, at the first meeting of each calendar year elect one member to serve as president of the board and one member to serve as secretary; provided however, that no member may serve for more than two consecutive years as president. After such election of the president and secretary, each board shall inform the governor, the speaker of the assembly and the temporary president of the senate of such new president and secretary.

(e) Visitors shall not receive compensation but shall be reimbursed for their actual expenses in connection with their service as visitors.

(f) (1) Each board of visitors shall hold six bi-monthly regular meetings annually, but a greater number of regular meetings may be scheduled by the board. Each board of visitors shall establish in their by-laws or otherwise, in writing and at the first meeting of each calendar year, whether these six meetings shall be held during months represented by odd numbers or months represented by even numbers. The president of the board shall notify the executive director of the justice center for the protection of people with special needs and the commissioner of the determination made concerning the designated months for the six bi-monthly regular meetings. The dates of such meetings shall be posted on the office's website and shall be made available to

the public. The president of the board, the commissioner, or the members as determined by the rules of the board may call special meetings. The board may request the commissioner, or such commissioner's designee, to submit a report at each meeting. Each board shall keep a record of its proceedings and activities. A member of a board of visitors who has failed to attend three consecutive bi-monthly regular meetings shall be considered to have vacated such member's office unless otherwise ordered by the governor. The board shall cause notice of any of its public meetings to be sent to the mental hygiene legal service located in the same judicial department as the state operations office. The mental hygiene legal service may send a representative to any such public meeting, and may request the board to review patient complaints or investigate alleged incidents of abuse or mistreatment. The board shall notify the appropriate representative of the mental hygiene legal service of the board's actions and findings in relation to any such request. Meeting minutes, agendas, proceedings, activities, by-laws and actions by each board shall be posted on the office's website and shall be made available to the public.

(2) The president of the board of visitors shall notify a member by certified or registered mail return receipt requested when such member of the board has failed to attend any two consecutive bi-monthly regular meetings. This notice shall be sent within ten days following the second meeting and shall include the dates of the two meetings which were missed, the date of the next bi-monthly regular meeting, and a statement concerning the consequences of failure to attend the next meeting.

(3) Within three days after the third consecutive absence at a bi-monthly regular meeting by a member, the president of the board of visitors shall notify, in writing, the governor, the commissioner, the executive director of the justice center for the protection of people with special needs, the temporary president of the senate and the speaker of the assembly of such absences. The president of the board of visitors shall send a copy of this notice by registered or certified mail return receipt requested to the member to whom it pertains. The member may petition the governor to excuse such member's absences. If the governor does not excuse the absences within forty-five days of the date of the third consecutive meeting absence, the office of the member shall be deemed vacated.

(g) Upon the request of the commissioner or the director, or upon the board's initiative, the board shall consult, advise, and work with the director with respect to community relations, conditions at a state operated facility, preliminary plans for construction and alterations, and programs and activities of a state operated facility.

(h) Each board or any member of the board may visit and inspect a state operated facility that is in the catchment area of the state operations region in which such member or members serve at any time without prior notice and may report on conditions to the governor, to the commissioner and to the chairman of the state commission on quality of care and advocacy for persons with disabilities and, subject to confidential information being redacted to protect the confidentiality of individuals in such facility, to the temporary president of the senate and to the speaker of the assembly. In addition, each board shall ensure that a member or committee of members shall inspect such facility once every three months without prior notice. A report on conditions may be submitted to the governor, to the commissioner or to the chairman of the state commission on quality of care and advocacy for persons with disabilities and, subject to confidential information being redacted to protect the confidentiality of individuals in such facility, to the temporary president of the senate and to the speaker of the assembly. Each board member shall visit and inspect any such facility at least twice during each calendar year. Within thirty days after the conclusion of each calendar year, the president of the board of visitors shall notify the governor, the commissioner, the chairman of the commission on quality of care and advocacy for persons with disabilities, and the state operations director, if any member of the board has failed to visit and inspect any such facility at least twice during that year. The president of the board of visitors shall send a copy of this notice by certified or registered mail return receipt requested to the member to whom it pertains. A member of a board of visitors who has failed to visit and inspect a facility at least twice a year shall be considered to have vacated his or her office unless otherwise ordered by the governor within forty-five days after the end of the calendar year. The board shall have the power to investigate all charges against the state operations director, and all cases of alleged patient abuse or mistreatment made against any employee, and shall have the power to

interview patients and employees of the facilities in pursuit of such investigations. In conducting such an investigation, the board shall have the power, in accordance with the civil practice law and rules, to subpoena witnesses, compel their testimony, administer oaths to witnesses, examine witnesses under oath, and require the production of any books or papers deemed relevant to the investigation. A board or a member may include in the report or separately at any time any matter pertaining to the management and affairs of such facilities and may make recommendations to the governor, to the commissioner and to the chairman of the state commission on quality of care and advocacy for persons with disabilities. Each board member shall enter in a book, kept at each such facility for that purpose, the date of each visit.

(i) (1) Any member or members of the board may visit and inspect a family care home that is within the catchment area of the state operations region in which such member or members serve. Such member or members shall be granted access to such facility and to all books, records and data pertaining to such facility deemed necessary for carrying out the purposes of such visit. Information, books, records or data that are confidential as provided by law shall be kept confidential and any limitations on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to such member or members of the board. After any such visits or inspections, a report containing findings and recommendations may be submitted to the governor, to the commissioner or to the state commission on quality of care and advocacy for persons with disabilities and subject to confidential information being redacted to protect the confidentiality of individuals in such facility to the temporary president of the senate and to the speaker of the assembly.

(2) Any member or members of the board may visit and inspect a community residence operated by the office for people with developmental disabilities that is within the catchment area of the state operations region in which such member or members serve. Such member or members shall be granted access to such facility and to all books, records and data pertaining to such facility deemed necessary for carrying out the purposes of such visit and inspection. Information, books, records or data that are confidential as provided by law shall be kept confidential and any limitations on the release thereof imposed by law upon the party

furnishing the information, books, records or data shall apply to such member or members of the board. After any such visits or inspection, a report containing findings and recommendations shall be submitted promptly to the commissioner and to the chairman of the state commission on quality of care and advocacy for persons with disabilities.

(j) Once each year, each board shall make an independent assessment of conditions at such facilities and shall submit a report on the assessment and recommendations to the governor, to the commissioner, to the temporary president of the senate, to the speaker of the assembly and to the executive director of the justice center for the protection of people with special needs.

(k) The commissioner shall notify the board of visitors of a facility under his or her jurisdiction of the proposed appointment of a state operations director or the proposed transfer of a state operations director, with a request that the board report an expression of its opinion of the appointment or transfer and, if it objects thereto, the reasons for such objection.

(l) The commissioner shall appoint representatives of the office to serve as liaison between the office and the boards of visitors. At least once each year the commissioner shall meet with the boards collectively. The commissioner, or his or her designee, shall meet quarterly with representatives of boards of visitors.

(m) Members of the boards of visitors shall be considered officers of the office for people with developmental disabilities for the purposes of sections seventy-three, to the extent provided therein, and seventy-four of the public officers law relating to business or professional activities by state officers and employees and the code of ethics.

(n) Each member shall attend, within one year of the initial appointment or any subsequent reappointment, an orientation training program provided by the commission on quality of care and advocacy for persons with disabilities for members of boards of visitors. The chairman of the commission on quality of care and advocacy for persons with disabilities shall notify the governor and the appointed member of any such member's failure to attend such a training program. A member who has failed to attend such a training program scheduled for such member shall be considered to have vacated his office unless otherwise

ordered by the governor within forty-five days after the notice.

§ 13.34 On-site client advocacy in developmental centers.

1. There shall be at each developmental center facility listed in section 13.17 of this article, an ombudsman who shall be an employee of the justice center for the protection of people with special needs under article twenty of the executive law and who shall be responsible for receiving and responding to any complaints regarding individuals receiving services residing in such facility. The ombudsman shall have the following powers and duties:

i. to advise and consult with individuals receiving services, parents, guardians, correspondents and other interested persons with respect to any complaints, or issues related to individuals receiving services;

ii. to review and attempt to remedy specific complaints with responsible and appropriate staff;

iii. where it appears that care has not been rendered as required by applicable standards to refer the complaint to the appropriate agency or body for its attention;

iv. to receive and keep confidential any complaint, information or inquiry from any source. The records of the ombudsman shall be confidential, and shall not be available to the public;

v. to advise and consult with the board of visitors served by the ombudsman with respect to any complaints or issues relating to individuals receiving services, treatment and care and to regularly attend the meetings of such board; and

vi. to meet with the commissioner, or a representative of the commissioner, on a quarterly basis regarding systemic issues in the ombudsman's jurisdiction.

2. The ombudsman shall be afforded initial training and orientation by the justice center for the protection of people with special needs.

3. The director of each developmental center shall insure that parents, guardians and correspondents of clients and other interested persons at the facility under his direction are informed with respect to the existence and duties of the ombudsman established pursuant to this section by regularly and conspicuously posting the name, location and duties of the ombudsman within such facility.

4. The facility director shall insure that each ombudsman is given reasonable and private office quarters, including a means of record keeping, on the grounds of the facility under his or her direction and that adequate administrative resources are provided to the ombudsman for the purpose of carrying out the duties prescribed by this section.

5. No one shall prevent or inhibit the ombudsman from reasonably executing the powers and duties prescribed by this section.

§ 13.35 Actions against persons rendering professional services at the request of the office; defense and indemnification.

The provisions of section seventeen of the public officers law shall apply to any physician, dentist, psychologist, nurse, optometrist, licensed master social worker, or licensed clinical social worker, licensed to practice pursuant to the education law, who is rendering professional treatment authorized under such license at the request of the office or an office facility to patients receiving care or professional consultation from the office while rendering such professional treatment.

§ 13.37 Powers of the office and commissioner in relation to the planning and referral of children with developmental disabilities for adult services.

(a) As used in this section:

1. "report" means a report submitted to the office pursuant to subparagraph five of paragraph b of subdivision one of section forty-four hundred two of the education law or subdivision thirteen of section three hundred ninety-eight of the social services law.

2. "child" means the child who is the subject of a report.

3. "local governmental unit" means a governmental unit as defined and used in article forty-one of this chapter.

4. "voluntary agency" shall have the same meaning as that used in article forty-one of this chapter.

(b) Upon receipt of a report, the commissioner shall review the report and shall determine if the child will likely need adult services. If necessary and appropriate, the commissioner may conduct an evaluation of the child to determine if adult services will be needed. Such evaluation shall include, but not be limited to, the medical, vocational or day services and social needs of the child, the desires of the child and of his or her parents or guardian, and the availability of appropriate services. If the child will likely need adult services, the commissioner shall develop a plan for continued care which shall include any evaluation and shall identify those adult programs or services which may be available and which are operated or licensed by the office and by the local governmental unit of the county in which the child resides, or in the event that the child resides in a county within the city of New York, the local governmental unit of the city of New York. Such written plan shall be made available to the individual and, unless the individual objects, to his or her parents or guardian as soon as practicable but not later than one year before the individual attains the age of twenty-one. If such recommendation has been made prior to one year before the individual attains the age of twenty, the office shall provide yearly updates until the individual attains the age of twenty-one.

(c) If the commissioner determines, pursuant to subdivision (b) of this section, that such child will not require adult services, the commissioner shall notify the child's parent or guardian and the

committee on special education, multidisciplinary team or social services official, which submitted the report, in writing of such determination. Such notice shall be given as soon as practicable but no later than six months before the child attains the age of twenty-one. Such notice shall state the reasons for the determination and may recommend a state agency which may be responsible for determining and recommending adult services. If such determination is not acceptable to the child's parent or guardian, such person may appeal the determination pursuant to regulations adopted by the commissioner.

(d) The commissioner may designate any qualified employee of the office to carry out the functions described in subdivisions (b) and (c) of this section. The commissioner may enter agreements with local governmental units and voluntary agencies to provide the services described in subdivisions (b) and (c) of this section. Consistent with these agreements, the commissioner may designate a local governmental unit or voluntary agency to carry out the functions of the commissioner described in this section and the local governmental unit or voluntary agency shall perform those functions.

(e) All information received by a local governmental unit or voluntary agency pursuant to this section shall be subject to the confidentiality requirements of the office.

(f) Nothing in this section shall be construed to create an entitlement to adult services.

§ 13.37-a Transitional care.

(a) For purposes of this section, "transitional care" shall mean care and maintenance of persons:

1. who were placed in foster care by a social services district pursuant to article six of the social services law and who have become twenty-one years of age, or who were placed in a residential educational placement by a school district pursuant to article eighty-nine of the education law and who are no longer eligible for free educational services because they have completed the school year in which they became twenty-one;

2. who were disabled and in need of residential care prior to becoming age twenty-one or prior to becoming ineligible for free education services and who have since remained continuously disabled and continuously in need of residential care;

3. who became twenty-one or became ineligible for free educational services prior to July first, nineteen hundred ninety-six;

4. with respect to whom the office has approved a plan of continued out of home care for the person but has not yet identified a currently available appropriate placement;

5. whose residential needs can be met by the facility in which the persons resided prior to becoming age twenty-one or becoming ineligible for free educational services; and

6. who on July first, nineteen hundred ninety-eight are in receipt of transitional care, or who have continuously remained in the foster care or residential education placement where they had received transitional care.

(b) The office shall expend funds to provide transitional care as described in this section.

(c) Expenditures pursuant to subdivision (b) of this section shall be approved only if and to the extent that:

1. the office has an agreement with the residential facility for continued care of qualified persons at rates which are no greater than the rates that would have been available if such persons were under age twenty-one;

2. the facility understands and agrees to the right of the office and such other state offices as the office may deem appropriate to visit and inspect the facilities and residents and to have access to any records or information necessary to assure that the care provided is safe and appropriate to the needs of any persons residing in the facility for whom transitional care is being provided;

3. the payments are made subject to any other requirements identified by the office; and

4. an application for supplemental security income benefits has been submitted, and any supplemental security income benefits received by the person, in excess of any reserved personal allowance amounts, shall be applied to reduce the cost of transitional care.

(d) The office shall periodically forward to each facility that is providing transitional care a statement of the obligations the facility assumes by accepting payment pursuant to this section. The statement of obligations shall be established by the office and provided to each facility.

(e) The office shall discontinue payment for transitional care, in accordance with procedures established by the office, for any individual:

1. who has been offered an appropriate, available adult placement or adult services, when such an offer has been made and accepted, or has been made and upheld by an administrative hearing, or has been made and the time to request an administrative appeal has expired;

2. whose continued placement in a child care facility or residential school may adversely affect the health, safety or welfare of children residing in the facility, based upon a determination by the education department, or by the department of social services, and that the office will, if necessary and appropriate, offer an adult placement to the individual on an expedited basis; or

3. who is residing in a facility which has failed or refused to meet its obligations pursuant to this section as a condition of funding, and that the office will, if necessary and appropriate, offer an adult placement to the individual on an expedited basis.

§ 13.38 Additional duties of the office with respect to persons receiving transitional care.

(a) The office shall, in consultation with the department of social

services, the education department, the office of mental health, and the council on children and families, develop a plan and implement procedures to help assure that all persons who are at the age or time to first qualify for transitional care, as described in section 13.37-a of this article, and for whom the office has accepted planning responsibilities, receive assistance in locating an appropriate and available residential placement or plan of services, within the state and within the system of care subject to the jurisdiction of the office, prior to the age or time at which they would otherwise have qualified for transitional care, if such individuals had become twenty-one or become ineligible for educational services prior to July first, nineteen hundred ninety-six. For purposes of this section, the age or time at which a person would qualify for transitional care is twenty-one for persons in foster care, and the end of the school year in which they become twenty-one for persons in residential schools.

(b) The office shall, in consultation with the department of social services, the education department, the office of mental health, and the council on children and families, develop a plan and implement procedures to help assure that all persons in transitional care receive assistance in locating appropriate and available placements within the adult care systems supervised or funded by the office, and to monitor the health and safety of persons receiving transitional funding pursuant to section 13.37-a of this article. In connection with the plans and procedures, the office shall establish standards governing the quality of care provided to such persons by the residential programs, including standards relating to the development and monitoring of written individual services plans for each such person, the involvement of the individual and, unless the individual objects, parents, guardians or other persons interested in the care of such persons in the development of written individual services plans, and the investigation of complaints relating to the quality of care or services provided to such persons. In appropriate circumstances, the office shall work with the individual and, unless the individual objects, the parents, guardians or other family members to help determine what services would be necessary to enable the family to provide care for the person at their home or in an independent community setting, and shall provide or assist in arranging for those services to

the extent funds are available for that purpose.

(c) The office shall enter into a memorandum of understanding with the department of social services to facilitate access by the office to child care facilities providing transitional care to young adults as may be necessary for the office to meet its responsibilities for monitoring the care of the young adults.

(d) The office shall enter into memorandums of understanding with the department of social services and the state education department to address any requirements of those departments relating to the removal of any person receiving transitional care from a child care facility or residential school whose continuation in such facility or school may adversely affect the health, safety or welfare of children residing in the facility or school. The memorandum shall set forth the procedures the office will follow in offering a placement or services in the adult care system, if necessary and appropriate, on an expedited basis, or any other procedures for assuring alternative care and services are available to the young adult, and the manner in which the department of social services or state education department will be informed of the progress of those efforts.

(e) Upon making a determination that a person who is receiving transitional care or care pursuant to subdivision (g) of this section can be appropriately cared for in an available adult care facility or service licensed, certified or approved by the office, and whose removal from a child care facility is not required on an expedited basis, the office shall notify in writing the person and the person's guardian, if one has been appointed, or another individual who has been involved in the care of the person and who may represent the person's interests, of the description of the proposed new placement, the availability of an administrative appeal to review the determination and of the need to request such an appeal in writing within thirty days of the notice. If the person, guardian or other individual requests an administrative appeal within the time required, the office shall schedule a hearing providing no less than ten days notice to the objecting party and the commissioner or his or her designee shall issue a written determination to the objecting party within thirty days of the adjournment of the hearing, on whether the adult placement identified by the office is appropriate to the needs of the person and is available or will become

available on an identified date certain. If the person, guardian or other individual does not request a hearing within the time required, or if the hearing results in a determination that the proposed adult services or placement is appropriate to the needs of the person and is available or will be available on an identified date certain, the office shall discontinue care funding for the person as of a date certain. The written determination shall be the final administrative remedy available and shall be subject to review in accordance with the provisions of article seventy-eight of the civil practice law and rules.

(f) In any case where an individual receiving transitional care is about to be transferred from one facility to another, a transfer plan shall be prepared by the sending facility and forwarded to the receiving facility, the individual and, unless the individual objects, the parents, guardian or other family members prior to the transfer. The transfer plan shall include any information necessary to facilitate a safe transfer, such as specific problems, a schedule for administering medications and behavior unique to the individual.

(g) The office may make payments necessary to maintain individuals described in subdivision (a) of this section in a child care facility or residential school on an emergency basis where circumstances temporarily prevent the transfer of individuals to adult services or placements.

§ 13.39 Registration and notification of boards of directors or trustees of certain voluntary not-for-profit facilities or corporations.

(a) Notwithstanding any other law, rule or regulation, the executive director, chairperson or president of a voluntary, not-for-profit corporation or facility which is subject to the jurisdiction of the office for people with developmental disabilities shall furnish annually to the commissioner a list of the names and addresses of the current members of the board of directors or trustees of such facility or corporation. Failure to furnish such annual list shall remove such facility or corporation from consideration for recertification.

(b) In the event that such facility or corporation is found to be in violation of the provisions of this chapter or of rules and regulations promulgated by the commissioner pursuant to this chapter which could

result in the revocation, cancellation, limitation or suspension of the operating certificate of such facility and if notice of such violation is provided to the facility pursuant to such regulations, a copy of such notice shall be provided to each of the current members of the board of directors or trustees of such facility or corporation by the commissioner.

(c) The commissioner is authorized to promulgate such rules and regulations as are necessary to implement the provisions of this section.

§ 13.40 People first waiver program.

(a) The commissioner and the commissioner of health shall jointly establish a people first waiver program for purposes of developing a care coordination model that integrates various long-term habilitation supports and/or health care. The people first waiver program shall include the use of developmental disability individual support and care coordination organizations, herein referred to as DISCOs, pursuant to section forty-four hundred three-g of the public health law, health maintenance organizations, herein referred to as HMOs, providing services under subdivision eight of section forty-four hundred three of the public health law, and managed long term care plans, herein referred to as MLTCs, providing services under subdivisions twelve, thirteen and fourteen of section forty-four hundred three-f of the public health law. Services shall be provided as described in section forty-four hundred three-g of the public health law, subdivision eight of section forty-four hundred three of the public health law, and subdivisions twelve, thirteen and fourteen of section forty-four hundred three-f of the public health law.

(b) Entities providing services pursuant to this section shall provide health and long term care services as the term is defined in section forty-four hundred three-g of the public health law.

(c) No person with a developmental disability who is receiving or applying for medical assistance and who is receiving, or eligible to receive, services operated, funded, certified, authorized or approved by the office, shall be required to enroll in a DISCO, HMO or MLTC in order to receive such services until program features and reimbursement rates

are approved by the commissioner and the commissioner of health, and until such commissioners determine that a sufficient number of plans that are authorized to coordinate care for individuals pursuant to this section or that are authorized to operate and to exclusively enroll persons with developmental disabilities pursuant to subdivision twenty-seven of section three hundred sixty-four-j of the social services law are operating in such person's county of residence to meet the needs of persons with developmental disabilities, and that such entities meet the standards of this section. No person shall be required to enroll in a DISCO, HMO or MLTC in order to receive services operated, funded, certified, authorized or approved by the office until there are at least two entities operating under this section in such person's county of residence, unless federal approval is secured to require enrollment when there are less than two such entities operating in such county. Notwithstanding the foregoing or any other law to the contrary, any health care provider: (i) enrolled in the Medicaid program and (ii) rendering hospital services, as such term is defined in section twenty-eight hundred one of the public health law, to an individual with a developmental disability who is enrolled in a DISCO, HMO or MLTC, or a prepaid health services plan operating pursuant to section forty-four hundred three-a of the public health law, including, but not limited to, an individual who is enrolled in a plan authorized by section three hundred sixty-four-j or the social services law, shall accept as full reimbursement the negotiated rate or, in the event that there is no negotiated rate, the rate of payment that the applicable government agency would otherwise pay for such rendered hospital services.

(d) DISCOs, HMOs and MLTCs operating under this section shall ensure, to the greatest extent practicable, that their assessment, services, and the grievance and appeals processes are culturally and linguistically competent.

(e) 1. The commissioner and the commissioner of health shall identify one or more valid and reliable quality assurance instruments that include assessments of individual and family satisfaction, provision of services, and personal outcomes. The instruments shall:

(1) provide nationally validated, benchmarked, consistent, reliable and measurable data for a comprehensive quality improvement and review process, and

(2) include outcome-based measures such as health, safety, well-being, relationships, interactions with people who do not have a disability, employment, quality of life, integration, choice, service and consumer satisfaction.

2. Within available appropriations, the instruments identified in this subdivision may be expanded to collect additional data requested by other offices, departments or agencies of the state, local or federal government.

3. The commissioner may contract with an independent agency or organization for the development of the quality assurance instruments described in this subdivision.

4. The commissioner shall establish the methodology by which the quality assurance instruments shall be administered.

5. The commissioner, in consultation with stakeholders, shall annually review the data collected from the quality assurance instruments described in this subdivision and shall review recommendations regarding additional or different criteria for the quality assurance instruments in order to assess the performance of the state's developmental disabilities services system and improve services for consumers.

(f) There shall be a joint advisory council chaired by the commissioner and the commissioner of health that shall be charged with advising both commissioners in regard to the oversight of DISCOs, HMOs providing services under subdivision eight of section forty-four hundred three of the public health law, and MLTCs providing services under subdivisions twelve, thirteen and fourteen of section forty-four hundred three-f of the public health law. The joint advisory council may be comprised of the members of existing advisory councils or similar entities serving the office, provided that it shall be comprised of twelve members, including individuals with developmental disabilities, family members of, advocates for, and providers of services to people with developmental disabilities. Three members of the joint advisory council shall also be members of the special advisory review panel on medicaid managed care established under section three hundred

sixty-four-jj of the social services law. The joint advisory council shall review all managed care options provided to individuals with developmental disabilities, including: the adequacy of habilitation services; the record of compliance with person-centered planning, person-centered services and community integration; the adequacy of rates paid to providers in accordance with the provisions of paragraph one of subdivision four of section forty-four hundred three of the public health law, paragraph a-two of subdivision eight of section forty-four hundred three of the public health law or paragraph a-two of subdivision twelve of section forty-four hundred three-f of the public health law; and quality of life, health, safety and community integration of individuals with developmental disabilities enrolled in managed care. The commissioner and commissioner of the office for people with developmental disabilities or their designees shall attend all meetings of the joint advisory council. The joint advisory council shall report its findings, recommendations, and any proposed amendments to pertinent sections of the law to the commissioner and the commissioner of health, the senate majority leader and speaker of the assembly. The joint advisory council shall have access to any and all information that may be lawfully disclosed to it and that is necessary to perform its functions under this section.

(g) Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law to the contrary, the commissioner and the commissioner of health are authorized to enter into a contract or contracts under section forty-four hundred three-g of the public health law, subdivision eight of section forty-four hundred three of the public health law, and subdivision twelve of section forty-four hundred three-f of the public health law, provided, however, that:

1. the office shall post on its website, for a period of no less than thirty days:

- (1) a description of the proposed services to be provided pursuant to the contract or contracts;

- (2) the criteria for selection of a contractor or contractors;

- (3) the period of time during which a prospective contractor may seek

selection, which shall be no less than thirty days after such information is first posted on the website; and

(4) the manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

2. all reasonable and responsive submissions that are received from prospective contractors in a timely fashion shall be reviewed by the commissioners; and

3. the commissioner and the commissioner of health may jointly select such contractor or contractors that, in their discretion, have demonstrated the ability to effectively, efficiently and economically integrate health and long term care services as defined in section forty-four hundred three-g of the public health law, and meet the standards for a certificate of authority in the public health law for the provision of services operated, funded, certified, authorized or approved by the office for people with developmental disabilities and applicable to the type of managed care plan that such contractor proposes to operate.

* (h) Consistent with and subject to the terms of federal approval, the commissioner shall establish the managed care for persons with developmental disabilities advocacy program, hereinafter referred to as the advocacy program. The activities of the advocacy program shall be coordinated with the independent Medicaid managed care ombuds services provided to persons with disabilities enrolling in Medicaid managed care. The advocacy program shall advise individuals of applicable rights and responsibilities, provide information and assistance to address the needs of individuals with disabilities, and pursue legal, administrative and other appropriate remedies or approaches to ensure the protection of and advocacy for the rights of the enrollees. The advocacy program shall provide support to eligible individuals with developmental disabilities enrolling in developmental disability individual support and care coordination organizations pursuant to section forty-four hundred three-g of the public health law, health maintenance organizations providing services pursuant to subdivision eight of section forty-four hundred three of the public health law, managed long term care plans providing services under subdivisions twelve, thirteen and fourteen of

section forty-four hundred three-f of the public health law, and fully integrated dual advantage plans providing services under subdivision twenty-seven of section three hundred sixty-four-j of the social services law. The commissioner shall select an independent organization or organizations to provide advocacy services under this subdivision.

* NB Effective upon approval by the federal centers for medicare and medicaid services of a managed care advocacy program for individuals with developmental disabilities

*** § 13.41 Integrated employment plan.**

(a) The commissioner, in consultation with the developmental disabilities advisory council, shall establish a plan to increase employment opportunities for people with developmental disabilities. The plan shall include, but not be limited to:

(1) identification of strategies to increase competitive employment opportunities for individuals with developmental disabilities, including students transitioning from educational programs;

(2) data concerning job retention among individuals with developmental disabilities and the identification of strategies to increase job retention;

(3) identification of models of integrated employment promoting, to the greatest extent possible, individuals with developmental disabilities working alongside individuals without disabilities, including considerations of ability levels, critical life transitions and appropriate options;

(4) strategies for assisting individuals in transitioning from sheltered workshop programs to competitive employment;

(5) partnerships with business communities and senior services to assist in increasing the availability of competitive employment for older adults;

(6) identification of means to assist individuals with significant behavioral or medical needs in preparing for and moving towards integrated employment;

(7) technical assistance, compliance and transition assistance procedures for existing providers who seek to transition to competitive and/or integrated employment models; and

(8) assessments of funding and necessary supports for individuals and providers.

(b) The commissioner, in consultation with the developmental disabilities advisory council, shall develop the plan with input from stakeholders, including individuals with developmental disabilities, parents and guardians of individuals with developmental disabilities, advocates and providers of services for individuals with developmental disabilities.

(c) The plan required pursuant to this section shall be developed and submitted to the temporary president of the senate and speaker of the assembly and posted on the website of the office for people with developmental disabilities within one hundred eighty days of the centers for medicare and medicaid services' approval of the plan to increase competitive employment opportunities for people with developmental disabilities.

(d) Individuals with developmental disabilities who were employed in sheltered workshops on or after July first, two thousand thirteen who are not interested in working or who are not able to work in a provider-owned business or private business in the community shall, to the extent practicable and in accordance with the principles of person-centered planning, be afforded the option of receiving other services of the office, including, but not limited to pathway to employment, community prevocational, day habilitation, community habilitation and self-directed services. The provision of such services shall consider, but not be limited to, the following factors:

(1) assessment of the individual's skills, including social behavior, ability to handle stress, ability to work with others, job performance, communication skills, work ethic, and interests;

(2) assessment of the individual's situation, including transportation needs, family supports, and physical and mental health; and

(3) creation of opportunities to explore different community and volunteer experiences to obtain information that will be used to create a person-centered plan.

(e) For individuals with developmental disabilities who were employed in sheltered workshops on or after July first, two thousand thirteen interested in retirement, office services shall focus on connecting individuals to retirement-related activities, including participating in

senior and community center activities, and other local activities for retirees.

* NB There are 2 § 13.41's

*** § 13.41 Retaliatory personnel actions.**

Employees of facilities, programs and providers operated, licensed, certified, authorized or funded by the office shall have protection from retaliatory action from employers as provided for in sections seven hundred forty and seven hundred forty-one of the labor law.

* NB There are 2 § 13.41's

§ 13.42 Autism spectrum disorders advisory board.

(a) There is hereby established within the office the autism spectrum disorders advisory board. Such board shall consist of twenty-four members, fifteen of whom shall be appointed and nine of whom shall serve ex officio. Of the appointed members, three shall be appointed by the governor, three shall be appointed by the temporary president of the senate, three shall be appointed by the speaker of the assembly, three shall be appointed by the minority leader of the senate and three shall be appointed by the minority leader of the assembly. Of the three members appointed by each appointing authority, one member shall have expertise of work as a professional in the field of autism, one member shall be a family advocate and one member shall be a self-advocate in the community that such advocate resides. A representative from each of the following state agencies shall serve ex officio: the office for people with developmental disabilities; the department of education; the office of mental health; the office of children and family services; the department of health; the developmental disabilities planning council; the council on children and families; and the office of vocational and educational services for individuals with disabilities. The chair of the board shall be selected by the governor.

(b) Members of the board shall serve for a term of three years, at which point such membership position shall be subject to reappointment. Vacancies on the board shall be filled in the same manner as the

original appointment once a member's term has expired, or if a member resigns before his or her term has expired. Members of the board shall receive no compensation, but may be reimbursed for actual and necessary expenses incurred in the performance of their duties within amounts appropriated therefor. As of the effective date of the chapter of the laws of two thousand twenty-three which amended this subdivision, all appointees who are currently serving on the board shall be subject to the term limit set forth pursuant to this section.

(c) The board shall have the following tasks and duties:

(1) Study and review the effectiveness of supports and services currently being provided to people diagnosed with autism spectrum disorders;

(2) Identify legislative and regulatory activity which may be required to improve existing service systems that support people diagnosed with autism spectrum disorders;

(3) Identify methods of improving interagency coordination of services and maximize the impact and effectiveness of services and agency functions;

(4) Identify strategies and methods of improving outreach and coordination of services associated with autism spectrum disorders for minority group members including, but not limited to, African American, Latino and Asian children; and

(5) Such other matters as may be deemed appropriate by the members of the board.

At the discretion of the chair, the board may consult with stakeholders for the purpose of carrying out its tasks and duties in accordance with this subdivision.

(d) Such board shall meet at least quarterly. Special meetings may be called by the chair. The agenda and meeting place of all regular or special meetings shall be made available to the public in advance of such meetings.

(e) The advisory board shall submit a written report to the governor, the temporary president of the senate and the speaker of the assembly by no later than October first of the year next succeeding the effective date of this section and annually thereafter, setting forth the recommendations and activities of the council on matters within the

scope of its duties as set forth in this section.

*** § 13.43 First responder training.**

(a) The commissioner, in consultation with the commissioner of health, the office of fire prevention and control, the municipal police training council, and the superintendent of state police, shall develop a training program and associated training materials, to provide instruction and information to firefighters, police officers and emergency medical services personnel on appropriate recognition and response techniques for handling emergency situations involving individuals with autism spectrum disorder and other developmental disabilities. The training program and associated training materials shall include any other information deemed necessary and appropriate by the commissioner.

(b) Such training shall address appropriate response techniques for dealing with both adults and minors with autism spectrum disorder and other developmental disabilities, including but not limited to training on the appropriate use of force on such individuals, as well as training on appropriate techniques for deescalating encounters with such individuals that is consistent with such individual's safety.

(c) Such training program may be developed as an online program.

* NB There are 2 § 13.43's

*** § 13.43 Disabilities identification card.**

(a) The commissioner shall develop an identification card denoting that a person has been medically diagnosed with a developmental disability. Such identification card may be presented to law enforcement, firefighters and emergency medical services personnel as necessary.

(b) Upon the request of a person with developmental disabilities, or the guardian or caregiver of such person, the office shall issue such developmental disabilities identification card in accordance with eligibility and documentation criteria established by the office for a fee to be determined by the commissioner.

(c) The front of such card shall indicate that it has been issued by

the office pursuant to this section and shall include:

- (1) the card bearer's name;
- (2) the card bearer's address;
- (3) the card bearer's date of birth; and
- (4) the following statement: "I HAVE A DEVELOPMENTAL DISABILITY. I MAY HAVE DIFFICULTY UNDERSTANDING AND FOLLOWING YOUR DIRECTIONS OR MAY BECOME UNABLE TO RESPOND. I MAY BECOME PHYSICALLY AGITATED IF YOU PROMPT ME VERBALLY OR TOUCH ME OR MOVE TOO CLOSE TO ME. A DEVELOPMENTAL DISABILITY IS NOT AN EXCUSE FOR ILLEGAL BEHAVIOR. I AM NOT INTENTIONALLY REFUSING TO COOPERATE. I MAY NEED YOUR ASSISTANCE. PLEASE SEE THE BACK OF THIS CARD."

(d) The back of such card shall include:

- (1) at the card bearer's discretion, the name and phone number of an individual designated by such card bearer to be contacted in case of emergency; and
- (2) a designated space where such card bearer may include any additional information.

* NB There are 2 § 13.43's

ARTICLE 15

ADMISSION OF PEOPLE WITH DEVELOPMENTAL DISABILITIES TO SCHOOLS

Section 15.01 Definitions.

15.03 Admission to a school.

15.05 Examining physician or psychologist and medical certificate.

15.07 Notice to all residents of their rights and of the availability of the mental hygiene legal service.

15.09 Notices to mental hygiene legal service concerning minors.

15.11 Records of residents.

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15.15 Voluntary admissions; suitability.

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15.19 Voluntary admissions; encouragement of.

15.21 Voluntary admissions; conversion to.

15.23 Voluntary admissions; review of status.

15.25 Admission and retention of certain non-objecting

residents.

15.27 Involuntary admission on medical certification.

15.29 Involuntary admission on medical certification; notice of admission to residents and others.

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15.33 Court authorization to retain an involuntary resident.

15.35 Review of court authorization to retain an involuntary resident.

15.37 Transfer of juvenile delinquents.

§ 15.01 Definitions.

As used in this article:

"in need of care and treatment" means that a person has a developmental disability and would benefit from care and treatment as a resident in a school.

"in need of involuntary care and treatment" means that a person is in need of in-patient care and treatment as a resident in a school, that such care and treatment is essential to his or her welfare, and that his or her judgment is so impaired that he or she is unable to understand the need for such care and treatment and that he or she poses a real and present risk of substantial physical harm to himself or herself or others.

"need for retention" means that a person who has been admitted to a school pursuant to this article is in need of involuntary care and treatment in a school for a further period.

"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.

"director of community services" means the director of community services for the mentally disabled appointed pursuant to article eleven of this chapter.

any provisions of this article which explicitly or implicitly apply to, or reference, persons who are, or who are alleged to be, mentally

retarded shall be deemed to apply to, or to be a reference to, persons who are, or who are alleged to be, developmentally disabled.

§ 15.03 Admission to a school.

Unless otherwise specifically provided for by statute, a person with a developmental disability shall be admitted to a school as a resident only pursuant to the provisions of this article. The section of the mental hygiene law under which the resident is admitted or under which any change of legal status is subsequently effected, shall be stated in the resident's record. For the purposes of this article, a school does not include a facility licensed as an intermediate care facility, a community residence, or a family care home, except when such a facility is specifically designated as a school by the commissioner.

§ 15.05 Examining physician or psychologist and medical certificate.

(a) A person is disqualified from acting as an examining physician or psychologist in the following cases:

1. if he is a relative of the person applying for the admission or of the person alleged to have a developmental disability.

2. if he is a manager, trustee, visitor, proprietor, officer, director, or stockholder of the school in which the resident resides 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 school, provided that receipt of fees, privileges, or compensation for treating or examining patients in such school shall not be deemed to be such a pecuniary interest.

3. if he 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 has a developmental disability and shall be based on an examination of the person alleged to have a developmental disability

made within six months 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 examiners is based and shall show that the condition of the person examined is such that he needs care or treatment in a school and such other information as the commissioner may by regulation require.

§ 15.07 Notice to all residents of their rights and of the availability of the mental hygiene legal service.

(a) Immediately upon the admission of any resident to a school or upon his conversion to a different status, the director shall inform the resident in writing of his status, including the section of this chapter under which he has been admitted, and of his rights under this article, including the availability of the mental hygiene legal service. At any time thereafter, upon the request of the resident or of anyone on the resident's behalf, the resident shall be permitted to communicate with the mental hygiene legal service and avail himself of the facilities thereof.

(b) The director of every school shall post copies of a notice, in a form and manner to be determined by the commissioner, at places throughout the school where such notice will be conspicuous and visible to all residents, stating the following:

1. the availability of the mental hygiene legal service.
2. a general statement of the rights of residents under the various admission or retention provisions of this article.
3. the right of the resident to communicate with the director, the board of visitors, the commissioner of developmental disabilities, and the mental hygiene legal service.

§ 15.09 Notices to mental hygiene legal service concerning minors.

When any person under the age of eighteen years is admitted to or is

converted from one admission status to another in any school, written notice of such admission or conversion shall be given to the mental hygiene legal service within three days thereof and such notice shall specify the age of and admission procedure applicable to such person. No such person shall be transferred to any other school without the prior consent of such person and the prior written consent of his parent or legal guardian unless three days prior written notice of such proposed transfer is given to the mental hygiene legal service and an opportunity is afforded to the service to see such person and to review the proposed transfer. Immediately upon release or transfer of any such person, the director of the school shall give the mental hygiene legal service written notice thereof.

§ 15.11 Records of residents.

The director of a school shall within five days, excluding Sunday and holidays, after the admission of any resident forward to the mental hygiene legal service a record of such resident and shall simultaneously forward to the department such information from the record as the commissioner by regulation shall require. Such information from the record in the department shall be accessible only in the manner set forth in section 33.13.

§ 15.13 Voluntary admissions.

(a) The director of any school may receive as a voluntary resident any person suitable for care and treatment, who voluntarily makes written application therefor. If such person be under eighteen years of age the application shall be made by the parent or legal guardian or next-of-kin of such person.

(b) If such voluntary resident gives notice in writing to the director of the resident's desire to leave the school, the director shall promptly release the resident; provided, however, that if there are reasonable grounds for belief that the resident may be in need of involuntary care and treatment, the director may retain the resident for a period not to exceed seventy-two hours from receipt of such notice.

Before the expiration of such seventy-two hour period, the director shall either release the resident or apply to a court of record in the county where the school is located for an order authorizing the involuntary retention of such resident. The application and proceedings in connection therewith shall be in the manner prescribed in this article for a court authorization to retain an involuntary resident, except that notice of such application shall be served forthwith and, if a hearing be demanded, the date for hearing to be fixed by the court shall be at a time not later than three days from the date such notice has been received by the court. If it be determined by the court that the resident has a developmental disability and is in need of retention for involuntary care and treatment in the school, the court shall forthwith issue an order authorizing the retention of such resident for care and treatment in the school, or, if requested by the resident, his guardian, or committee, such other non-public school as may be within the financial means of the resident, for a period not exceeding sixty days from the date of such order. Further applications for retention of the resident for periods not exceeding one year, and successive two year periods thereafter, respectively, may thereafter be made in accordance with the provisions of this article.

In the case of a resident under eighteen years of age, such notice requesting release of the resident may be given by the resident, by the person who made application for his admission, by a person of equal or closer relationship to the resident, or by the mental hygiene legal service. If such notice be given by any other person, the director may in his discretion refuse to discharge the resident and, in the event of such refusal, such other person or the mental hygiene legal service may apply to the supreme court or to a county court for the release of the resident.

§ 15.15 Voluntary admissions; suitability.

(a) In order for a person to be suitable for admission to a school as a voluntary resident, or for conversion to such status he must be notified of and have the ability to understand the following:

1. that the school to which he is requesting admission is a school for persons with developmental disabilities.

2. that he is making an application for admission.

3. the nature of the voluntary status and the provisions governing release or conversion to involuntary status.

(b) The department shall have the power to examine the residents admitted pursuant to this section and determine if they belong to the voluntary class. If it be determined that any such patient does not belong to the voluntary class, the department shall determine whether the resident shall be discharged or whether procedures shall be commenced for the admission of such resident to a school pursuant to other sections of this article. The decision of the department shall be forthwith complied with by the director or person in charge of any such school. Any failure to conform to the requirements of this section shall be considered a sufficient cause for revocation of an operating certificate theretofore issued to a school.

§ 15.17 Voluntary admissions; notices.

The director shall cause all residents admitted on their own application as voluntary residents to be informed annually of their status and rights as voluntary residents, 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 any such resident to his continued stay as a voluntary resident shall be obtained and a copy thereof shall be given to the mental hygiene legal service.

§ 15.19 Voluntary admissions; encouragement of.

(a) It shall be the duty of all state and local officers having duties to perform relating to persons with developmental disabilities to encourage any such person suitable therefor and in need of care and treatment for a developmental disability to apply for admission as a voluntary resident.

(b) No requirement shall be made, by rule, regulation, or otherwise as a condition to admission and retention on a voluntary status that any person applying for admission shall have the legal capacity to contract.

(c) A person requesting admission to a school, who is suitable for admission on a voluntary status, shall be admitted only on such a voluntary status.

§ 15.21 Voluntary admissions; conversion to.

(a) Nothing contained in this article shall be construed to prohibit any director from converting, and it shall be his duty to convert, the admission of any involuntary resident suitable and willing to apply therefor to a voluntary status. The mental hygiene legal service shall be given notice of every conversion from an involuntary status to a voluntary status.

(b) Any patient converted from an involuntary status to a voluntary status shall have the right to a judicial hearing before the supreme court or a county court on the questions of his suitability for such conversion and on his willingness to be so converted. The procedure for requesting such a hearing, except as to time limitation and questions to be determined, shall be pursuant to subdivisions (a) and (b) of section 33.31.

§ 15.23 Voluntary admissions; review of status.

(a) No voluntary resident, whether admitted on such status or converted thereto, shall be continued in 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 chapter, whichever is later, unless the suitability of such resident to remain in such status and his willingness to so remain have been reviewed. The director shall review the suitability of such resident to remain in such status, and the mental hygiene legal service shall review the willingness of such resident to remain in such status. Notice of the determination of the resident'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 resident to remain in a voluntary or informal status or the willingness of the resident to so remain, it shall make an application, upon notice to the resident and the director of the school, for a court order determining those questions. In any such proceeding, the resident or someone on his behalf or the mental hygiene legal service may request a hearing. If the mental hygiene legal service finds no ground to doubt the determination of the director as to the suitability, or the willingness of the resident to continue in a voluntary or informal status, it shall so certify and the resident may be continued in the school in such status. A copy of such certification of review shall be filed in the resident's record.

(b) If an application for a court order has been made and a hearing is requested, the provisions governing hearings contained in section 33.31 shall be applicable.

(c) If an application for a court order has been made, the court, in determining the proceeding, may approve the continuation of the resident as a voluntary resident or, if the court finds that the resident is not suitable or willing to continue as a voluntary resident, it may order the discharge of the resident or make such other order as it may deem appropriate in the circumstances.

(d) Prior to the termination of twelve months from the date of the certification by the mental hygiene legal service on 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 resident's suitability and willingness to remain as a voluntary resident, as set forth in the foregoing subdivisions.

§ 15.25 Admission and retention of certain non-objecting residents.

(a) The director of any school may receive and retain therein as a resident any person in need of care and treatment who does not object thereto and who is so profoundly or severely developmentally disabled that he does not have sufficient understanding to make him suitable for admission as a voluntary resident upon an application, accompanied by a

certificate of an examining physician or certified psychologist. The application shall conform to the requirements for an application set forth in section 15.27 of this article. The certificate of the examining physician or certified psychologist, in addition to the other requirements for such certificate set forth in this article, must show that the person sought to be admitted meets the requirements of this section.

(b) The director of the school where such person is brought shall cause such person to be examined forthwith by a staff physician of such school other than the original examining physician or certified psychologist whose certificate accompanied the application and, if such person is found to be suitable for admission under this section, he may be admitted thereto as a resident and retained therein for care and treatment.

(c) If notice in writing that the resident be released from the school is given to the director by the resident or any person on his behalf or by the mental hygiene legal service, the director shall promptly release the resident; provided, however, that, if there are reasonable grounds for belief that the resident may be in need of involuntary care and treatment, the director may retain the resident for a period not to exceed seventy-two hours from the receipt of such notice. Before the expiration of such seventy-two hour period, the director shall either release the resident or apply to a court of record in the county where the school is located for an order authorizing the involuntary retention of such resident. The application and proceedings in connection therewith shall be in the manner prescribed in this article for a court authorization to retain an involuntary resident, except that notice of such application shall be served forthwith and, if a hearing be demanded, the date for hearing to be fixed by the court shall be at a time not later than three days from the date such notice has been received by the court. If it be determined by the court that the resident has a developmental disability and is in need of retention for involuntary care and treatment in the school, the court shall forthwith issue an order authorizing the retention of such resident for care and treatment in the school for a period not exceeding sixty days from the date of such order. Further applications for retention of the resident for periods not exceeding one year, and successive two year periods

thereafter, respectively, may thereafter be made in accordance with the provisions of this article.

(d) The director shall cause written notice of a person's admission pursuant to this section to be given forthwith to the mental hygiene legal service. The mental hygiene legal service shall promptly review such admission. Thereafter, the mental hygiene legal service and the director of the school shall make a review of such resident's retention pursuant to this section at least once during each twelve month period of retention.

§ 15.27 Involuntary admission on medical certification.

(a) The commissioner may receive and retain in a school, as a resident any person alleged to have a developmental disability and be in need of involuntary care and treatment upon the certificates of two examining physicians or of one examining physician and one certified psychologist, accompanied by an application for the admission of such person. The examination may be conducted jointly but each examiner shall execute a separate certificate.

(b) Such application must have been executed within six months prior to such admission. It may be executed by any one of the following:

1. any person with whom the person alleged to have a developmental disability resides.
2. the father or mother, husband or wife, brother or sister, or the child of any such person or the nearest available relative.
3. the committee of such person or his judicially appointed guardian.
4. an officer of any well recognized charitable institution or agency or home including but not limited to the superintendent of a correctional facility, as such term is defined in paragraph (a) of subdivision four of section two of the correction law, in whose institution the person alleged to have a developmental disability resides.

5. the director of community services or social services official, as defined in the social services law, of the city or county in which any such person may be.

6. the director of the facility in which the resident resides.

7. the director of the division for youth, acting in accordance with the provisions of section five hundred nine of the executive law.

(c) Such application shall contain a statement of the facts upon which the allegation of developmental disability and need for care and treatment are based and shall be executed under penalty of perjury but shall not require the signature of a notary public thereon.

(d) Before an examining physician or certified psychologist completes the certificate of examination of a person for involuntary care and treatment, he shall consider alternative forms of care and treatment that might be adequate to provide for the person's needs without requiring involuntary care and treatment. If the examining physician or certified psychologist knows that the person he is examining for involuntary care and treatment has been under prior treatment, he shall, insofar as possible, consult with the physician or psychologist furnishing such prior treatment prior to completing his certificate. Nothing in this section shall prohibit or invalidate any involuntary admission made in accordance with the provisions of this chapter.

(e) The director of the school where such person is brought shall cause such person to be examined forthwith by a staff physician of such school other than the original examining physicians or certified psychologist whose certificate or certificates accompanied the application and, if such person is found to be in need of involuntary care and treatment, he may be admitted thereto as a resident as herein provided.

(f) Following admission to a school, no resident may be sent to another school by any form of involuntary admission unless the mental hygiene legal service has been given notice thereof.

§ 15.29 Involuntary admission on medical certification; notice of admission to residents and others.

(a) The director shall cause written notice of a person's involuntary admission on an application supported by medical certification to be given forthwith to the mental hygiene legal service.

(b) The director shall cause written notice of the admission of such person, including such person's rights under this article, to be given personally or by mail not later than five days, excluding Sunday and holidays, after such admission to the following:

1. the nearest relative of the person alleged to have a developmental disability, other than the applicant, if there be any such person known to the director.

2. as many as three additional persons, if designated in writing to receive such notice by the person so admitted.

§ 15.31 Involuntary admission on medical certification; resident's right to a hearing.

(a) If, at any time prior to the expiration of sixty days from the date of involuntary admission of a resident on an application supported by medical certification, 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 need for care and treatment at a school, a hearing shall be held as herein provided. The resident or person requesting a hearing on behalf of the resident may designate the county where the hearing shall be held, which shall be either in the county where the school is located, the county of the resident's residence or the county in which the school to which the resident was first admitted is located. Such hearing shall be held in the county so designated, subject to application by any interested party, including the director, for change of venue to any other county because of the convenience of parties or witnesses or the condition of the resident upon notice to the persons required to be served with notice of the resident's initial admission.

(b) 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 resident to the supreme court or the county court in the

county designated by the applicant, if one be designated, or if no designation be made, then to the supreme court or the county court in the county where such school is located. A copy of such notice and record shall also be given the mental hygiene legal service.

(c) The court which receives such notice shall fix the date of such hearing at a time not later than five days from the date such notice is received by the court and cause the resident, any 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 have a developmental disability if it be deemed advisable in or out of court. If it be determined that the resident is in need of retention, the court shall deny the application for the resident's release. If it appears that the relatives of the resident or a committee of his person are willing and able properly to care for him at some place other than a school, then, upon their written consent, the court may order the transfer of the resident to the care and custody of such relatives or such committee. If it be determined that the resident is not in need of retention, the court shall order the release of the resident.

(d) If the court shall order the release of the resident, such resident shall forthwith be released.

(e) The director of the school authorized to retain or receive and retain such resident shall be immediately furnished with a copy of the order of the court.

(f) The papers in any proceeding under this article which are filed with the county clerk shall be sealed and shall be exhibited only to the parties to the proceeding or someone properly interested, upon order of the court.

§ 15.33 Court authorization to retain an involuntary resident.

(a) If the director shall determine that a resident admitted upon an application supported by medical certification, for whom there is no court order authorizing retention for a specified period, is in need of retention and if such resident does not agree to remain in such school

as a voluntary resident, the director shall apply to the supreme court or the county court in the county where the school is located for an order authorizing continued retention. Such application shall be made no later than sixty days from the date of involuntary admission on application supported by medical certification or thirty days from the date of an order denying an application for resident's release pursuant to section 15.31, whichever is later; and the school is authorized to retain the resident for such further period during which the school is authorized to make such application or during which the application may be pending. The director shall cause written notice of such application to be given the resident and a copy thereof shall be given personally or by mail to the persons required by this article to be served with notice of such resident's initial admission and to the mental hygiene legal service. Such notice shall state that a hearing may be requested and that failure to make such a request within five days, excluding Sunday and holidays, from the date that the notice was given to the resident will permit the entry without a hearing of an order authorizing retention.

(b) If no request is made for a hearing on behalf of the resident within five days, excluding Sunday and holidays, from the date such notice of such application was given such resident, and if the mental hygiene legal service has not requested a hearing, the court receiving the application may, if satisfied that the resident requires continued retention for care and treatment or transfer and continued retention, immediately issue an order authorizing continued retention of such resident in such school for a period not to exceed one year from the date of the order.

(c) Upon the demand of the resident or of anyone on his behalf or upon request of the mental hygiene legal service, the court shall, or may on its own motion, fix a date for the hearing of the application, in like manner as is provided for hearings in section 15.31. The provisions of such section shall apply to the procedure for obtaining and holding a hearing and to the granting or refusal to grant an order of retention by the court, except that the resident shall not have the right to designate initially the county in which the hearing shall be held.

(d) If the director of a school, in which a resident is retained pursuant to the foregoing subdivisions of this section, shall determine

that the condition of such resident requires his further retention in a school, he shall, if such resident does not agree to remain in such school as a voluntary resident, apply during the period of retention authorized by the last order of the court to the supreme court or the county court in the county where the school is located for an order authorizing further continued retention of such resident. 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 resident or anyone on his behalf or the mental hygiene legal service may request that the resident be brought personally before the court, in which case the court shall not grant an order for periods of one year or longer unless such resident shall have appeared personally before the court. Orders obtained under this subdivision shall authorize further continued retention of the resident for periods not to exceed two years each from the date of the order.

§ 15.35 Review of court authorization to retain an involuntary resident.

If a person who has been denied release or whose retention or continued retention has been authorized pursuant to this article, or any relative or friend in his behalf, be dissatisfied with any such order he may, within thirty days after the making of any such order, obtain a rehearing and a review of the proceedings already had and of such order upon a petition to a justice of the supreme court other than the judge or justice presiding over the court making such order. Such justice shall cause a jury to be summoned and shall try the question of the developmental disability and the need for retention of the resident so authorized to be retained. Any such resident or the person applying on his behalf for such review may waive the trial of such fact by a jury and consent in writing to trial of such fact by the court. No such petition for rehearing and review may be made by anyone other than the person so authorized to be retained or the father, mother, husband, wife, or child of such person, unless the petitioner shall have first obtained the leave of the court upon good cause shown. If the verdict of the jury, or the decision of the court when jury trial has been waived, be that such person is not developmentally disabled or is not in need of

retention the justice shall forthwith discharge him, but if the verdict of the jury, or the decision of the court where a jury trial has been waived, be that such person has a developmental disability and is in need of retention the justice shall certify that fact and make an order authorizing continued retention under the original order. Such order shall be presented, at the time of authorization of continued retention of such person with a developmental disability, to, and filed with, the director of the school in which the person with a developmental disability is authorized to be retained, and a copy thereof shall be forwarded to the department by such director and filed in the office thereof. Proceedings under the order shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court, made upon notice and after a hearing, with provisions made therein for such temporary care or confinement of the alleged person with a developmental disability as may be deemed necessary.

§ 15.37 Transfer of juvenile delinquents.

(a) The commissioner shall receive and arrange for the admission of juvenile delinquents temporarily transferred to his custody pursuant to section 353.4 of the family court act to the appropriate office facility.

(b) Immediately upon the admission of a juvenile as a resident pursuant to this section, the director shall comply with the provisions of section 15.07 of this chapter, and the mental hygiene legal service shall contact such juvenile and explain and make available the facilities thereof. Any juvenile placed pursuant to this section shall be subject to the provisions of article fifteen of this chapter.

ARTICLE 16

REGULATION AND QUALITY OF SERVICES

Section 16.00 Regulation and quality control of services for individuals with developmental disabilities.

16.01 Evaluation of services for persons with developmental disabilities.

16.03 Operating certificate required.

- 16.05 Issuance of operating certificates.
- 16.09 Approval of new construction.
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§ 16.00 Regulation and quality control of services for individuals with developmental disabilities.

This article sets forth provisions enabling the commissioner of the office for people with developmental disabilities to regulate and assure the consistent high quality of services provided within the state to its citizens with developmental disabilities. The commissioner may adopt and promulgate any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by this article. This article shall govern the operation of programs, provision of services and the facilities hereinafter described and the commissioner's powers and authority with respect thereto, and shall

supersede, as to such matters, sections of article thirty-one that are inconsistent with the provisions of this chapter.

Any provisions of this article which explicitly or implicitly apply to, or reference, persons who are mentally retarded, shall be deemed to apply to, or reference, persons with developmental disabilities.

§ 16.01 Evaluation of services for persons with developmental disabilities.

(a) The commissioner shall ensure that all services provided under this chapter for persons with developmental disabilities are periodically evaluated.

(b) The commissioner shall, by regulations, establish and maintain evaluation criteria and methods which assure the utility of data generated in the evaluation of services in different areas of the state provided under this chapter for persons with developmental disabilities, including, but not limited to:

(1) Uniform definitions of services to persons with developmental disabilities;

(2) Uniform standards for all comparable services and programs;

(3) Uniform financial reporting procedures for comparable providers;

(4) Uniform clinical reporting procedures; and

(5) Requirements for the generation and maintenance of uniform data for all individuals receiving services from any provider of services.

(c) (1) Notwithstanding any other provision of law, the commissioner, or his designee, may require from any hospital, as defined under article twenty-eight of the public health law, any information, report, or record necessary for the purpose of carrying out the functions, powers and duties of the commissioner related to the investigation of deaths and complaints of abuse, mistreatment, or neglect concerning persons with developmental disabilities who receive services, or had prior to death received services, in a facility as defined in section 1.03 of this chapter, or are receiving medicaid waiver services from the office for people with developmental disabilities in a non-certified setting, and have been treated at such hospitals.

(2) Any information, report, or record requested by the commissioner

or his designee pursuant to this subdivision shall be limited to that information that the commissioner determines necessary for the completion of this investigation.

(3) The information, report or record received by the commissioner or his designee pursuant to this subdivision shall be subject to section two thousand eight hundred five-m, section eighteen, as added by chapter four hundred ninety-seven of the laws of nineteen hundred eighty-six, and article twenty-seven-F of the public health law, section 33.13 of this chapter, and any applicable federal statute or regulation.

§ 16.03 Operating certificate required.

(a) No provider of services shall engage in any of the following activities without an operating certificate issued by the commissioner pursuant to this article:

(1) Operation of a residential facility for the care and treatment of persons with developmental disabilities including a family care home.

(2) Operation of any distinct part of a general hospital or other facility possessing an operating certificate, pursuant to article twenty-eight of the public health law, operated for the primary purpose of providing residential or non-residential services for persons with developmental disabilities.

(3) Operation of a facility established or maintained by a public agency, board, or commission, or by a corporation or voluntary association for the rendition of out-patient or non-residential services for persons with developmental disabilities; provided, however, that such operation shall not be deemed to include (i) professional practice, within the scope of a professional license or certificate issued by an agency of the state, by an individual practitioner or by a partnership of such individuals or by a professional service corporation duly incorporated pursuant to the business corporation law or by a university faculty practice corporation duly incorporated pursuant to the not-for-profit corporation law or (ii) non-residential services which are licensed, supervised, or operated by another agency of the state and non-residential services which are chartered or issued a certificate of incorporation pursuant to the education law or (iii) pastoral counseling by a clergyman or minister, including those defined as clergyman or

minister by section two of the religious corporations law.

(4) The provision of home and community based services approved under a waiver program authorized pursuant to section eleven hundred fifteen of the federal social security act or subdivision (c) of section nineteen hundred fifteen of the federal social security act and subdivisions seven and seven-a of section three hundred sixty-six of the social services law, provided that an operating certificate issued pursuant to this paragraph shall only authorize services in a home or community setting.

(5) The provision of services approved in a medicaid state plan authorized pursuant to section nineteen hundred two of the federal social security act, including optional state plan services authorized pursuant to subdivision (g) of section nineteen hundred fifteen of the federal social security act, and designated by the commissioner of health, in consultation with the commissioner, as being for persons with developmental disabilities.

(b) The commissioner shall enter into a cooperative agreement with the commissioner of education with respect to all issues regarding certification under this article of providers of non-residential services which are chartered or issued a certificate of incorporation pursuant to the education law.

(c) The commissioner shall enter into a cooperative agreement with the commissioner of health with respect to all issues regarding certification under this article of providers of services possessing an operating certificate pursuant to article twenty-eight of the public health law.

(d) The operation of a facility or provision of services for which an operating certificate is required pursuant to this article shall be in accordance with the terms of the operating certificate and the regulations of the commissioner.

(e) Any provider of services who knowingly fails to comply with the provisions of this section shall be guilty of a misdemeanor.

(f) Any provider of services that holds an operating certificate pursuant to paragraph four of subdivision (a) of this section, shall be authorized to employ or contract with persons licensed to practice nursing pursuant to article one hundred thirty-nine of the education law; employ or contract with exempt individuals authorized to perform

tasks pursuant to subparagraph (v) of paragraph a of subdivision one of section sixty-nine hundred eight of the education law; or contract with entities legally authorized to employ persons licensed to practice nursing pursuant to article one hundred thirty-nine of the education law or exempt individuals authorized to perform tasks pursuant to subparagraph (v) of paragraph a of subdivision one of section sixty-nine hundred eight of the education law; provided that such exempt individuals shall only be authorized to provide those tasks delegated pursuant to subparagraph (v) of paragraph a of subdivision one of section sixty-nine hundred eight of the education law.

(g) No provision of this article or any other provision of law shall be construed to require a provider licensed pursuant to article twenty-eight of the public health law or certified pursuant to article thirty-one or thirty-two of this chapter to obtain an operating certificate from the office for people with developmental disabilities if such provider has been authorized to provide integrated services in accordance with regulations issued by the commissioner of the office for people with developmental disabilities, in consultation with the commissioner of the department of health, the commissioner of the office of mental health and the commissioner of the office of alcoholism and substance abuse services, including regulations issued pursuant to subdivision seven of section three hundred sixty-five-l of the social services law or part L of chapter fifty-six of the laws of two thousand twelve.

§ 16.05 Issuance of operating certificates.

(a)(1) Application for an operating certificate shall be made upon forms prescribed by the commissioner.

(2) Application shall be made by the person or entity responsible for operation of the facility or provider of services as described in subdivision four of section 16.03 of this article. Applications shall be in writing, shall be verified and shall contain such information as required by the commissioner.

(b) Notice of an application for an operating certificate shall be forwarded by the office to the appropriate local governmental unit in the area to be served and the local health planning agency.

(c) No operating certificate shall be issued by the commissioner unless the commissioner is satisfied as to:

(1) The public need for the facility or services to be established upon issuance of the operating certificate;

(2) The character, competence and standing in the community of the person or entity responsible for operating the facility or providing services;

(3) The financial resources of the proposed facility or provider of services and its sources of future revenues;

(4) The adequacy of the premises, equipment, personnel and program to provide the services which would be authorized by the operating certificate;

(5) The commissioner may deny an operating certificate to any operator who, within ten years of the date of application, has been denied renewal for cause of an operating certificate, or who has had an operating certificate revoked or suspended for cause, and such denial, revocation or suspension was not reversed after an administrative hearing or other appeal, for a program or facility licensed or operated by a health, mental hygiene, social services or education agency or department of this or any state or who has failed to operate a program serving the mentally disabled, other disabled persons as defined in subdivision twenty-one of section two hundred ninety-two of the executive law, the aged, children or other persons receiving health, mental hygiene, residential, social or educational services in continuous compliance with applicable laws or regulations within the previous ten years in any state;

(6) In the case of residential facilities, that arrangements have been made with other providers of services for the provision of health, habilitation, day treatment, education, sheltered workshop, transportation or other services as may be necessary to meet the needs of individuals who will reside in the facility; and

(6-a) In the case of a provider of services seeking to provide nursing tasks by non-licensed persons authorized to provide such tasks pursuant to subparagraph (v) of paragraph a of subdivision one of section sixty-nine hundred eight of the education law, that such provider will provide services and perform tasks in a safe and competent manner and will fully comply with the requirements of such subparagraph and any

memorandum of understanding between the office and the state education department pursuant to such subparagraph. Any operating certificate subject to this paragraph shall specify that the provider of services is authorized to provide these nursing services.

(7) Such other matters as the commissioner shall deem pertinent in the public interest.

(d) No operating certificate shall be renewed by the commissioner unless the commissioner is satisfied as to:

(1) the financial resources of the proposed facility or provider of services and its sources of future revenues;

(2) the adequacy of the premises, equipment, personnel and program to provide the services which would be authorized by the operating certificate;

(3) the ability of the operator to provide the services required by the operating certificate as demonstrated by the operator's compliance with applicable laws and regulations within the previous ten years;

(4) in the case of residential facilities, that arrangements have been made with other providers of services for the provision of health, habilitation, day treatment, education, sheltered workshop, transportation or other services as may be necessary to meet the needs of individuals who will reside in the facility; and

(5) such other matters as the commissioner shall deem pertinent in the public interest.

(e) The commissioner may disapprove an application for an operating certificate, may authorize fewer services than applied for, and may place limitations or conditions on the operating certificate including, but not limited to compliance with a time limited plan of correction of any deficiency which does not threaten the health or well-being of any individuals. In such cases the applicant shall be given an opportunity to be heard, at a public hearing if requested by the applicant.

(f) Operating certificates shall be valid for up to a three-year period as shall be expressly provided upon such certificate or renewal thereof. No application fee shall be required for an application for issuance or renewal of an operating certificate.

(g) The commissioner shall specify on each operating certificate the kind or kinds of services authorized, any limitations or conditions of the certificate and the expiration date of the certificate.

(h) Operating certificates shall not be transferable.

(i) In the event that the holder of an operating certificate for a residential facility issued by the commissioner pursuant to this article wishes to cease the operation or conduct of any of the activities, as defined in paragraph one or four of subdivision (a) of section 16.03 of this article, for which such certificate has been issued or to cease operation of any one or more of facilities for which such certificate has been issued; wishes to transfer ownership, possession or operation of the premises and facilities upon which such activities are being conducted or to transfer ownership, possession or operation of any one or more of the premises or facilities for which such certificate has been issued; or elects not to apply to the commissioner for re-certification upon the expiration of any current period of certification, it shall be the duty of such certificate holder to give to the commissioner written notice of such intention not less than sixty days prior to the intended effective date of such transaction. Such notice shall set forth a detailed plan which makes provision for the safe and orderly transfer of each person with a developmental disability served by such certificate holder pursuant to such certificate into a program of services appropriate to such person's on-going needs and/or for the continuous provision of a lawfully operated program of such activities and services at the premises and facilities to be conveyed by the certificate holder. Such certificate holder shall not cease to provide any such services to any such person with a developmental disability under any of the circumstances described in this section until the notice and plan required hereby are received, reviewed and approved by the commissioner. For the purposes of this paragraph, the requirement of prior notice and continuous provision of programs and services by the certificate holder shall not apply to those situations and changes in circumstances directly affecting the certificate holder that are not reasonably foreseeable at the time of occurrence, including, but not limited to, death or other sudden incapacitating disability or infirmity. Written notice shall be given to the commissioner as soon as reasonably possible thereafter in the manner set forth within this subdivision.

(j) Notwithstanding any other provision of this chapter, except in the case of family care, the commissioner may issue one operating

certificate for two or more facilities in the same program class operated by the same person or entity.

§ 16.09 Approval of new construction.

(a) As used or referred to in this section, unless a different meaning clearly appears from the context:

(1) "Facility" is limited to a facility in which services are offered for which an operating certificate is required by this article. For the purposes of this section facility shall include family care homes but shall not include the provision of services, as defined in paragraph four of subdivision (a) of section 16.03 of this article, outside of a facility.

(2) "Construction" means the erection, building, or substantial acquisition, alteration, reconstruction, improvement, extension or modification of a facility, including its equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

(b) The construction of a facility, whether public or private, incorporated or not incorporated, shall require the prior approval of the commissioner. An application for such construction shall be filed with the office, together with such other forms and information as shall be prescribed by, or acceptable to, the office. Thereafter, the office shall forward for comment a copy of the application and accompanying documents to the local governmental unit responsible for community services for the mentally disabled where the facility is to be located, and, for facilities other than community residences, to the concerned health systems agency. The commissioner shall not act upon an application for construction of a facility unless the applicant has obtained all approvals and consents required by law for its incorporation or establishment. The commissioner in approving the construction of a facility shall take into consideration and is empowered to request information and advice from all available sources including local and area mental hygiene and health planning agencies and groups as to (i) the availability of facilities or services which may serve as alternatives or substitutes for the whole or any part of the

proposed construction and (ii) the adequacy of financial resources and sources of future revenue and (iii) the public need for the facility or the services, for facilities other than community residences, at the time and place and under the circumstances proposed. If the commissioner proposes to disapprove an application for construction of a facility, he shall afford the applicant an opportunity to be heard. The commissioner, on his own motion, may hold a hearing on an application for construction of a facility.

(c) In determining whether there is a public need for any services or facilities, for facilities other than community residences, as required by this article, the commissioner shall consider the advice of the state health planning and development agency designated pursuant to the provisions of the national health planning and resources development act of nineteen hundred seventy-four and any amendments thereto. The commissioner shall not take any action contrary to the advice of the health systems agency for facilities other than community residences until he affords an opportunity to the agency to request a public hearing and, if so requested, a public hearing shall be held.

§ 16.11 Oversight of facilities and services. (a) The commissioner shall provide for the oversight of facilities and providers of services holding operating certificates pursuant to section 16.03 of this article and shall provide for the annual review of such facilities and providers in implementing the requirements of the office and in providing quality care and person centered and community based services.

(1) The review of facilities issued an operating certificate pursuant to this article shall include periodic visitation and review of each facility. Reviews shall be made as frequently as the commissioner may deem necessary but in any event such inspections shall be made on at least two occasions during each calendar year which shall be without prior notice, provided, however, that where, in the discretion of the commissioner, an operating certificate has been issued to a program with a history of compliance and a record of providing a high quality of care, the periodic inspection and visitation required by this subdivision shall be made at least once during each calendar year provided such visit shall be without prior notice. Areas of review shall

include, but not be limited to, a review of a facility's: physical plant, fire safety procedures, health care, protective oversight, abuse and neglect prevention, and reporting procedures.

(2) The review of providers of services, as defined in paragraph four of subdivision (a) of section 16.03 of this article, shall ensure that the provider of services complies with all the requirements of the applicable federal home and community based services waiver program, or other successor Medicaid waiver program, and applicable federal regulation, subdivisions seven and seven-a of section three hundred sixty-six of the social services law and rules and regulations adopted by the commissioner.

(3) The review of providers of services, as defined in paragraph five of subdivision (a) of section 16.03 of this article, shall ensure that the provider of services complies with all the requirements of the applicable federal regulations and rules and the regulations adopted by the commissioner.

(b) The commissioner shall have the power to conduct investigations into the operations of any provider of service, person or entity which holds an operating certificate issued by the office, into the operation of any facility, service or program issued an operating certificate by the office and into the operations, related to the provision of services regulated by this chapter, of any person or entity providing a residence for one or more unrelated persons with developmental disabilities.

(c) In conducting a review or investigation, the commissioner or his or her authorized representative shall have the power to inspect facilities, conduct interviews of clients, interview personnel, examine and copy all records, including financial and medical records of the facility or provider of services, and obtain such other information as may be required in order to carry out his or her responsibilities under this chapter.

(d) In conducting any review or investigation under this chapter, the commissioner or his or her authorized representative is empowered to subpoena witnesses, compel their attendance, administer oaths to witnesses, examine witnesses under oath, and require the production of any books or papers deemed relevant to the investigation, inspection, or hearing. A subpoena issued under this section shall be regulated by the civil practice law and rules.

(e) The supreme court may enjoin persons or entities subject to review or investigation pursuant to this article to cooperate with the commissioner and to allow the commissioner access to providers of services, facilities, records, clients and personnel as necessary to enable the commissioner to conduct the review or investigation.

(f) All inspections and investigations shall be made by persons competent to conduct such activities. Information obtained by the commissioner in the course of such inspections and investigations shall be kept confidential in accordance with the provisions of this chapter and other applicable provisions of law.

§ 16.13 Duties of providers of services.

It shall be the duty of every holder of an operating certificate issued pursuant to this article or organization whose incorporation or activities require the approval of the commissioner, or program funded or administered by the office to assist such office and the commission on quality of care for the mentally disabled in carrying out their respective regulatory and oversight functions by:

(a) Complying with the applicable provisions of this chapter, other applicable laws, and the regulations of the commissioner.

(b) Making reports of allegations of reportable incidents in accordance with article eleven of the social services law to the vulnerable persons' central register, which shall screen and immediately forward reports that appear to allege crimes to the appropriate law enforcement agency.

(c) Cooperating with the commissioner or his or her authorized representative and the commission on quality of care for the mentally disabled or any representative authorized by the chair of such commission in any investigation or inspection conducted by the office or such commission.

(d) Permitting the commissioner or his or her authorized representative and the commission on quality of care for the mentally disabled or any representative authorized by the chair of such commission to inspect its facility and all books and records, including financial records and client records, kept by it and to interview and

examine any client at its facility except that no such client may be examined against his or her will.

(e) Posting a visible notice. Facilities licensed, certified or operated by the office shall post signs in accordance with this subdivision. Such signs shall be posted and visible where employee notices are posted, be not less than eight and one-half inches by eleven inches and shall read: "In case of an emergency, dial 911".

§ 16.17 Suspension, revocation, or limitation of an operating certificate.

(a) The commissioner may revoke, suspend, or limit an operating certificate or impose the penalties described in subparagraph a, b, c or d of paragraph one of subdivision (b) or in subdivision (g) of this section upon a determination that the holder of the certificate has failed to comply with the terms of its operating certificate or with the provisions of any applicable statute, rule or regulation. The holder of the certificate shall be given notice and an opportunity to be heard prior to any such determination except that no such notice and opportunity to be heard shall be necessary prior to an emergency suspension or limitation of the facility's or provider of services' operating certificate imposed pursuant to paragraph one of subdivision (b) of this section, nor shall such notice and opportunity to be heard be necessary should the commissioner, in his or her discretion, decide to issue separate operating certificates to each facility or provider of services formerly included under the services authorized by one operating certificate to the provider of services.

(b) (1) An operating certificate may be temporarily suspended or limited without a prior hearing for a period not in excess of sixty days upon written notice to the facility or provider of services following a finding by the office for people with developmental disabilities that a individual's health or safety is in imminent danger. Upon such finding and notice, the power of the commissioner temporarily to suspend or limit an operating certificate shall include, but shall not be limited to, the power to:

a. Prohibit or limit the placement of new individuals in the facility

or services;

b. Remove or cause to be removed some or all of the individuals in the facility or services;

c. Suspend or limit or cause to be suspended or limited the payment of any governmental funds to the facility or provider of services provided that such action shall not in any way jeopardize the health, safety and welfare of any person with a developmental disability in such program or facility or services;

d. Prohibit or limit the placement of new individuals, remove or cause to be removed some or all individuals, or suspend or limit or cause to be suspended or limited the payment of any governmental funds, in or to any one or more of the facilities or provider of services authorized pursuant to an operating certificate.

(2) At any time subsequent to the suspension or limitation of any operating certificate pursuant to paragraph one of this subdivision where said suspension or limitation is the result of correctable physical plant, staffing or program deficiencies, the facility or provider of services may request the office to review the facility or provider of services to redetermine whether a physical plant, staffing or program deficiency continues to exist. After the receipt of such a request, the office shall review the facility or provider of services within ten days and in the event that the previously found physical plant, staffing or program deficiency has been corrected, the suspension or limitation shall be withdrawn. If the physical plant, staffing or program deficiency has not been corrected, the commissioner shall not thereafter be required to review the facility or provider of services during the emergency period of suspension or limitation.

(3) During the sixty day suspension or limitation period provided for in paragraph one of this subdivision the commissioner shall determine whether to reinstate or remove the limitations on the facility's or provider of services' operating certificate or to revoke, suspend or limit the operating certificate pursuant to subdivision (a) of this section. Should the commissioner choose to revoke, suspend or limit the operating certificate, then the emergency suspension or limitation

provided for in this subdivision shall remain in effect pending the outcome of an administrative hearing on the revocation, suspension or limitation.

(4) The facility operator or provider of services, within ten days of the date when the emergency suspension or limitation pursuant to paragraph one of this subdivision is first imposed, may request an evidentiary hearing to contest the validity of the emergency suspension or limitation. Such an evidentiary hearing shall commence within ten days of the facility operator's or provider's request and no request for an adjournment shall be granted without the concurrence of the facility operator or provider of service, office for people with developmental disabilities, and the hearing officer. The evidentiary hearing shall be limited to those violations of federal and state law and regulations that existed at the time of the emergency suspension or limitation and which gave rise to the emergency suspension or limitation. The emergency suspension or limitation shall be upheld upon a determination that the office for people with developmental disabilities had reasonable cause to believe that an individual's health or safety was in imminent danger. A record of such hearing shall be made available to the facility operator or provider of service upon request. Should the commissioner determine to revoke, suspend or limit an operating certificate pursuant to subdivision (a) of this section, no administrative hearing on that action shall commence prior to the conclusion of the evidentiary hearing. The commissioner shall issue a ruling within ten days after the receipt of the hearing officer's report.

(c) When the holder of an operating certificate shall request an opportunity to be heard, the commissioner shall fix a time and place for the hearing. A copy of the charges, together with the notice of the time and place of the hearing, shall be served in person or mailed by registered or certified mail to the facility or provider of services at least ten days before the date fixed for the hearing. The facility or provider of services shall file with the office, not less than three days prior to the hearing, a written answer to the charges.

(d) (1) When a hearing must be afforded pursuant to this section or other provisions of this article, the commissioner, acting as hearing officer, or any person designated by him or her as hearing officer, shall have power to:

a. administer oaths and affirmations;

b. issue subpoenas, which shall be regulated by the civil practice law and rules;

c. take testimony; or

d. control the conduct of the hearing.

(2) The rules of evidence observed by courts need not be observed except that the rules of privilege recognized by law shall be respected. Irrelevant or unduly repetitious evidence may be excluded.

(3) All parties shall have the right of counsel and be afforded an opportunity to present evidence and cross-examine witnesses.

(4) If evidence at the hearing relates to the identity, condition, or clinical record of an individual, the hearing officer may exclude all persons from the room except parties to the proceeding, their counsel and the witness. The record of such proceeding shall not be available to anyone outside the office, other than a party to the proceeding or his counsel, except by order of a court of record.

(5) The commissioner may establish regulations to govern the hearing procedure and the process of determination of the proceeding.

(6) The commissioner shall issue a ruling within ten days after the termination of the hearing or, if a hearing officer has been designated, within ten days from the hearing officer's report.

(e) All orders or determinations hereunder shall be subject to review as provided in article seventy-eight of the civil practice law and rules.

(f) (1) Except as provided in paragraph two of this subdivision, anything contained in this section to the contrary notwithstanding, an operating certificate of a facility or provider of service shall be revoked upon a finding by the office that any individual, member of a partnership or shareholder of a corporation to whom or to which an operating certificate has been issued, has been convicted of a class A, B or C felony or a felony related in any way to any activity or program subject to the regulations, supervision, or administration of the office or of the office of temporary and disability assistance, the department

of health, or another office of the department of mental hygiene, or in violation of the public officers law in a court of competent jurisdiction of the state, or in a court in another jurisdiction for an act which would have been a class A, B or C felony in this state or a felony in any way related to any activity or program which would be subject to the regulations, supervision, or administration of the office or of the office of temporary and disability assistance, the department of health, or another office of the department of mental hygiene, or for an act which would be in violation of the public officers law. The commissioner shall not revoke or limit the operating certificate of any facility or provider of service, solely because of the conviction, whether in the courts of this state or in the courts of another jurisdiction, more than ten years prior to the effective date of such revocation or limitation, of any person of a felony, or what would amount to a felony if committed within the state, unless the commissioner makes a determination that such conviction was related to an activity or program subject to the regulations, supervision, and administration of the office or of the office of temporary and disability assistance, the department of health, or another office of the department of mental hygiene, or in violation of the public officers law.

(2) In the event one or more members of a partnership or shareholders of a corporation shall have been convicted of a felony as described in paragraph one of this subdivision, the commissioner shall, in addition to his or her other powers, limit the existing operating certificate of such partnership or corporation so that it shall apply only to the remaining partner or shareholders, as the case may be, provided that every such convicted person immediately and completely ceases and withdraws from participation in the management and operation of the facility or provider of services and further provided that a change of ownership or transfer of stock is completed without delay, and provided that such partnership or corporation shall immediately reapply for a certificate of operation pursuant to subdivision (a) of section 16.05 of this article.

(g) The commissioner may impose a fine upon a finding that the holder of the certificate has failed to comply with the terms of the operating certificate or with the provisions of any applicable statute, rule or

regulation. The maximum amount of such fine shall be one thousand dollars per day or fifteen thousand dollars per violation.

Such penalty may be recovered by an action brought by the commissioner in any court of competent jurisdiction.

Such penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general. Any such penalty may be released or compromised and any action commenced to recover the same may be settled or discontinued by the attorney general with the consent of the commissioner.

(h) Where a proceeding has been brought pursuant to section 16.27 of this article, and a receiver appointed pursuant thereto, the commissioner may assume operation of the facility subject to such receivership, upon termination of such receivership, and upon showing to the court having jurisdiction over such receivership that no voluntary association, not-for-profit corporation or other appropriate provider is willing to assume operation of the facility subject to receivership and is capable of meeting the requirements of this article; provided that the commissioner notifies the chairman of the assembly ways and means committee, the chairman of the senate finance committee and the director of the budget of his intention to assume operation of such facility upon service of the order to show cause upon the owner or operator of the facility, pursuant to subdivision (b) of section 16.27 of this article.

§ 16.19 Confinement, care and treatment of persons with developmental disabilities.

(a) No individual who is or appears to have a developmental disability shall be detained, deprived of liberty or otherwise confined without lawful authority, or inadequately, unskillfully, cruelly or unsafely cared for or supervised by any person.

(b) If the commissioner has reason to believe that a person is being detained or given inadequate, unskillful, cruel or unsafe care, as described in subdivision (a) of this section, he shall promptly investigate the matter. If, after giving the person accused of violating subdivision (a) of this section an opportunity to be heard, he finds

that a violation did occur, the commissioner shall issue an order directing that person to cease and desist from continued violation.

(c) In addition to any other remedies available under this article, the commissioner may bring an action in the supreme court to enjoin any person from unlawfully subjecting a person with a developmental disability to physical, sexual, or emotional abuse, or active, passive or self neglect, or detaining a person with a developmental disability or providing inadequate, unskillful, cruel or unsafe care or supervision for such a person.

(d) (1) If, upon receiving a report that any adult thought to have a developmental disability has been subjected to physical, sexual, or emotional abuse, or active, passive or self neglect, and the commissioner has reason to believe that such adult is known by the commissioner to have received services from providers duly authorized by the commissioner and has been subjected to such abuse or neglect, the commissioner shall intervene pursuant to this section or, if such adult has not received services from said authorized providers, the commissioner shall, immediately or as soon as practicable, notify adult protective services established pursuant to section four hundred seventy-three of the social services law. The commissioner shall, within forty-eight hours, forward copies of reports made pursuant to this subdivision to the state commission of quality of care and advocacy for persons with disabilities and indicate if such report was referred to adult protective services.

(2) In order to carry out the provisions of this subdivision, the commissioner and commissioner of the office of children and family services shall develop a model memorandum of understanding which shall be entered into between each developmental disability services office and each local department of social services within its jurisdiction. Such agreement shall define the responsibilities of each developmental disability services office and social services district with respect to reports pursuant to paragraph one of this subdivision and reasonable time frames for implementing such responsibilities. Such agreement entered into in accord with such memorandum of understanding shall be finalized between all developmental disability services offices and all local departments of social services no later than ninety days after the effective date of this subdivision. A developmental disabilities

services office shall be deemed a provider of services for the purposes of access to adult protective records under section four hundred seventy-three-e of the social services law.

(e) The commissioner shall promulgate rules and regulations requiring that when the office or a provider licensed, certified or operated by the office conducts an investigation regarding potential abuse, maltreatment or neglect of a person receiving services, any affected employee or volunteer shall be provided a copy of regulations and procedures governing such investigations and, in writing, notify the employee or volunteer subject of the investigation of the right and procedures for obtaining and responding to any report filed by the provider with the office in accordance with this section.

§ 16.21 Injunctions.

(a) The supreme court may, on application of the commissioner, enjoin violations or threatened violations of any provision of this article or violations of the regulations of the office established pursuant to this chapter. Upon request of the commissioner, the attorney general may maintain a proceeding in the supreme court in the name of the people of the state to enjoin any such violation, provided that notice of such violation or threatened violation and proposed referral to the attorney general has been given to the violator by mailing notice thereof to the last known address of the violator by registered mail. The court may, upon proof that such violation is one which may result in injury to any person, whether or not such person is a party to such action, grant a temporary restraining order upon such terms as may be just, pending the determination of the proceeding. No security on the part of the state shall be required.

(b) It shall be the duty of the attorney general upon the request of the commissioner to bring an action for an injunction against any person who violates, disobeys or disregards any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto; provided, however, that the commissioner shall furnish the attorney general with such material, evidentiary matter or proof as may be requested by the attorney general for the prosecution of such an action.

§ 16.23 Family care homes.

(a) Family care homes shall be subject to visitation and inspection of the office.

(b) Operation of a family care home shall be in accordance with an operating certificate issued pursuant to section 16.05 of this article, subject to the following additional requirements:

(1) Operating certificates for family care homes shall be issued only to natural persons, and corporations for profit shall not be formed under the business corporation law for any such purpose.

(2) Except as provided in paragraph three of this subdivision no family care homes shall be issued an operating certificate for the purpose of providing suitable care therein to more than six persons.

(3) Any provider of service providing family care to more than six persons on July first, nineteen hundred seventy-five shall be issued an operating certificate for a family care home effective April first, nineteen hundred seventy-seven, pursuant to the provisions of this section, provided that such person fulfills all requirements of this section except for the number of persons in care, and that such person agrees to provide family care to no more than ten persons on and after April first, nineteen hundred seventy-seven.

(c) The commissioner shall promulgate and distribute a caretaker's manual for the operation of family care homes.

(d) The office shall provide substitute caretakers to each family care home for a maximum of ten days per year, either directly or as a purchase of service.

(e) The commissioner shall establish a procedure, subject to the approval of the state comptroller, whereby payments may be made to operators of family care homes for one or more of the following needs of clients residing in such facilities, limited to two hundred ninety dollars per client per year and paid semi-annually in the manner specified by such procedures:

(1) Replacement of necessary clothing;

(2) Personal requirements and incidental needs of clients;

(3) Recreational and cultural activities of clients. Such payments may be made from monies appropriated to the office for this purpose. Such payments shall be audited by the office pursuant to an audit plan

approved by the comptroller.

*** § 16.25 Temporary operator.**

(a) For the purposes of this section:

(1) "Established operator" shall mean the provider of services that has been established and issued an operating certificate pursuant to this article.

(2) "Extraordinary financial assistance" shall mean state funds provided to, or requested by, a program for the express purpose of preventing the closure of the program that the commissioner finds provides essential and necessary services within the community.

(3) "Serious financial instability" shall include but not be limited to defaulting or violating material covenants of bond issues, missed mortgage payments, missed rent payments, a pattern of untimely payment of debts, failure to pay its employees or vendors, insufficient funds to meet the general operating expenses of the program, failure to maintain required debt service coverage ratios and/or, as applicable, factors that have triggered a written event of default notice to the office by the dormitory authority of the state of New York.

(4) "Office" shall mean the office for people with developmental disabilities.

(5) "Temporary operator" shall mean any provider of services that has been established and issued an operating certificate pursuant to this article or which is directly operated by the office, that:

a. agrees to provide services certified pursuant to this article on a temporary basis in the best interests of its individuals served by the program; and

b. has a history of compliance with applicable laws, rules, and regulations and a record of providing care of good quality, as determined by the commissioner; and

c. prior to appointment as temporary operator, develops a plan determined to be satisfactory by the commissioner to address the program's deficiencies.

(b) (1) In the event that: (i) the established operator is seeking extraordinary financial assistance; (ii) office collected data demonstrates that the established operator is experiencing serious financial instability issues; (iii) office collected data demonstrates that the established operator's board of directors or administration is unable or unwilling to ensure the proper operation of the program; or (iv) office collected data indicates there are conditions that seriously endanger or jeopardize continued access to necessary services within the community, the commissioner shall notify the established operator of his or her intention to appoint a temporary operator to assume sole responsibility for the provider of services' operations for a limited period of time. The appointment of a temporary operator shall be effectuated pursuant to this section, and shall be in addition to any other remedies provided by law.

(2) The established operator may at any time request the commissioner to appoint a temporary operator. Upon receiving such a request, the commissioner may, if he or she determines that such an action is necessary, enter into an agreement with the established operator for the appointment of a temporary operator to restore or maintain the provision of quality care to the individuals until the established operator can resume operations within the designated time period or other action is taken as described in section 16.17 of this article.

(c) (1) A temporary operator appointed pursuant to this section shall use his or her best efforts to implement the plan deemed satisfactory by the commissioner to correct or eliminate any deficiencies in the program and to promote the quality and accessibility of services in the community served by the provider of services.

(2) During the term of appointment, the temporary operator shall have the authority to direct the staff of the established operator as necessary to appropriately provide services for individuals. The temporary operator shall, during this period, provide services in such a manner as to promote safety and the quality and accessibility of services in the community served by the established operator until either the established operator can resume operations or until the office revokes the operating certificate for the services issued under this article.

(3) The established operator shall grant access to the temporary

operator to the established operator's accounts and records in order to address any deficiencies related to the program experiencing serious financial instability or an established operator requesting financial assistance in accordance with this section. The temporary operator shall approve any financial decision related to an established provider's day to day operations or the established provider's ability to provide services.

(4) The temporary operator shall not be required to file any bond. No security interest in any real or personal property comprising the established operator or contained within the established operator or in any fixture of the program, shall be impaired or diminished in priority by the temporary operator. Neither the temporary operator nor the office shall engage in any activity that constitutes a confiscation of property.

(d) The temporary operator shall be entitled to a reasonable fee, as determined by the commissioner and subject to the approval of the director of the division of the budget, and necessary expenses incurred while serving as a temporary operator. The temporary operator shall be liable only in its capacity as temporary operator for injury to person and property by reason of its operation of such program; no liability shall incur in the temporary operator's personal capacity, except for gross negligence and intentional acts.

(e) (1) The initial term of the appointment of the temporary operator shall not exceed ninety days. After ninety days, if the commissioner determines that termination of the temporary operator would cause significant deterioration of the quality of, or access to, care in the community or that reappointment is necessary to correct the deficiencies that required the appointment of the temporary operator, the commissioner may authorize an additional ninety-day term. However, such authorization shall include the commissioner's requirements for conclusion of the temporary operatorship to be satisfied within the additional term.

(2) Within fourteen days prior to the termination of each term of the appointment of the temporary operator, the temporary operator shall submit to the commissioner and to the established operator a report describing:

a. the actions taken during the appointment to address the identified program deficiencies, the resumption of program operations by the established operator, or the revocation of an operating certificate issued by the office;

b. objectives for the continuation of the temporary operatorship if necessary and a schedule for satisfaction of such objectives; and

c. if applicable, the recommended actions for the ongoing provision of services subsequent to the temporary operatorship.

(3) The term of the initial appointment and of any subsequent reappointment may be terminated prior to the expiration of the designated term, if the established operator and the commissioner agree on a plan of correction and the implementation of such plan.

(f) (1) The commissioner shall, upon making a determination of an intention to appoint a temporary operator pursuant to paragraph one of subdivision (b) of this section, cause the established operator to be notified of the intention by registered or certified mail addressed to the principal office of the established operator. Such notification shall include a detailed description of the findings underlying the intention to appoint a temporary operator, and the date and time of a required meeting with the commissioner and/or his or her designee within ten business days of the receipt of such notice. At such meeting, the established operator shall have the opportunity to review and discuss all relevant findings. At such meeting, the commissioner and the established operator shall attempt to develop a mutually satisfactory plan of correction and schedule for implementation. In such event, the commissioner shall notify the established operator that the commissioner will abstain from appointing a temporary operator contingent upon the established operator remediating the identified deficiencies within the agreed upon timeframe.

(2) Should the commissioner and the established operator be unable to establish a plan of correction pursuant to paragraph one of this subdivision, or should the established operator fail to respond to the commissioner's initial notification, there shall be an administrative hearing on the commissioner's determination to appoint a temporary operator to begin no later than thirty days from the date of the notice

to the established operator. Any such hearing shall be strictly limited to the issue of whether the determination of the commissioner to appoint a temporary operator is supported by substantial evidence. A copy of the decision shall be sent to the established operator.

(3) If the decision to appoint a temporary operator is upheld such temporary operator shall be appointed as soon as is practicable and shall provide services pursuant to the provisions of this section.

(g) Notwithstanding the appointment of a temporary operator, the established operator shall remain obligated for the continued provision of services. No provision contained in this section shall be deemed to relieve the established operator or any other person of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the established operator or any other person prior to the appointment of any temporary operator of the program hereunder; nor shall anything contained in this section be construed to suspend during the term of the appointment of the temporary operator of the program any obligation of the established operator or any other person for the maintenance and repair of the facility, provision of utility services, payment of taxes or other operating and maintenance expenses of the facility, nor of the established operator or any other person for the payment of mortgages or liens.

(h) Upon appointment of a temporary operator, the commissioner shall cause the temporary president of the senate, the speaker of the assembly, and the chairs of the senate mental health and developmental disabilities committee and the assembly mental health committee to be notified of such determination. Such notification shall include, but not be limited to, the name of the established operator, the name of the appointed temporary operator and a description of the reasons for such determination to the extent practicable under the circumstances and in the sole discretion of the commissioner.

* NB Repealed March 31, 2028

§ 16.27 Residential facilities; receivership.

(a) The operator of any facility may at any time request the office to take over the operation of such facility by the appointment of a receiver. Upon receiving such a request, the office may, if it deems

such action desirable, enter into an agreement with any such operators with respect to the appointment of a receiver to take charge of the facility under conditions as found acceptable by both parties. Receivership commenced in accordance with the provisions of this subdivision shall terminate at such time as may be provided in the receivership agreement, or one hundred twenty days after the receipt by either party of written notice that the other party wishes to terminate such receivership.

(b) (1) a. If the commissioner has reason to believe that it is necessary to protect the health, safety and welfare of the persons with developmental disabilities in a residential facility, at the time of temporary suspension of the operating certificate of such a facility or upon issuance of a notice of intention to revoke or suspend the operating certificate of such a facility pursuant to section 16.17 of this article, or at the time of any notice of disapproval of an application for issuance or renewal of such certificate pursuant to section 16.05 of this article, the commissioner may apply to the supreme court in the county where the facility is situated for an order to show cause why a receiver should not be appointed to take charge of the facility. The supreme court shall, upon the request of the commissioner, and upon determining that the notice was properly issued and that the health, safety and welfare of the persons with developmental disabilities would be served by the appointment of a receiver to operate the facility, appoint a receiver to commence operating the facility upon the effective date of the revocation, suspension, temporary suspension, denial or nonrenewal of the operating certificate of such facility.

b. The receiver should, where reasonably possible, be a voluntary association or not-for-profit corporation which holds a valid and current operating certificate for a residential facility pursuant to section 16.05 of this article (or which shall satisfactorily demonstrate its lawful qualifications for such operating certificate) with the approval of the commissioner, an employee of the office or other designee.

c. Such application for an order to show cause, shall contain proof by affidavit that the commissioner has temporarily suspended the facility's

operating certificate or has issued a notice of intention to revoke, suspend, or deny issuance or renewal of its operating certificate.

d. In the case of a temporary suspension of an operating certificate, a temporary receiver may be appointed and a temporary restraining order may be granted. If the commissioner demonstrates that, unless a temporary receiver is appointed and a temporary restraining order is granted before a hearing can be held, the health or safety of any person with developmental disabilities will be in imminent danger or that property necessary to the operation of the facility will be in imminent danger of removal or destruction, a temporary receivership and a temporary restraining order may be granted without notice. The temporary receivership and temporary restraining order shall be in effect pending a determination of the order to show cause.

e. The order to show cause why a receiver should not be appointed shall be returnable not less than five days after service is completed; provided, however, that in the case of an appointment of a temporary receiver without notice to the owner or operator pursuant to subparagraph d of this paragraph, the order to show cause shall be returnable no more than fourteen days from the appointment of a temporary receiver.

f. The order to show cause shall provide for personal service of a copy thereof and the papers on which it is based on the owner or owners of the real property on or in which the facility is located and on the facility operator. In the case of an appointment of a temporary receiver without notice to the owner or operator pursuant to subparagraph d of this paragraph, such order to show cause shall provide for personal service upon such owner and operator within thirty-six hours after the appointment of the temporary receiver. If any owner or operator cannot with due diligence be served personally within the county where the property is located and within the time fixed in such order, then service may be made on such person by posting a copy thereof in a conspicuous place within the facility in question, and by sending a copy thereof by certified mail, return receipt requested, to such operator at the last address registered by him with the department and such owner to

the address set forth in the last recorded deed with respect to such real property on or in which the facility is located. Service shall be deemed complete on filing proof of service thereof in the office of the county clerk, or the clerk of the city of New York, as the case may be.

(2) On the return of said order to show cause, determination shall have precedence over every other business of the court unless the court shall find that some other pending proceeding, having similar statutory precedence, shall have priority. The court may conduct a hearing at which all interested parties shall have the opportunity to present evidence pertaining to whether the health, safety and welfare of the residents with developmental disabilities will be served by the appointment of a receiver to operate the facility. If the court shall find that the facts warrant the granting thereof, then any such qualified and approved agency, person or corporation, the commissioner, or any person designated by the commissioner, shall be appointed receiver to take charge and assume operation of the facility, and the court shall determine a fair monthly rental for the facility consistent with its usage as such facility, taking into account all relevant factors, including the condition of such facility, which amount shall, except in the case where the receiver is assuming an existing bona fide arm's length lease, not exceed the amount which would be reimbursable to the facility under the medical assistance program for real property costs if each resident in the facility were a recipient of medical assistance. Such rental shall be paid by the receiver to the owner or owners of the facility for each month that the receivership remains in effect, provided, however, that nothing contained herein shall be construed to alter and diminish any rental obligation the operator may have under any currently valid lease.

(3) Any receiver appointed pursuant to this subdivision shall have all of the powers and duties of a receiver appointed in an action to foreclose a mortgage on real property, together with such additional powers and duties as are herein granted and imposed. The receiver shall with all reasonable speed, but in any case, within eighteen months after the date on which the receivership was ordered to provide for the orderly transfer of all persons with developmental disabilities in the facility to other facilities or make other provisions for their continued safety and care. During the interim period when such persons

with developmental disabilities must remain in the facility, the receiver may correct or eliminate those deficiencies in the facility that seriously endanger the life, health or safety of such persons with developmental disabilities provided that such correction or elimination of deficiencies does not include major alterations of the physical structure of the facility. The receiver shall, during this period operate the facility in such a manner as to guarantee safety and adequate care for such persons with developmental disabilities. The receiver shall have the power to let contracts therefor or incur expenses in accordance with the provisions of local laws, ordinances, rules and regulations applicable to contracts for public works except that advertisement shall not be required for each such contract. Notwithstanding any such laws, ordinances, rules or regulations, the receiver may let contracts or incur expenses for individual items of repairs, improvements or supplies without the procurement of competitive bids where the total amount of any such individual item does not exceed five thousand dollars. Any receiver who is an official or employee of the state of New York shall not be required to file any bond. The receiver shall collect incoming payments from all sources and apply them to the costs incurred in the performance of the receiver's functions. The receiver shall honor all existing leases, mortgages and chattel mortgages that had previously been undertaken as obligations of the owners or operators of the facility. However, such receiver may make application to the appointing court for rescission, reformation or such other relief as may be appropriate with respect to the executory covenants or provisions of any contractual obligations of such owners or operators as may be necessary or appropriate to protect the best interests of the persons with developmental disabilities residing within such facility. No security interest in any real or personal property comprising the facility or contained within the facility, or in any fixture of the facility, shall be impaired or diminished in priority by the receiver. The receiver shall compensate the owner or owners of any goods held in inventory for those goods which he uses or causes to be used by reimbursing the costs of such goods, except that no such compensation shall be made for any such goods for which the owners or operators of the facility have already been reimbursed. Neither the receiver nor the office shall engage in any activity that constitutes a

confiscation of property without the payment of fair compensation.

(4) The appointing court, upon application of the receiver, may make such provision as justice may require for a reasonable compensation and reimbursement of the reasonable expenses of such receiver. The receiver shall be liable only in the receiver's official capacity for injury to person and property by reason of conditions of the facility in a case where an owner would have been liable; provided that the receiver operates such facility in compliance with the terms of the appointment the receiver shall not have any liability in a personal capacity, except for gross negligence and intentional acts.

(5) a. The court shall terminate the receivership only under any of the following circumstances:

(i) eighteen months after the date on which it was ordered;

(ii) when the office grants the facility a new operating certificate, whether the structure of the facility or the land on which it is located shall be under the same or different ownership; or

(iii) at such time as all of the persons with developmental disabilities in the facility have been provided alternative residential services.

b. At the time of termination, the receiver shall render a full and complete accounting to the court and shall make disposition of surplus money at the direction of the court.

(6) a. Any person who is served a copy of an order of the court appointing the receiver shall, upon being notified of the name and address of the receiver, make all payments for goods supplied by the facility, or services rendered by the facility, to the receiver. A receipt shall be given for each such payment, and copies of all such receipts shall be kept on file by the receiver. The amount so received shall be deposited by the receiver in a special account which shall also be used for all disbursements made by the receiver.

b. Any person refusing or omitting to make such a payment after such service and notice may be sued therefor by the receiver. Such person shall not in such suit dispute the authority of the receiver to incur or order such expenses, or the right of the receiver to have such payments made to him. The receipt of the receiver for any sum paid to him shall,

in all suits and proceedings and for every purpose, be as effectual in favor of any person holding the same as actual payment of the amount thereof to the owner or other person or persons who would, but for the provisions of this subdivision, have been entitled to receive the sum to be paid. No person with developmental disabilities shall be discharged, nor shall any contract or rights be forfeited or impaired, nor any forfeiture or liability be incurred, by reason of any omission to pay any owner, contractor or other person any sum so paid to the receiver.

(7) Any other provision of this chapter notwithstanding, the office may, if it deems appropriate, grant to any facility operating or scheduled to operate under a receivership authorized by this subdivision an operating certificate the duration of which shall be limited to the duration of the receivership.

(8) (i) No provision contained herein shall be deemed to relieve the owner or operator of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner or operator prior to the appointment of any receiver hereunder, nor shall anything contained herein be construed to suspend during the receivership any obligation of the owner or operator for the payment of taxes or other operating and maintenance expenses of the facility nor of the owner or any other person for the payment of mortgages or liens.

(ii) The receiver shall not be responsible for any obligations incurred by the owner, operator or prime lessor, if any, prior to the appointment of the receiver.

(iii) The receiver shall be entitled to use for operating and maintenance expenses and the basic needs of the residents of the facility a portion of the revenues due the operator during the month in which the receiver is appointed which portion shall be established on the basis of the amounts of the unpaid operating and maintenance expenses for such month.

(iv) Any sums determined to be due and owing by the receiver to the owner, operator or prime lessor shall be off-set by any charges determined to be the obligations of the owner, operator or prime lessor.

(c) (1) Subject to paragraph two of this subdivision, and subject to the approval of the director of the budget, the commissioner is authorized to make payments to receivers appointed pursuant to the provisions of subdivision (b) of this section, only if the receiver

demonstrates to the satisfaction of the commissioner that the facility's funds which are available are insufficient to meet operating and maintenance expenses of the facility and the basic needs of the residents of the facility.

(2) Notwithstanding any inconsistent provisions of law, payments made pursuant to this section shall be made from funds appropriated therefor and such payments shall be made only if a certificate of allocation and a schedule of amounts to be available therefor shall have been issued by the director of the budget and a copy of such certificate filed with the comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

(d) This section shall apply only to the facilities under the jurisdiction of the office for people with developmental disabilities. Reference to the commissioner in this section shall mean the commissioner of developmental disabilities.

§ 16.29 Abuse, neglect, and significant incidents involving vulnerable persons.

(a) The commissioner, in consultation with the executive director of the justice center for the protection of people with special needs, shall promulgate regulations establishing standards for the protection of service recipients in the care of facilities and provider agencies operated, licensed or certified by the office from reportable incidents pursuant to article eleven of the social services law, including procedures for:

(1) consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law, assisting the justice center for the protection of people with special needs with its review and evaluation of criminal background checks of prospective employees, as set forth in subdivision five of section five hundred fifty-three of the executive law;

(2) establishing minimal experiential and educational qualifications

for employees that are consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law;

(3) assuring adequate and appropriate supervision of employees, volunteers and consultants;

(4) demonstrating that appropriate action is taken to assure the safety of a service recipient as well as other persons in care, immediately upon notification that a reportable incident has been made in accordance with article eleven of the social services law;

(4-a) consistent with applicable collective bargaining agreements, assuring that an individual who has committed a category one offense, as defined in paragraph (a) of subdivision four of section four hundred ninety-three of the social services law, that is included on the vulnerable persons' central register is not hired or otherwise used in any position in which such individual would have regular and substantial contact with a service recipient in any program operated, licensed or certified by the office;

(5) removing a service recipient when it is determined that there is a risk to such person if he or she continues to remain in a facility or service program; and

(6) taking appropriate preventive and remedial action, including legal action, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law. The commissioner shall adopt standards as established by the justice center for the protection of people with special needs, that:

(i) administrators, employees, volunteers and consultants receive training in at least the following: abuse prevention and identification, safety and security procedures, the principles of child development, the characteristics of persons in care and techniques of group management including crisis intervention, the laws, regulations and procedures governing the protection of vulnerable persons from reportable incidents, and other appropriate topics provided, however, that the office may exempt administrators and consultants from such requirements upon demonstration of substantially equivalent knowledge or experience; and

(ii) service recipients receive instruction consistent with their age, needs and circumstances as well as the needs and circumstances within the facility or program, in techniques and procedures which will enable

them to advocate and protect themselves from reportable incidents.

The commissioner, in consultation with the executive director of the justice center for the protection of people with special needs, shall take all reasonable and necessary actions to assure that employees, volunteers and consultants in facilities operated or overseen by the office are kept apprised on a current basis of all policies and procedures of the office relating to the protection of vulnerable persons, and shall monitor and supervise the provision of training to such administrators, employees, volunteers, children and consultants. Standards developed pursuant to this subdivision shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes.

(b) The commissioner shall provide necessary assistance to the justice center for the protection of people with special needs in the conduct of investigations pursuant to article eleven of the executive law, shall consider its recommendations for appropriate preventive and remedial action including legal actions, and shall provide or direct a residential facility licensed or operated by the office for people with developmental disabilities to provide written reports thereon to the justice center as to the implementation of plans of prevention and remediation approved by such office.

(c) The commissioner shall provide for the development and implementation of a plan of prevention and remediation with respect to a substantiated report of a reportable incident. Such action shall include:

(i) within ten days of receipt of a substantiated report of a reportable incident, development and implementation of a plan of prevention and remediation to be taken to assure the continued health, safety and welfare of service recipients and to provide for the prevention of future acts of reportable incidents; and

(ii) development and implementation of a plan of prevention and remediation, in the event an investigation of a report of an alleged reportable incident exists and such reportable incident may be attributed in whole or in part to noncompliance by the facility or provider of services with the provisions of this chapter or regulations of the office applicable to the operation of such facility or provider

of services. Any plan of prevention and remediation required to be developed pursuant to this subdivision by a facility supervised by the office shall be submitted to and approved by such office in accordance with time limits established by regulations of such office.

Implementation of the plan shall be monitored by such office. In reviewing the continued qualifications of a residential facility or provider of services or program for an operating certificate, the office shall evaluate such facility's or provider of service's compliance with plans of prevention and remediation developed and implemented pursuant to this subdivision.

§ 16.31 Monthly personal allowances.

(a) All persons residing in facilities for which an operating certificate is required pursuant to this article shall be entitled to an exemption from income as a personal needs allowance in the following amounts:

1. For persons residing in family care, community residences or schools for persons with developmental disabilities, the amount specified in subdivision one of section one hundred thirty-one-o of the social services law.

2. For persons residing in intermediate care facilities, the amounts set forth in subparagraph ten of paragraph a of subdivision two of section three hundred sixty-six of the social services law.

(b) Any person residing in a facility for which an operating certificate is required pursuant to this article who has no income, or who has otherwise non-exempt income in an amount less than the appropriate amount pursuant to subdivision (a) of this section, shall be eligible for a state payment in an amount equal to subdivision (a) of this section less the amount of the person's otherwise non-exempt income.

§ 16.32 Improper expenditure of moneys.

(a) No provider of services certified pursuant to this article shall

make any charitable contribution of any state moneys, medical assistance payments or social security or supplemental security income or any interest or other income earned thereon, except as authorized by the commissioner. Provided, however, the provisions of this section shall not apply to receipts or donations from private or non-governmental sources and any interest or other income earned thereon.

(b) No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by a not-for-profit corporation which is certified as a provider of services pursuant to this article to its employee who receives an annual salary in excess of thirty thousand dollars, or to any other corporation, firm, association or other entity in which such employee is a director or officer or employee or holds a direct or indirect substantial financial interest, except a loan by one corporation incorporated as a charitable corporation as defined in paragraph (a) of section one hundred two (Definitions) of the not-for-profit corporation law to another charitable corporation, or a loan for a temporary or emergency purpose which will further the health and welfare of the employee so long as the purpose and amount of such loan are disclosed to and approved by the board of directors of such agency. Such disclosure shall be filed with the secretary of the corporation and entered in the minutes of the meeting, and, if approved by such board, such disclosure shall also be forwarded in writing to the commissioner and to the director of community services of each local governmental unit that has, at the time of such disclosure, a contract with such corporation for the rendition of services pursuant to article forty-one of this chapter. A loan made in violation of this section shall be a violation of the duty to the not-for-profit corporation of the directors or officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

(c) (1) No contract or other transaction between a not-for-profit corporation which is certified as a provider of services pursuant to this article and one or more of its employees who receive an annual salary in excess of thirty thousand dollars, or between a not-for-profit corporation and any other corporation, firm, association or other entity in which one or more of such persons are directors or officers of the

board or corporation, or employee who receives an annual salary in excess of thirty thousand dollars, or have an indirect or direct substantial financial interest, shall be either void or voidable for this reason alone:

a. If the material facts as to such person's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the board or committee, and the board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote or votes of such interested person; or

b. If the material facts as to such person's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the members entitled to vote thereon, if any, and such contract or transaction is authorized by vote of such members.

(2) If such good faith disclosure of the material facts as to the person's interest in the contract or transaction and as to any such common directorship, officership or financial interest, is made to the directors or members, or known to the board or committee or members authorizing such contract or transaction, as provided in paragraph one of this subdivision, the contract or transaction may not be voided by the corporation for the reasons set forth in paragraph one of this subdivision. If there was no such disclosure or knowledge the corporation may void the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the corporation at the time it was authorized by the board, a committee or the members.

§ 16.33 Review of criminal history information concerning certain prospective employees.

(a) Every provider of services who contracts with or is approved or otherwise authorized by the office to provide services, except (1) a department facility, (2) a hospital as defined in article twenty-eight of the public health law, or (3) a licensed professional under title

eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, and every applicant to be such a provider of services except (i) a department facility, (ii) a hospital as defined in article twenty-eight of the public health law, or (iii) a licensed professional under title eight of the education law and who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, shall request that the justice center for the protection of people with special needs check, and upon such request such justice center shall request and shall be authorized to receive from the division of criminal justice services criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, concerning each (A) prospective operator, employee or volunteer of such provider who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, or (B) other person over the age of eighteen who is to reside in a family care home, except any person receiving family care services, who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider. For purposes of this section, "operator" shall include any natural person with an ownership interest in the provider of services.

(b) Access to and the use of such information shall be governed by the provisions of section eight hundred forty-five-b of the executive law.

§ 16.34 Certain information regarding persons working with people with developmental disabilities.

(a) Upon a request to the justice center for criminal history information for a prospective employee or volunteer pursuant to section eight hundred forty-five-b of the executive law, the justice center shall notify the office, and if the office has available, after a reasonably diligent search a substantiated report that the prospective employee or volunteer engaged in behavior that constituted abuse or serious neglect of a patient or consumer in a program licensed, operated, or certified by the office, the office shall cause to be

furnished a summary of such report or reports to the provider that requested the criminal history information from the justice center with respect to such prospective employee or volunteer; provided, however, summary reports provided shall be limited to substantiated reports based on investigations that commenced prior to the effective date of this section. Such summary report shall be provided to the authorized person as defined in paragraph (b) of subdivision one of section eight hundred forty-five-b of the executive law and at that same time the office shall furnish such documents to the prospective employee or volunteer at the address for such person listed on the request.

(b) The summary report provided by the office to a provider of services pursuant to subdivision (a) of this section shall be received by the provider subject to the confidentiality provisions of subdivision seven of section eight hundred forty-five-b of the executive law.

(c) For the purposes of this section the following terms shall have the following meanings:

1. "abuse" shall mean physical abuse, sexual abuse, or psychological abuse; and

2. "serious neglect" shall mean intentional acts or omissions that endanger the life or health of a person receiving services.

3. "substantiated report" shall mean that, after investigation, the commission on quality care and advocacy for persons with disabilities or the office has determined, in writing, that a report filed by such commission, by the office, or by a provider certified by the office, meets the criteria of abuse or serious neglect, as defined in this section, of a patient or consumer in a program licensed, operated, or certified by the office and that the report and credible information submitted support the relevant allegations in the report or shall mean that the prospective employee or volunteer was either found guilty in a disciplinary proceeding, or there was a settlement agreement in which the prospective employee or volunteer admitted guilt.

(d) Nothing in this section shall be interpreted to limit the office's ability to investigate abuse, neglect or maltreatment, whether intentional or unintentional, under current law or regulations.

§ 16.35 Developmental disabilities services quality improvement demonstration program.

(a) For purposes of this section "facility" means any not-for-profit or public agency regulated by the office that provides services funded in whole or in part by the state.

(b) Notwithstanding any law, rule or regulation to the contrary, the commissioner shall, within amounts appropriated, including federal financial participation if available, establish a demonstration program to improve the quality of care for facility clients through the increase or improvement of direct care staff at such facilities. In furtherance of such demonstration program for facilities selected through a competitive process, rates of payment or state aid shall be adjusted accordingly. Requests for proposals for eligible projects shall be issued by the commissioner.

(c) Such eligible projects shall be designated by the commissioner and may include:

(1) an increase in direct care staff, either facility wide or targeted at a particular area of care or shift;

(2) increased training and education of direct care staff, including allowing direct care staff to increase their level of licensure or certification relevant to facility care;

(3) efforts to decrease staff turn-over through wage, employee benefit improvements, or other means; and

(4) other efforts related to the recruitment and retention of direct care staff that will effect the quality of care at such facility.

(d) The commissioner shall consider, in selecting projects, the likelihood that such project will improve the care for the residents of the facility, the financial need of the facility and such other matters as the commissioner deems appropriate.

(e) Adjustments to rates of payment or state aid made pursuant to this section shall be subject to available appropriations and shall not, in aggregate, exceed five million dollars annually. The program shall commence on April first, two thousand seven and end on March thirty-first, two thousand ten.

(f) On or before June thirtieth, two thousand ten, the commissioner

shall contract with an independent consultant to evaluate and report to the commissioner, the speaker of the assembly and the temporary president of the senate on the impact that the demonstration project has had upon direct care staff recruitment, retention and quality of services provided.

§ 16.37 Autism spectrum disorder booklet; first responders.

The commissioner, in consultation with other appropriate agency representatives, shall prepare for publication and cause to be distributed to first responders, including emergency medical services personnel, firefighters and police officers, a booklet containing information on recognizing the behavioral symptoms and characteristics of children and adults with autism spectrum disorders. Such booklet also shall contain information on additional resources and any other information deemed necessary and appropriate by the commissioner.

TITLE D

ALCOHOLISM AND SUBSTANCE ABUSE ACT

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22 Chemical dependence programs, treatment facilities, and services.

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ARTICLE 19

OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE

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§ 19.01 Declaration of policy.

The legislature declares the following:

Alcoholism, substance abuse and chemical dependence pose major health and social problems for individuals and their families when left untreated, including family devastation, homelessness, and unemployment. It has been proven that successful prevention and treatment can dramatically reduce costs to the health care, criminal justice and social welfare systems.

The tragic, cumulative and often fatal consequences of alcoholism and substance abuse are, however, preventable and treatable disabilities that require a coordinated and multi-faceted network of services.

The legislature recognizes locally planned and implemented prevention as a primary means to avert the onset of alcoholism and substance abuse. It is the policy of the state to promote comprehensive, age appropriate education for children and youth and stimulate public awareness of the risks associated with alcoholism and substance abuse. Further, the legislature acknowledges the need for a coordinated state policy for the establishment of prevention and treatment programs designed to address the problems of chemical dependency among youth, including prevention and intervention efforts in school and community-based programs designed to identify and refer high risk youth in need of chemical dependency services.

Substantial benefits can be gained through alcoholism and substance abuse treatment for both addicted individuals and their families. Positive treatment outcomes that may be generated through a complete continuum of care offer a cost effective and comprehensive approach to rehabilitating such individuals. The primary goals of the rehabilitation and recovery process are to restore social, family, lifestyle,

vocational and economic supports by stabilizing an individual's physical and psychological functioning. The legislature recognizes the importance of varying treatment approaches and levels of care designed to meet each client's needs. Relapse prevention and aftercare are two primary components of treatment that serve to promote and maintain recovery.

The legislature recognizes that the distinct treatment needs of special populations, including women and women with children, persons with HIV infection, persons diagnosed with mental illness, persons who abuse chemicals, the homeless and veterans with posttraumatic stress disorder, merit particular attention. It is the intent of the legislature to promote effective interventions for such populations in need of particular attention. The legislature also recognizes the importance of family support for individuals in alcohol or substance abuse treatment and recovery. Such family participation can provide lasting support to the recovering individual to prevent relapse and maintain recovery. The intergenerational cycle of chemical dependency within families can be intercepted through appropriate interventions.

The state of New York and its local governments have a responsibility in coordinating the delivery of alcoholism and substance abuse services, through the entire network of service providers. To accomplish these objectives, the legislature declares that the establishment of a single, unified office of alcoholism and substance abuse services will provide an integrated framework to plan, oversee and regulate the state's prevention and treatment network. In recognition of the growing trends and incidence of chemical dependency, this consolidation allows the state to respond to the changing profile of chemical dependency. The legislature recognizes that some distinctions exist between the alcoholism and substance abuse field and where appropriate, those distinctions may be preserved. Accordingly, it is the intent of the state to establish one office of alcoholism and substance abuse services in furtherance of a comprehensive service delivery system.

§ 19.03 Definitions. As used in this title:

1. "Office" means the office of alcoholism and substance abuse services.

2. "Commissioner" means the commissioner of the office of alcoholism and substance abuse services.

§ 19.06 Advisory council on underage alcohol consumption and youth substance abuse.

1. Definitions. As used in this section:

(a) "Council" shall mean the advisory council on underage alcohol consumption and youth substance abuse created by this section.

(b) "Chairperson" shall mean the chairperson of the advisory council on underage alcohol consumption and youth substance abuse.

2. Advisory council on underage alcohol consumption and youth substance abuse. There is hereby created an advisory council on underage alcohol consumption and youth substance abuse. The council shall consist of twenty-one members, who are broadly representative of the various groups in society which are stakeholders in the effort to combat underage alcohol consumption and youth substance abuse. Seven members shall be appointed by the governor, seven members by the temporary president of the senate and seven members by the speaker of the assembly. In making such appointments, due consideration shall be given to the recommendations made by representative civic, educational, legal and advocacy groups and associations concerned with, or otherwise engaged in, the representation of the interests of the youth of New York state. The commissioner, the chairman of the state liquor authority, the commissioner of mental health, the attorney general, the temporary president of the senate and the speaker of the assembly shall be ex-officio members of the council.

3. Term of office for council members. (a) The term of office for each member of the council shall be two years. Vacancies in the council occurring, other than by expiration of a term, shall be filled for the

remainder of the unexpired term in the same manner as original appointments.

(b) At the beginning of each two year term, the members of the council shall choose one member of the council to be a chairperson and one member to be vice-chairperson. The members of the council shall receive no compensation for their services, but shall be reimbursed for all expenses actually and necessarily incurred by them in the performance of their duties under this section within the amount made available by appropriation therefor.

4. Powers and duties of the council. The council shall have the following powers and duties:

(a) To receive information with respect to, and to study and analyze, incidents of underage consumption of alcoholic beverages, youth substance abuse, and to examine the elements of such incidents to identify those factors that are consistently associated with such behavior;

(b) To identify and analyze the responses to underage drinking and youth substance abuse made by governmental officials, including law enforcement officials and prosecutors, and to make recommendations as to whether such responses appear to be achieving decreases in the incidence of such behavior, and if not, whether it appears that a change is required in policies and procedures;

(c) To conduct public hearings as may be necessary to carry out its functions under this section;

(d) To make recommendations with respect to the following:

(i) educational programs to teach children the dangers of underage drinking and youth substance abuse;

(ii) training programs for law enforcement officials and prosecutors to sensitize them to the special nature of youth-related crime to encourage them to develop appropriate responses;

(iii) the appropriateness and effectiveness of existing civil and criminal laws in redressing underage drinking and youth substance abuse and any changes that should be made in such laws; and

(iv) such other matters as may be deemed appropriate by the council after consultation with involved parties;

(e) To promulgate any necessary rules of order or procedures relating

to the administration and performance of the powers and duties of the council pursuant to this section; and

(f) To perform all other tasks necessary and convenient to carry out the functions, powers and duties of the council and to effectuate the purposes of this section.

5. Report. The council shall submit a written report to the governor, temporary president of the senate and the speaker of the assembly by no later than October first of the year next succeeding the effective date of this section and annually thereafter, setting forth the recommendations and activities of the council on matters within the scope of its powers and duties as set forth in this section.

§ 19.07 Office of alcoholism and substance abuse services; scope of responsibilities.

(a) The office of alcoholism and substance abuse services is charged with the responsibility for assuring the development of comprehensive plans, programs, and services in the areas of research, prevention, care, treatment, rehabilitation, including relapse prevention and recovery maintenance, education, and training of persons who abuse or are dependent on alcohol and/or substances and their families. Such plans, programs, and services shall be developed with the cooperation of the office, the other offices of the department where appropriate, local governments, consumers and community organizations and entities. The office shall provide appropriate facilities and shall encourage the provision of facilities by local government and community organizations and entities. The office is also responsible for developing plans, programs and services related to compulsive gambling education, prevention and treatment consistent with section 41.57 of this chapter.

(b) The office of alcoholism and substance abuse services shall advise and assist the governor in improving services and developing policies designed to meet the needs of persons who suffer from an addictive disorder and their families, and to encourage their rehabilitation, maintenance of recovery, and functioning in society.

(c) The office of addiction services and supports shall have the responsibility for seeing that persons who suffer from a substance use

disorder and their families are provided with addiction services, care and treatment, and that such services, care, treatment and rehabilitation is of high quality and effectiveness, and that the personal and civil rights of persons seeking and receiving addiction services, care, treatment and rehabilitation are adequately protected, including that patients have the right to access services based on their gender identity, gender expression and/or sexual orientation. For the purposes of this subdivision, gender identity or gender expression means a person's actual or perceived gender related identity, appearance, behavior, expression, or other gender related characteristic regardless of the sex assigned to that person at birth.

(d) The office of alcoholism and substance abuse services shall foster programs for the training and development of persons capable of providing the foregoing services, including but not limited to a process of issuing, either directly or through contract, credentials for alcoholism and substance abuse counselors or gambling addiction counselors in accordance with the following:

(1) The office shall establish minimum qualifications for counselors in all phases of delivery of services to persons and their families who are suffering from alcohol and/or substance abuse and/or chemical dependence and/or compulsive gambling that shall include, but not be limited to, completion of approved courses of study or equivalent on-the-job experience in alcoholism and substance abuse counseling and/or counseling of compulsive gambling. Such approved courses of study or equivalent on-the-job experience shall include: providing trauma-informed, patient-centered care; referring individuals to appropriate treatments for co-occurring disorders; and sensitivity training. Such courses shall be updated as needed to reflect evolving best practices in harm reduction, treatment and long-term recovery. For the purposes of this paragraph, sensitivity training shall mean a form of training with the goal of making people more aware of their own prejudices and more sensitive to others.

(i) The office shall establish procedures for issuing, directly or through contract, credentials to counselors who meet minimum qualifications, including the establishment of appropriate fees, and shall further establish procedures to suspend, revoke, or annul such credentials for good cause. Such procedures shall be promulgated by the

commissioner by rule or regulation.

(ii) The commissioner shall establish a credentialing board which shall provide advice concerning the credentialing process.

(2) The establishment, with the advice of the advisory council on alcoholism and substance abuse services, of minimum qualifications for counselors in all phases of delivery of services to those suffering from alcoholism, substance and/or chemical abuse and/or dependence and/or compulsive gambling and their families that shall include, but not be limited to, completion of approved courses of study or equivalent on-the-job experience in counseling for alcoholism, substance and/or chemical abuse and/or dependence and/or compulsive gambling, and issue credentials to counselors who meet minimum qualifications and suspend, revoke, or annul such credentials for good cause in accordance with procedures promulgated by the commissioner by rule or regulation.

(3) For the purpose of this title, the term "credentialed alcoholism and substance abuse counselor" or "C.A.S.A.C." means an official designation identifying an individual as one who holds a currently registered and valid credential issued by the office of alcoholism and substance abuse services pursuant to this section which documents an individual's qualifications to provide alcoholism and substance abuse counseling. The term "gambling addiction counselor" means an official designation identifying an individual as one who holds a currently registered and valid credential issued by the office of alcoholism and substance abuse services pursuant to this section which documents an individual's qualifications to provide compulsive gambling counseling.

(i) No person shall use the title credentialed alcoholism and substance abuse counselor or "C.A.S.A.C." or gambling addiction counselor unless authorized pursuant to this title.

(ii) Failure to comply with the requirements of this section shall constitute a violation as defined in the penal law.

(4) All persons holding previously issued and valid alcoholism or substance abuse counselor credentials on the effective date of amendments to this section shall be deemed C.A.S.A.C. designated.

(e) Consistent with the requirements of subdivision (b) of section 5.05 of this chapter, the office shall carry out the provisions of article thirty-two of this chapter as such article pertains to regulation and quality control of chemical dependence services,

including but not limited to the establishment of standards for determining the necessity and appropriateness of care and services provided by chemical dependence providers of services. In implementing this subdivision, the commissioner, in consultation with the commissioner of health, shall adopt standards including necessary rules and regulations including but not limited to those for determining the necessity or appropriate level of admission, controlling the length of stay and the provision of services, and establishing the methods and procedures for making such determination.

(f) The office of alcoholism and substance abuse services shall develop a list of all agencies throughout the state which are currently certified by the office and are capable of and available to provide evaluations in accordance with section sixty-five-b of the alcoholic beverage control law so as to determine need for treatment pursuant to such section and to assure the availability of such evaluation services by a certified agency within a reasonable distance of every court of a local jurisdiction in the state. Such list shall be updated on a regular basis and shall be made available to every supreme court law library in this state, or, if no supreme court law library is available in a certain county, to the county court library of such county.

(g) The office of alcoholism and substance abuse services shall develop and maintain a list of the names and locations of all licensed agencies and alcohol and substance abuse professionals, as defined in paragraphs (a) and (b) of subdivision one of section eleven hundred ninety-eight-a of the vehicle and traffic law, throughout the state which are capable of and available to provide an assessment of, and treatment for, alcohol and substance abuse and dependency. Such list shall be provided to the chief administrator of the office of court administration and the commissioner of motor vehicles. Persons who may be aggrieved by an agency decision regarding inclusion on the list may request an administrative appeal in accordance with rules and regulations of the office.

(h) The office of addiction services and supports shall monitor programs providing care and treatment to incarcerated individuals in correctional facilities operated by the department of corrections and community supervision who have a history of alcohol or substance use disorder or dependence. The office shall also develop guidelines for the

operation of alcohol and substance use disorder treatment programs in such correctional facilities, based on best practices, and tailored to the nature of the individual's substance use, history of past treatment, and history of mental illness or trauma, which may include harm reduction strategies, in order to ensure that such programs sufficiently meet the needs of incarcerated individuals with a history of alcohol or substance use disorder or dependence and promote the successful transition to treatment in the community upon release. No later than the first day of December of each year, the office shall submit a report regarding: (1) the adequacy and effectiveness of alcohol and substance use disorder treatment programs operated by the department of corrections and community supervision; (2) the total number of incarcerated individuals in correctional facilities that have been screened for, and determined to have, a substance use disorder; (3) information regarding which substances incarcerated individuals are most dependent upon and the available treatment for such individuals within each correctional facility; (4) the total number of individuals who participate in each of the treatment programs operated by the department of corrections and community supervision; and (5) the total number of individuals who participated in a substance use disorder treatment program but failed to complete such program, as well as whether such failure to complete the program was a result of disciplinary action taken by the facility against the individual for instances unrelated to their participation in the treatment program. The department of corrections and community supervision shall provide the office with information needed to complete this report. Such report shall be sent to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate committee on crime victims, crime and correction, and the chairman of the assembly committee on correction.

(i) The office of addiction services and supports shall periodically, in consultation with the state commissioner of veterans' services: (1) review the programs operated by the office to ensure that the needs of the state's veterans who served in the U.S. armed forces and who are recovering from alcohol and/or substance abuse are being met and to develop improvements to programs to meet such needs; and (2) in collaboration with the state commissioner of veterans' services and the

commissioner of the office of mental health, review and make recommendations to improve programs that provide treatment, rehabilitation, relapse prevention, and recovery services to veterans who have served in a combat theatre or combat zone of operations and have a co-occurring mental health and alcoholism or substance abuse disorder.

(j) The office, in consultation with the state education department, shall identify or develop materials on problem gambling among school-age youth which may be used by school districts and boards of cooperative educational services, at their option, to educate students on the dangers and consequences of problem gambling as they deem appropriate. Such materials shall be available on the internet website of the state education department. The internet website of the office shall provide a hyperlink to the internet page of the state education department that displays such materials.

(k) Heroin and opioid addiction awareness and education program. The commissioner, in cooperation with the commissioner of the department of health, shall develop and conduct a public awareness and educational campaign on heroin and opioid addiction. The campaign shall utilize public forums, social media and mass media, including, but not limited to, internet, radio, and print advertising such as billboards and posters and shall also include posting of materials and information on the office website. The campaign shall be tailored to educate youth, parents, healthcare professionals and the general public regarding: (1) the risks associated with the abuse and misuse of heroin and opioids; (2) how to recognize the signs of addiction; and (3) the resources available for those needing assistance with heroin or opioid addiction. The campaign shall further be designed to enhance awareness of the opioid overdose prevention program authorized pursuant to section thirty-three hundred nine of the public health law and the "Good Samaritan law" established pursuant to sections 220.03 and 220.78 of the penal law and section 390.40 of the criminal procedure law, and to reduce the stigma associated with addiction.

(l) The office of alcoholism and substance abuse services, in consultation with the state education department, shall develop or utilize existing educational materials to be provided to school districts and boards of cooperative educational services for use in

addition to or in conjunction with any drug and alcohol related curriculum regarding the misuse and abuse of alcohol, tobacco, prescription medication and other drugs with an increased focus on substances that are most prevalent among school aged youth as such term is defined in section eight hundred four of the education law. Such materials shall be age appropriate for school age children, and to the extent practicable, shall include information or resources for parents to identify the warning signs and address the risks of substance abuse.

(m) (1) The office shall report on the status and outcomes of initiatives created in response to the heroin and opioid epidemic to the temporary president of the senate, the speaker of the assembly, the chairs of the assembly and senate committees on alcoholism and drug abuse, the chair of the assembly ways and means committee and the chair of the senate finance committee.

(2) Such reports shall include, to the extent practicable and applicable, information on:

(i) The number of individuals enrolled in the initiative in the preceding quarter;

(ii) The number of individuals who completed the treatment program in the preceding quarter;

(iii) The number of individuals discharged from the treatment program in the preceding quarter;

(iv) The age and sex of the individuals served;

(v) Relevant regional data about the individuals;

(vi) The populations served; and

(vii) The outcomes and effectiveness of each initiative surveyed.

(3) Such initiatives shall include opioid treatment programs, crisis detoxification programs, 24/7 open access centers, adolescent club houses, family navigator programs, peer engagement specialists, recovery community and outreach centers, regional addiction resource centers and the state implementation of the federal opioid state targeted response initiatives.

(4) Such information shall be provided quarterly, beginning no later than July first, two thousand nineteen.

* (n) The office in consultation with the office of mental health, the department of health, the division of housing and community renewal and any other agency that may oversee an appropriate program or service

shall monitor and ensure funds appropriated pursuant to section ninety-nine-nn of the state finance law are expended for services and programs in accordance with such section.

* NB There are 2 sb (n)'s

* (n) The office of addiction services and supports, in consultation with the commissioner of health, shall provide and publish, in electronic or other format, training materials for health care providers, as defined by subdivision six of section two hundred thirty-eight of the public health law, and qualified health professionals, recognized by the office to enable the implementation of the screening, brief intervention, and referral to treatment program (SBIRT). Such training materials shall include any and all materials necessary to inform health care providers and qualified health professionals of the method for administering the SBIRT program to a patient in the care of health care providers or qualified health professionals. Such training materials shall be made available to health care providers and qualified health professionals through the official websites of the office and the department of health and by any other means deemed appropriate by the commissioner.

* NB There are 2 sb (n)'s

§ 19.09 Powers of the office and commissioner; how exercised.

(a) The commissioner shall exercise all powers vested in the office. He or she may delegate any function, power, or duty assigned to him or her or to the office of alcoholism and substance abuse services to a director of a facility operated by such office or to any other officer or employee of such office, unless otherwise provided by law.

(1) The commissioner may enter into agreements with the other commissioners of the department in order to ensure that programs and services are provided for all of the mentally disabled.

(2) Upon the request of a state agency, including but not limited to the department of corrections and community supervision, the office of probation and correctional alternatives, and the office of children and family services, the commissioner shall have the power to provide alcoholism, substance abuse, and chemical dependence services either directly or through agreements with local certified or approved

providers to persons in the custody or under the jurisdiction of the requesting agency within amounts available and within priorities established through the planning process.

(3) The commissioner may coordinate alcoholism, alcohol abuse, substance abuse, substance dependence and chemical dependence related activities in all departments of the state by convening at regular intervals a coordinating committee of representatives of the departments of health, corrections and community supervision, labor, economic development, education, and motor vehicles, and the office of temporary and disability assistance and any other department or agency having an interest therein.

(4) The commissioner shall meet on an ongoing basis with the representatives of the New York state conference of local mental hygiene directors to promote coordination and consistency of plans, rules, and regulations governing the planning and financing of the care, treatment, and rehabilitation of alcohol and substance abusers, to promote coordination with the other offices of the department, and to assist local governmental units in fulfilling their responsibilities pursuant to this chapter.

(b) The commissioner may adopt regulations necessary and proper to implement any matter under his or her jurisdiction. Proposed rules and regulations regarding chemical dependence services shall be submitted to the advisory council on alcoholism and substance abuse services for its advice, in accordance with this article, unless the commissioner finds that the public health, safety, or general welfare requires that such regulation be promulgated as an emergency rulemaking.

(c) In conducting any investigation, audit, financial review, inspection, or hearing, the commissioner may subpoena witnesses, compel their attendance, administer oaths to witnesses, examine witnesses under oath, and require the production of any books or papers deemed relevant to the investigation, inspection, or hearing. Subpoenas issued shall be regulated by the civil practice law and rules. The confidentiality of information obtained by the commissioner from patients' records shall be maintained in accordance with state and federal law.

(d) The commissioner shall survey and analyze the state's needs, and with the advice of the advisory council on alcoholism and substance abuse services, shall, in accordance with the requirements of section

5.07 and article twenty-five of this chapter, as it pertains to substance abuse services, and article forty-one of this chapter, as it pertains to alcoholism services, formulate a comprehensive plan for long range development, through utilization of a network of federal, state, local and private resources, of adequate services and facilities for the prevention and control of chemical abuse or dependence and from time to time revise such plan, ensuring that such plans have as part of their goal the delivery of services to the elderly and women and children, including pregnant women unless such programs have provided for the treatment of pregnant women through a transfer agreement with another provider.

(e) The commissioner shall execute the policies of the state concerning alcoholism and substance abuse services.

(1) In furtherance thereof, within the amounts made available by appropriation and with the approval of the division of the budget, the commissioner shall have the authority to make grants or enter into agreements with alcoholism or substance abuse programs, or other appropriate entities. Special emphasis shall be placed on those geographic areas with a high prevalence of alcoholism, alcohol abuse, substance abuse, substance dependence, or chemical dependence.

(2) The office shall be the authority, when designated by the governor, to supervise and administer financial or technical assistance as the designee under a state plan or as may be required by federal legislation making such assistance available for programs or activities in alcoholism, alcohol abuse, substance abuse, substance dependence, and chemical dependence, and other areas under its jurisdiction and control.

(f) The commissioner shall administer all state, local, private, and federal funds, excluding those provided under title XIX or XX of the federal social security act, made available to the state for the provision of alcoholism, substance abuse, or chemical dependence services subject to the approval of the director of the budget.

(g) The commissioner shall establish and operate chemical dependence programs, facilities, and services for the prevention, treatment, and rehabilitation, including relapse prevention and recovery maintenance, of persons who abuse or are dependent on alcohol and/or substances, and significant others not limited to the psychiatric model but embodying all recognized or promising approaches.

(h) The commissioner shall promulgate rules and regulations requiring the division of horse racing and pari-mutuel wagering and the division of gaming to provide for the posting of signs in facilities regulated by the division of horse racing and pari-mutuel wagering and facilities regulated by the division of gaming advising patrons where to get help in dealing with a compulsion to gamble. In addition, the information contained on such signs shall be posted on the internet at appropriate internet sites. Such signs and information posted on the internet shall include, but not be limited to, notice of the availability of one or more organizations, approved by the commissioner, that offer assistance in the prevention and treatment of compulsive gambling. Such signs, not less than eight and one-half inches by eleven inches, shall be posted in a prominent manner and within reasonable distance of each entrance and exit by the facility that conducts the gambling. Such signs shall be available at the division of gaming and the office of alcoholism and substance abuse services and shall be distributed by the division of gaming.

(i) (1) The office, in cooperation with the department of environmental conservation, shall post on the office website information which includes but is not limited to the required steps and guidelines for any municipality, pharmacy, local law enforcement agency, or community group to conduct a household pharmaceutical collection event.

(2) Pursuant to section 27-2703 of the environmental conservation law, as added by chapter six hundred twenty-five of the laws of two thousand eight, the commissioner, in consultation with the department may assist in the development of a public information program on the proper disposal of drugs and drug disposal sites. The office shall disseminate such information by any means deemed appropriate by the commissioner.

(j) (1) The commissioner, in consultation with the commissioner of health, shall create or utilize existing educational materials regarding the dangers of misuse and the potential for addiction to prescription controlled substances, treatment resources available, and the proper way to dispose of unused prescription controlled substances in accordance with paragraph two of this subdivision.

(i) Such materials shall be made available to pharmacies registered in the state, and shall be distributed at the time of dispensing with any prescribed drug that is a controlled substance. Information disseminated

pursuant to this paragraph may, at the option of the consumer, be distributed through electronic means.

(ii) Such materials shall also be posted on the website of the office of alcoholism and substance abuse services and of the department of health, and shall be provided in languages other than English as deemed appropriate by the commissioners, but shall include the ten most commonly spoken languages, aside from English, in the state.

(2) The educational materials required in paragraph one of this subdivision shall include the following:

(a) the risks of using or consuming such controlled substances;

(b) the physical, behavioral and advanced warning signs of addiction to such controlled substances;

(c) the HOPELINE telephone contract number (1-877-8-HOPE-NY) and text (HOPENY) for the HOPELINE operated by the office, or any number that succeeds the HOPELINE;

(d) the procedures for the safe disposal of unused controlled substances established pursuant to section thirty-three hundred forty-three-b of the public health law; and

(e) such other information as the commissioner shall determine to be necessary or informative relating to the use, consumption or abuse of, or addiction to controlled substances.

(3) A pharmacy may also provide additional information regarding the safe disposal of controlled substances, including but not limited to any disposal program that such pharmacy is operating or participating in outside of the programs under section thirty-three hundred forty-three-b of the public health law.

(k) The commissioner, in consultation with the New York state gaming commission, is authorized and directed to commission a statewide evaluation regarding the extent of gambling by New York state residents, including, but not limited to the lottery, horse racing, Native American casinos, internet gambling, sports betting, and poker. Such evaluation shall be delivered to the governor and legislature no later than December first, two thousand twenty-three. The evaluation shall be prepared by an independent entity and selected through a request for proposal process. Such evaluation shall include:

(1) the percentage of New York residents participating in each gambling activity by:

- (a) age;
- (b) race;
- (c) income;
- (d) education;
- (e) sex; and
- (f) any other demographic that would be relevant to the evaluation;

and

(2) an estimate of the amount of money being wagered and lost by New York residents in each gambling activity.

* (l)(1) The office, in consultation with the department of health, shall maintain on its website a publicly available directory of all distributors of opioid antagonists to the public, including but not limited to, pharmacies, prevention programs and not-for-profits. As used in this subdivision, the following terms shall have the following meanings:

(i) "Opioid" means an opiate as defined in section thirty-three hundred two of the public health law.

(ii) "Opioid antagonist" means a federal food and drug administration-approved drug that, when administered, negates or neutralizes in whole or in part the pharmacological effects of an opioid in the body. The opioid antagonist shall be limited to naloxone or other medications approved by the department of health for this purpose.

(2) The directory required by this subdivision shall include and be searchable by the following information:

(i) addresses of each distributor of opioid antagonists;

(ii) contact information, such as phone numbers or email addresses, for each distributor;

(iii) services offered by each distributor at each location if more than one, as well as information providing which opioid antagonists are currently available at each distributor;

(iv) special populations served;

(v) insurance providers accepted;

(vi) hours of operation of each distributor;

(vii) contact information of opioid addiction prevention programs; and

(viii) any other information the commissioner deems necessary.

(3) The office may utilize an existing directory to satisfy the requirements of this subdivision.

* NB There are 2 sb (l)'s

* (l) The commissioner shall identify or develop educational materials regarding compulsive gambling for the purpose of informing individuals about the dangers of problem gambling as well as treatment opportunities that may be available to them. Such educational materials shall be provided to individuals when they voluntarily place themselves on a self-exclusion list of an association or corporation licensed or enfranchised by the New York state gaming commission pursuant to section one hundred eleven of the racing, pari-mutuel wagering and breeding law. Such materials shall also be made available on the website of the office. To the extent that a gaming facility licensed pursuant to article thirteen of the racing, pari-mutuel wagering and breeding law has already created materials pursuant to section thirteen hundred sixty-two of the racing, pari-mutuel wagering and breeding law that effectuate the intent of this subdivision, such educational materials may be utilized by the gaming facility instead of ones identified or developed by the commissioner.

* NB There are 2 sb (l)'s

§ 19.10 Status of facilities.

A rehabilitation center, a medical examination facility, or such other facility or facilities as may be established and operated by the office pursuant to the provisions of section 19.09 of this article shall be mental hygiene facilities in the department for the purpose of the facilities development corporation act.

§ 19.11 Organization and administration of the office of alcoholism and substance abuse services and its facilities.

(a) The commissioner shall have the professional jurisdiction, supervision, and control of the office and all department facilities which provide alcoholism services.

(b) The commissioner shall control the organization of the office and may continue, establish, discontinue, expand, and contract facilities under his or her jurisdiction. Units and facilities shall have such

functions, duties, and responsibilities as may be assigned to them by the commissioner.

(c) The commissioner may, within amounts appropriated therefor, lease space of facilities in which services for alcoholism treatment programs are provided. This authority may be delegated to the facilities development corporation.

§ 19.13 Local services.

(a) Local services for persons who abuse or are dependent on alcohol shall be planned, financed, and implemented in accordance with article forty-one of this chapter.

(b) Local services for persons who abuse or are dependent on substances shall be planned, financed, and implemented in accordance with article twenty-five of this chapter.

§ 19.14 Civil actions against certain officers and employees of the office.

(a) No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against an officer or employee of the office who is charged with the duty of securing the custody of a person in need of care and treatment for alcoholism in his personal capacity for damages arising out of any act done or the failure to perform any act within the scope of employment and in the discharge of official duties by such officer or employee.

(b) Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of such officer or employee shall be brought and maintained in the court of claims as a claim against the state.

(c) The state shall save harmless and indemnify such officer or employee from financial loss resulting from a claim filed in a court of the United States for damages arising out of an act done or the failure to perform any act that was (1) within the scope of the employment and in the discharge of the duties of such officer or employee, and (2) was not in violation of any rule or regulation of the office or of any statute or governing case law of the state or of the United States at

the time the alleged damages were allegedly sustained; provided that the officer or employee shall comply with the provisions of subdivision four of section seventeen of the public officers law.

(d) (1) The provisions of this section shall supplement, and be available in addition to, the provisions of section seventeen of the public officers law and, insofar as this section is inconsistent with section seventeen of the public officers law, the provisions of this section shall be controlling.

(2) The provisions of this section shall not be construed in any way to impair, modify or abrogate any immunity available to any officer or employee of the officer under the statutory or decisional law of the state or the United States.

(e) This section shall not in any way impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

(f) The benefits of subdivision (c) shall inure only to the officers and employees of the office and shall not enlarge or diminish the rights of any other party.

(g) This section shall apply with respect to claims arising on or after the effective date of this section. Claims arising prior thereto shall be governed by section seventeen of the public officers law.

§ 19.15 Programs of the office of alcoholism and substance abuse services.

(a) With the advice of the advisory council on alcoholism and substance abuse services, and with the assistance of any interdepartmental council or committee heretofore or hereafter established that shall be charged with the responsibility for interdepartmental cooperation and program development in alcoholism, substance abuse, and chemical dependency, the commissioner shall promote, establish, coordinate, and conduct programs for prevention, diagnosis, treatment, aftercare, rehabilitation, and control in the fields of alcoholism, alcohol abuse, substance abuse, substance dependence, and chemical dependence in cooperation with such other federal, state, local, and private agencies as are necessary and, within the amount made available by appropriation therefor, implement and administer such programs.

(b) The commissioner shall cooperate with, guide, and assist political subdivisions, local agencies, local governmental units, community service boards, and/or providers of services in the development and periodic review of local comprehensive plans and programs for alcoholic, alcohol abusing, substance abusing, substance dependent and chemically dependent persons and their families and approve such plans and programs.

(c) The activities described in subdivisions (a) and (b) of this section may be undertaken in cooperation and agreement with other offices of the department and with other departments or agencies of the state, local or federal government, or with other organizations and individuals, including, but not limited to, the research institute on addictions as established in article one hundred five of the education law.

(d) The commissioner shall provide for the development of systems and programs through which individuals in the state's public and private work force who abuse or are dependent on alcohol and/or substances, and their families or significant others are identified and referred for assistance, ensuring that these systems and programs shall provide emphasis upon the special needs of working women.

(e) The commissioner shall implement a program of alcoholism, substance abuse, and chemical dependence prevention and treatment services adapted to the needs and interests of young people, including the children of alcoholic and/or substance abusing persons.

(f) Reports. (1) The commissioner shall make an annual report to the governor and the legislature by March first of each year assessing the progress in implementing the programs and policies contained in this title and including an accounting of the amounts, sources and uses of funds expended for alcoholism and substance abuse services and for prevention and education.

(2) The office shall on or before the first day of April in each year file a written report with the governor, the temporary president of the senate and the speaker of the assembly summarizing the results of any special system or program directed at the special needs of women and children affected by alcoholism, alcohol abuse, substance abuse, substance dependence, or chemical dependence. Such report shall include but not be limited to a statistical analysis of the effectiveness of

such programs initiated by the office together with suggested legislation deemed necessary or proper for the implementation of new programs or future success and development of existing programs.

(g) The office shall study, investigate, and recommend to the governor and the legislature methods of increasing third party payments for programs treating persons who abuse or are dependent on alcohol and/or substances, and their families.

(h) The office shall administer community and school based alcoholism, substance abuse, and chemical dependence prevention and education programs.

(i) The commissioner shall develop plans, and cause to be promoted, programs and services related to compulsive gambling education, prevention and treatment consistent with section 41.57 of this chapter. He or she shall take all actions that are necessary, desirable, or proper to implement the purposes of this chapter and to carry out the purposes and objectives of the department within the amounts made available therefor by appropriation, grant, gift, devise, bequest or allocation from the problem and compulsive gambling education, prevention and treatment fund established under section ninety-nine-i of the state finance law, as amended by section one of part Y of chapter sixty-three of the laws of two thousand three.

§ 19.16 Methadone Registry.

The office shall establish and maintain, either directly or through contract, a central registry for purposes of preventing multiple enrollment, ensuring accurate dosage delivery and facilitating disaster management in methadone programs. The office shall require all methadone programs to utilize such registry and shall have the power to assess methadone programs such fees as are necessary and appropriate.

§ 19.17 Programs, services, and operation of facilities in the office of alcoholism and substance abuse services.

(a) The commissioner shall establish policy and procedure for the organization, administration, and operation of facilities under his or

her jurisdiction. He or she shall make provision for the efficient rendition of services to patients by such facilities.

(b) The commissioner shall establish the areas which each facility under his or her jurisdiction shall serve and the categories of patients which each such facility shall receive, retain, or treat. The commissioner shall provide for priority of admission for persons whose children have been placed in foster care or are in jeopardy of being so placed pursuant to article ten of the family court act or article six of the social services law.

(c) The commissioner may permit the other offices of the department and any public or private non-profit organization or political subdivision of the state to operate programs for the mentally disabled not inconsistent with the programs and objectives of the department, in any facility under his or her jurisdiction. The commissioner may permit any facility under his or her jurisdiction to operate programs for the mentally disabled, not inconsistent with the programs and objectives of the department, under contracts or agreements with other offices within the department.

(d) The commissioner shall direct and carry on basic clinical, epidemiological, social science, evaluative, and statistical research in chemical abuse and dependence either individually or in conjunction with other agencies, public or private, and, within the amounts made available by appropriation therefor, develop pilot programs. In pursuance of the foregoing and notwithstanding any other provision of law, the office may establish, direct, and carry on experimental pilot clinical programs providing for early intervention and for treatment of chemical abuse and dependence. Such treatment may include the administration, under medical supervision and control, of experimental substances.

(e) The office shall have the authority to gather information and maintain statistical and other records relating to chemical abuse and dependence services in the state. Any person licensed or otherwise permitted to dispense, administer, or conduct research with respect to a controlled substance in the course of a licensed professional practice or research license pursuant to article thirty-three of the public health law and all public officials having duties to perform with respect to controlled substances or users of such substances shall

report and supply such information to the office in relation thereto as the office shall by rule, regulation, or order require consistent with appropriate state and federal law relative to the confidentiality of patient records.

(f) There shall be in the office the facilities named below for the care, treatment and rehabilitation of the mentally disabled and for clinical research and teaching in the science and skills required for the care, treatment and rehabilitation of such mentally disabled.

R.E. Blaisdell Addiction Treatment Center

Bronx Addiction Treatment Center

C.K. Post Addiction Treatment Center

Creedmoor Addiction Treatment Center

Dick Van Dyke Addiction Treatment Center

Kingsboro Addiction Treatment Center

McPike Addiction Treatment Center

Richard C. Ward Addiction Treatment Center

J.L. Norris Addiction Treatment Center

South Beach Addiction Treatment Center

St. Lawrence Addiction Treatment Center

Stutzman Addiction Treatment Center

(g) The office shall have the authority to establish an information policy and data reporting procedure for the collection, use, and disclosure of data from providers of chemical dependence services, including procedures to ensure the protection of patient-identifying information and data gathered pursuant to section 19.16 of this article,

which shall be deemed confidential except as otherwise provided by law including, but not limited to, articles six and six-A of the public officers law.

§ 19.18-b Certified peer recovery advocate services program.

1. For purposes of this subdivision "certified peer recovery advocate services" means participant-centered services that emphasize knowledge and wisdom through lived experience in which peers are encouraged to share their own personal experience and first-hand knowledge of substance abuse, addiction, and recovery to support the recovery goals of individuals who use drugs and/or alcohol.

2. The commissioner shall develop and administer a certification process and standards of training and competency for certified peer recovery advocate services.

3. Certified peer recovery advocate services may include but not be limited to:

- (a) developing recovery plans;
- (b) raising awareness of existing social and other support services;
- (c) modeling coping skills;
- (d) assisting with applying for benefits;
- (e) accompanying clients to medical appointments;
- (f) providing non-clinical crisis support, especially after periods of hospitalization or incarceration;
- (g) accompanying clients to court appearances and other appointments;
- (h) working with participants to identify strengths;
- (i) linking participants to formal recovery supports, including, but not limited to, medication assisted treatment;
- (j) educating program participants about various modes of recovery, including, but not limited to, medication assisted treatment;
- (k) peer engagement coordination with hospital emergency services to assist any patient that has been administered an opioid antagonist by a medical provider to establish connections to treatment, including, but not limited to, medication assisted treatment and other supports after

an opioid overdose reversal or after discharge from another substance abuse related emergency department visit; and

(l) peer engagement coordination with law enforcement departments, fire departments and other first responder departments to assist any individual that has been administered an opioid antagonist by a first responder to establish connections to treatment, including, but not limited to, medication assisted treatment and other support services after an opioid overdose reversal.

§ 19.18-c Corrections-based substance use disorder treatment and transition services.

1. Notwithstanding any other provision of this chapter, the commissioner, in consultation with local governmental units, county sheriffs, the New York city department of corrections and other stakeholders, shall implement a jail-based substance use disorder treatment and transition services program that supports the initiation, operation and enhancement of substance use disorder treatment and transition services for persons with substance use disorder who are incarcerated in jails.

2. The services to be provided by such program shall be in accordance with plans developed by participating local governmental units, in collaboration with county sheriffs, taking into account local needs and available resources. These plans must be approved by the commissioner and shall include, but not be limited to, the following:

- (a) Alcohol, benzodiazepine, heroin and opioid withdrawal management;
- (b) At least one formulation of every form of medication assisted treatments approved for the treatment of a substance use disorder by the Federal Food and Drug Administration necessary to ensure that each individual participating in the program receives the particular form found to be the most effective at treating and meeting their individual needs. The commissioner may allow jails a limited exemption to providing opioid full agonist treatment medications where the commissioner determines that no providers that have received the required accreditation are located within a reasonable distance of the facility.

Jails that do not have the resources available to meet standards set forth herein may apply to the commissioner for a limited exception allowing such jail to enter into an agreement with a community- or jail-based program offering substance use disorder treatment and transition services to provide such services to individuals in such jails. Any such determination shall be reviewed on a regular basis;

- (c) Group and individual counseling and clinical support;
- (d) Peer support;
- (e) Discharge planning; and
- (f) Re-entry and transitional supports.

3. (a) After a medical screening, incarcerated individuals who are determined to suffer from a substance use disorder for which medication assisted treatment exists shall be offered placement in the medication assisted treatment program. Placement in such program shall not be mandatory.

(b) Each participating incarcerated individual shall work with an authorized specialist to develop an individualized treatment plan, including an appropriate level of counseling and planning for continuity of care upon return to the community.

(c) Decisions regarding type, dosage, or duration of any medication regimen shall be made by a qualified health care professional licensed or certified under title eight of the education law who is authorized to administer such medication in conjunction with the incarcerated individual.

(d) Participation in the medication assisted treatment program shall not be unreasonably withheld from a qualified incarcerated individual. An incarcerated individual using medication assisted treatment prior to such individual's incarceration shall be eligible to, upon request by such individual, continue such treatment in the medication assisted treatment program for any period of time during the duration of such individual's incarceration.

(e) No person shall be denied participation in the program on the basis of a positive drug screening upon entering custody or upon intake into the program; nor shall any person receive a disciplinary infraction for such positive drug screening. No person shall be removed from, or denied participation in the program on the basis of having received any

disciplinary infraction: (1) before entry into the program; or (2) during participation in the program.

4. Within amounts appropriated therefor, funding shall be made available pursuant to criteria established by the office of addiction services and supports in consultation with local governmental units, which shall take into consideration the local needs and resources as identified by local governmental units, the average daily jail population, the average number of persons incarcerated in the jail that require substance use disorder services and such other factors as may be deemed necessary.

5. Any jail-based substance use disorder treatment and transition services program that is already in operation at the time this act shall have become law and meets or exceeds the standards set forth in this section shall be deemed to have met the requirements of subdivisions one and two of this section. Such programs shall certify annually in writing to the commissioner that they have met or exceeded the standards set forth herein.

§ 19.19 Personnel of the office.

(a) The commissioner shall, within the amounts appropriated therefor, appoint and remove in accordance with law and applicable rules of the state civil service commission, such officers and employees of the office of alcoholism and substance abuse services, and facility officers and employees as are necessary for efficient administration.

(b) The director of a facility or institute in the office shall have professional qualifications and experience to be prescribed by the commissioner.

(c) The use of volunteers by the office shall be encouraged. The commissioner may establish regulations governing such volunteer services for functions of the office.

(d) Where, and to the extent that, an agreement between the state and an employee organization entered into pursuant to article fourteen of the civil service law so provides, the commissioner is authorized to implement the provisions of such agreement relating to discipline

consistent with the terms thereof.

§ 19.20 Review of criminal history information concerning certain prospective employees and volunteers.

* Every provider of services who contracts with or is approved or otherwise authorized by the office to provide services, except (1) a department facility, (2) a hospital as defined in article twenty-eight of the public health law, or (3) a licensed professional under title eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, shall request that the office request and receive from the division of criminal justice services criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, concerning each prospective employee or volunteer of such provider who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider.

* NB Effective until November 3, 2023

* Every provider of services who contracts with or is approved or otherwise authorized by the office to provide services, except (1) a department facility, (2) a hospital as defined in article twenty-eight of the public health law, or (3) a licensed professional under title eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, shall request that the office request and receive from the division of criminal justice services criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, concerning each prospective employee or volunteer of such provider who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider.

Provided, however, a provider of services approved or otherwise authorized under article thirty-six of this chapter shall comply with the requirements of subdivision (a) of section 36.06 of such article to satisfy the requirements of this section, and provided further that a provider who complies with the requirements of subdivision (b) of

section 36.06 of such article, shall be deemed to have satisfied the requirements of this section.

* NB Effective November 3, 2023

(a) Prior to requesting the office to obtain a criminal history information concerning any prospective employee or volunteer, a provider shall:

(1) inform the prospective employee or volunteer in writing that the provider is required to request his or her criminal history information and review such information pursuant to this section; and

(2) obtain the signed informed consent of the prospective employee or volunteer on a form supplied by the division of criminal justice services which indicates that such person has:

(i) been informed of the right and procedures necessary to obtain, review and seek correction of his or her criminal history information;

(ii) been informed of the reason for the request for his or her criminal history information;

(iii) consented to such request; and

(iv) supplied on the form a current mailing or home address.

Upon receiving such written consent, the provider shall obtain two sets of fingerprints of such prospective employee or volunteer and provide such fingerprints to the office pursuant to regulations established by the division of criminal justice services.

(b) A provider requesting criminal history information pursuant to this section shall also complete a form developed for such purpose by the division of criminal justice services. Such form shall include a sworn statement of the person designated by such provider to request, receive and review criminal history information pursuant to paragraph one of subdivision (g) of this section certifying that:

(1) such criminal history information will be used by the provider solely for purposes authorized by this section;

(2) the provider and its staff are aware of and will abide by the confidentiality requirements and all other provisions of this section; and

(3) the persons designated by the provider to receive criminal history information pursuant to paragraph one of subdivision (g) of this section shall upon receipt immediately mark such criminal history information "confidential," and shall at all times maintain such criminal history

information in a secure place.

(c) Upon receipt of the fingerprints and sworn statement required by subdivisions (a) and (b) of this section, the office shall promptly submit the fingerprints to the division of criminal justice services. The division of criminal justice services shall promptly forward a set of the applicant's fingerprints to the federal bureau of investigation for the purpose of a nationwide criminal history record check to determine whether such applicant has been convicted of a criminal offense in any state other than New York or in a federal jurisdiction.

(d) The division of criminal justice services shall promptly provide the requested criminal history information, if any, to the office. Criminal history information provided by the division of criminal justice services pursuant to this section shall be furnished only by mail or other method of secure and confidential delivery, addressed to the office. Such information and the envelope in which it is enclosed, if any, shall be prominently marked "confidential," and shall at all times be maintained by the office in a secure place.

(e) After receiving any criminal history information provided by the division of criminal justice services concerning a prospective employee or volunteer, the office shall review the information to determine whether such prospective employee or volunteer has been convicted of a criminal offense in any state other than New York or in a federal jurisdiction. If the record does not include such information, the office shall forward a summary of the New York criminal history information to the provider who shall proceed pursuant to subdivision (g) of this section. For the purposes of this section, "summary of the criminal history information" shall mean a comprehensive synopsis of criminal history information which shall include an individualized statement for each pending charge and each criminal conviction which has not been vacated, reversed or sealed.

(f) Where the criminal history information received by the office includes a criminal offense in any state other than New York or in a federal jurisdiction, the office shall consider whether to approve or disapprove the prospective employee based on the criminal history information in accordance with the provisions of article twenty-three-A of the correction law and subdivisions fifteen and sixteen of section two hundred ninety-six of the executive law and notify the provider of

its determination, provided, however, that a reasonable time before making a determination pursuant to this subdivision, the office shall provide the prospective employee or volunteer with a copy of the criminal history information and a copy of article twenty-three-A of the correction law, and inform such prospective employee or volunteer of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to the regulations and procedures established by the division of criminal justice services.

(g) Where the provider receives a summary of the criminal history information from the office pursuant to subdivision (e) of this section, the provider shall consider the information in accordance with the provisions of article twenty-three-A of the correction law and subdivisions fifteen and sixteen of section two hundred ninety-six of the executive law.

(1) A provider shall designate one or two persons in its employ who shall be authorized to request, receive and review the summary of the criminal history information, and only such persons and the prospective employee or volunteer to which the criminal history information relates shall have access to such information; provided, however, that the summary of the criminal history information may be disclosed to other personnel authorized by the provider who are empowered to make decisions concerning prospective employees or volunteers and provided further that such other personnel shall also be subject to the confidentiality requirements and all other provisions of this section. A provider shall notify the office of each person authorized to have access to criminal history information pursuant to this section.

(2) Upon receipt of the summary of criminal history information pursuant to this section, a provider shall provide the prospective employee or volunteer with a copy of such summary of the criminal history information and a copy of article twenty-three-A of the correction law, and inform such prospective employee or volunteer of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to the regulations and procedures established by the division of criminal justice services.

(h) A prospective employee or volunteer may withdraw from the application process, without prejudice, at any time regardless of whether he or she, the office or the provider has reviewed his or her

criminal history information. Where a prospective employee or volunteer withdraws from the application process, any fingerprints and criminal history information concerning such prospective employee or volunteer received by the office or the provider shall, within ninety days, be returned to such prospective employee or volunteer.

(i) The commissioner of the division of criminal justice services shall promulgate all rules and regulations necessary to implement the provisions of this section, which shall include convenient procedures for prospective employees and volunteers to promptly verify the accuracy of their criminal history information and, to the extent authorized by law, to have access to relevant documents related thereto.

(j) Any person who willfully permits the release of any confidential criminal history information contained in the report to persons not permitted by this section to receive such information shall be guilty of a misdemeanor.

§ 19.20-a Review of criminal history information concerning prospective providers, operators and individuals seeking to be credentialed by the office.

* The office shall be authorized to receive from the division of criminal justice services criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, concerning each applicant to be a provider of services or operator of such provider except: (1) a department facility; (2) a hospital as defined in article twenty-eight of the public health law; or (3) a licensed professional under title eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, and for every individual seeking to be credentialed by the office to provide substance use disorder services pursuant to section 19.07 of this article. For purposes of this section, "operator" shall include any natural person with an ownership interest in the provider of services.

* NB Effective until November 3, 2023

* The office shall be authorized to receive from the division of criminal justice services criminal history information, as such phrase

is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, concerning each applicant to be a provider of services or operator of such provider except: (1) a department facility; (2) a hospital as defined in article twenty-eight of the public health law; or (3) a licensed professional under title eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, and for every individual seeking to be credentialed by the office to provide substance use disorder services pursuant to section 19.07 of this article. For purposes of this section, "operator" shall include any natural person with an ownership interest in the provider of services. Provided, however, an applicant to be a provider of services or operator of such provider under article thirty-six of this chapter shall comply with the requirements of subdivision (a) of section 36.06 of such article to satisfy the requirements of this section, and provided further that a provider who complies with the requirements of subdivision (b) of section 36.06 of such article, shall be deemed to have satisfied the requirements of this section.

* NB Effective November 3, 2023

(a) Prior to requesting criminal history information concerning any prospective provider, operator or individual seeking to be credentialed, the office shall:

(1) inform the prospective provider, operator or individual seeking to be credentialed in writing that the office is required to request his or her criminal history information from the division of criminal justice services and review such information pursuant to this section; and

(2) obtain the signed informed consent of the prospective provider, operator or individual seeking to be credentialed on a form supplied by the division of criminal justice services which indicates that such person has:

(i) been informed of the right and procedures necessary to obtain, review and seek correction of his or her criminal history information;

(ii) been informed of the reason for the request for his or her criminal history information;

(iii) consented to such request; and

(iv) supplied on the form a current mailing or home address.

Upon receiving such written consent, the office may obtain two sets of fingerprints of such prospective provider, operator or individual seeking to be credentialed pursuant to regulations established by the division of criminal justice services.

(b) The office shall designate one or two persons in its employ who shall be authorized to request, receive and review criminal history information, and only such persons and the prospective provider, operator or individual seeking to be credentialed to which the criminal history information relates shall have access to such information; provided, however, that criminal history information may be disclosed to other personnel authorized by the office who are empowered to make decisions concerning prospective providers, operators or individuals seeking to be credentialed and provided further that such other personnel shall also be subject to the confidentiality requirements and all other provisions of this section. The office shall notify the division of criminal justice services of each person authorized to have access to criminal history information pursuant to this section.

(c) The office shall request criminal history information pursuant to this section by completing a form developed for such purpose by the division of criminal justice services. Such form shall include a sworn statement of the persons designated by the office to request, receive and review criminal history information pursuant to subdivision (b) of this section certifying that:

(1) such criminal history information will be used by the office solely for purposes authorized by this section;

(2) the office and its staff are aware of and will abide by the confidentiality requirements and all other provisions of this section; and

(3) the person designated by the office to receive criminal history information pursuant to subdivision (b) of this section shall upon receipt immediately mark such criminal history information "confidential," and shall at all times maintain such criminal history information in a secure place.

(d) Upon receipt of the fingerprints and sworn statement required by subdivisions (a) and (c) of this section, the division of criminal justice services shall promptly forward a set of the individual's fingerprints to the federal bureau of investigation for the purpose of a

nationwide criminal history record check to determine whether such individual has been convicted of a criminal offense in any state other than New York or in a federal jurisdiction.

(e) The division of criminal justice services shall promptly provide the requested criminal history information to the office. Criminal history information provided by the division of criminal justice services pursuant to this section shall be furnished only by mail or other method of secure and confidential delivery, addressed to the office. Such information and the envelope in which it is enclosed, if any, shall be prominently marked "confidential," and shall at all times be maintained by the office in a secure place.

(f) Upon receipt of criminal history information pursuant to this section and before making a determination, the office shall provide the prospective provider, operator or individual seeking to be credentialed with a copy of such criminal history information and a copy of article twenty-three-A of the correction law and inform such prospective provider, operator or individual seeking to be credentialed of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to the regulations and procedures established by the division of criminal justice services.

(g) Criminal history information obtained pursuant to this section shall be considered by the office in accordance with the provisions of article twenty-three-A of the correction law and subdivisions fifteen and sixteen of section two hundred ninety-six of the executive law.

(h) A prospective provider, operator or individual seeking to be credentialed may withdraw from the application process, without prejudice, at any time regardless of whether or not he or she or the office has reviewed his or her criminal history information. Where a prospective provider, operator or individual seeking to be credentialed withdraws from the application process, any fingerprints and criminal history information concerning such prospective provider, operator or individual seeking to be credentialed received by the office shall, within ninety days, be returned to such prospective provider, operator or individual seeking to be credentialed by the person designated for receipt of criminal history information pursuant to subdivision (b) of this section.

(i) The commissioner of the division of criminal justice services

shall promulgate all rules and regulations necessary to implement the provisions of this section, which shall include convenient procedures for prospective providers, operators or individuals seeking to be credentialed to promptly verify the accuracy of their criminal history information and, to the extent authorized by law, to have access to relevant documents related thereto.

(j) Any person who willfully permits the release of any confidential criminal history information contained in the report to persons not permitted by this section to receive such information shall be guilty of a misdemeanor.

§ 19.21 Programs, services, and operation of facilities certified or licensed by the office of alcoholism and substance abuse services; temporary emergency operating certificates and licenses.

(a) The office shall inspect and approve or disapprove the facilities of and the services provided by alcoholism programs, substance abuse programs, and chemical dependence programs, and any program or facility purporting to provide such services.

(b) The office shall redefine and develop, establish, promulgate, and enforce certification, inspection, licensing, and treatment standards for chemical dependence facilities and staff, which shall be applied in addition to any other standards for any other services provided by such facilities, and which shall be applicable to any facility providing or purporting to provide as part or all of a program of services, any services for the alleviation of the conditions of alcoholism, alcohol abuse, substance abuse, substance dependence, chemical abuse, or chemical dependence. Where appropriate, such standards shall provide for priority of admission for persons whose children have been placed in foster care or are in jeopardy of being so placed pursuant to article ten of the family court act or article six of the social services law.

(c) The office shall have the authority to assist, through counseling or referral, and cause assistance to be provided to, recovering alcoholic persons; or former alcohol abusers, substance abusers, or substance dependent persons; or other persons who have received alcoholism, substance abuse, or chemical dependence services, with

respect to any right or privilege impaired, suspended, or forfeited as a result of alcoholism; or past substance abuse, substance dependence, or chemical dependence; or the receipt of such services, in securing the benefits of any non-discrimination laws or policies regarding such persons enacted or adopted by federal, state or local governments.

(d) The office shall establish reasonable performance standards for all providers of alcoholism, substance abuse, and chemical dependence services which are certified by such office pursuant to this title.

(1) Such standards shall:

(i) take into consideration program resources and the functional severity of patients served; and

(ii) be clearly defined and developed in consultation with certified providers of alcoholism, substance abuse, and chemical dependence services.

(2) The office shall promulgate regulations to implement the provisions of this subdivision which:

(i) establish criteria to assess alcoholism, substance abuse, and chemical dependence treatment effectiveness in accordance with the standards developed pursuant to this subdivision, including but not limited to criteria regarding client retention, completion of program, and outcome results; and

(ii) establish a procedure to be implemented by such office for reviewing and evaluating performance of certified providers of service in a consistent and objective manner.

§ 19.23 Education and training.

(a) The commissioner shall have the power to establish such programs of training and education related to alcoholism, substance abuse, and chemical dependence as the commissioner shall deem desirable.

(b) The commissioner may grant leaves of absence to employees of the office for the purpose of receiving training and education for the better performance of their duties and, with the approval of the director of the budget, may continue the salaries of such employees, in full or in part, in an amount not to exceed reimbursement for the loss of earnings while receiving such training.

(c) The office shall encourage and provide, either alone or in

conjunction with other public or private agencies including universities, medical schools, and colleges, education and training for medical students, physicians, nurses, social workers, counselors, clinic or ward attendants, and others involved in public or private prevention and treatment programs for persons who abuse or are dependent on alcohol and/or substances and their families.

(d) The office shall sponsor necessary conferences and professional educational programs relating to alcoholic, alcohol abusing, substance abusing, substance dependent, and chemically dependent persons and their families.

§ 19.25 Alcohol awareness program.

(a) The office shall establish an alcohol awareness program within the office which shall focus upon, but not be limited to, the health effects and social costs of alcoholism and alcohol abuse.

(b) The form, content and method of presentation of various aspects of such program shall be developed by the commissioner, provided that such program shall not exceed two hours per week over a period not to exceed eight weeks.

(c) The commissioner shall establish a schedule of fees to be paid by each participant and may, from time to time, modify same. Such fees may be waived, reduced or otherwise adjusted by the court upon application for resentencing in accordance with the provisions of paragraph (a) of subdivision five of section 420.10 of the criminal procedure law. For the purposes of this section the term "fee" shall also mean "payment" as referred to in paragraph (a) of subdivision five of section 420.10 of the criminal procedure law. Such fees shall not exceed amounts necessary to pay the ongoing expenses of the program. Provided, however, that pursuant to an agreement with the office, a municipality, a department or part thereof, or other not-for-profit corporation may conduct such a course in such program with all or part of the expense of such course being borne by such municipality, department, or part thereof, or other not-for-profit corporation. Ten percent of all fees received for such courses shall be paid to the office for administrative costs of program implementation.

(d) A certificate of completion shall be sent to the court by the

office upon completion of the program by all participants.

§ 19.27 Methamphetamine awareness and education program.

The office shall serve as the principle source for the statewide dissemination of information on methamphetamines. The office shall establish a methamphetamine awareness and education program that shall include but not be limited to providing information about the dangers of methamphetamine production and use and how to report suspected methamphetamine laboratories. Such information shall be made available to the following individuals and groups: chemical dependence prevention programs; child protective services; social services; schools; community-based organizations; chemical dependence treatment programs; health care providers; emergency services personnel (including police, fire fighters and ambulance personnel); and other entities or individuals deemed appropriate by the office.

§ 19.28 Receipt and disbursement of federal funds.

(a) The commissioner may receive, use, or distribute federal financial or technical assistance to support construction of facilities, research, staffing, or other programs or activities for alcoholism, substance abuse, or chemical dependence services, appropriated under federal legislation or regulations or under other federal legislation or regulations which provide assistance to the mentally disabled, including but not limited to vocational rehabilitation programs, alcoholism programs, substance abuse programs, poverty programs, or special programs for children or the aged.

(b) The commissioner may promulgate rules and regulations relating to the commissioner's powers and duties to implement any provision of state or federal law involving the receipt, use or disbursement of federal financial or technical assistance.

(c) The department of taxation and finance shall be the custodian of federal financial assistance granted or allocated to the office by the United States. These funds shall be paid out on the audit and warrant of the comptroller on the certificate of the commissioner, or his or her

authorized representative.

(d) Subject to the rules and regulations of the commissioner, any funds made available to the office by the United States or by another state agency as a federal allotment to be administered by the office may be disbursed by it to a local government, voluntary nonprofit agency, educational agency, or other entity properly authorized to receive funds in fulfillment of the purposes of appropriate federal or state legislation for the provision of services, construction of facilities, research, staffing, training or related programs or activities.

§ 19.29 Gifts.

(a) The commissioner, on behalf of the state and if in the public interest, shall accept, hold in trust, administer, apply, execute, or use gifts, devises, bequests, grants, powers, or trusts of personal or real property made to the state, the office of alcoholism and substance abuse services, a facility within the office, the commissioner, or the directors of facilities which are to be used or may be used for purposes of the office of alcoholism and substance abuse services, including but not limited to, the maintenance, support, or benefit of one or more patients in a facility.

(b) The commissioner, in carrying out the provisions of subdivision (a) of this section, may create or provide separate and distinct funds, investments, and deposits and regulate their use, transfer, and withdrawal. He or she may dispose of a power or trust upon its expiration and according to its terms.

(c) Subdivisions (a) and (b) of this section apply to gifts, devises, bequests, grants, powers, or trusts given to, received, or applied by the state, the commissioner, the office of alcoholism and substance abuse services, or facilities thereof and predecessor officers, agencies or facilities prior to as well as subsequent to the enactment of this section.

§ 19.31 Medication assisted treatment training requirement.

Every person who is a credentialed alcoholism and substance abuse

counselor pursuant to subdivision (d) of section 19.07 of this article who provides treatment or counseling services at a substance use disorder facility, shall, within eighteen months of the effective date of this section or within one year of commencing the provision of any such treatment or counseling, whichever shall be later, successfully complete a course of instruction relating to medication assisted treatment approved by the office.

§ 19.35 Actions against persons rendering professional services at the request of the office; defense and indemnification.

The provisions of section seventeen of the public officers law shall apply to any physician, psychologist, nurse, optometrist, licensed master social worker, or licensed clinical social worker, licensed to practice pursuant to the education law, who is rendering professional treatment authorized under such license at the request of the office or an office facility to patients receiving care or professional consultation from the office while rendering such professional treatment.

§ 19.40 Provision of chemical dependence services.

(a) Notwithstanding any other provision of law, the office shall have the authority to issue a single operating certificate for the provision of chemical dependence services to providers of alcoholism and/or substance abuse services previously certified or licensed pursuant to articles twenty-three and/or thirty-one of this chapter and who are deemed by the commissioner to meet applicable requirements of article thirty-two of this chapter and operating regulations promulgated thereunder. The commissioner shall have the authority to waive any requirements deemed to be duplicative or unnecessary to implement the provisions of this subdivision.

(b) Certificates of approval and operating certificates previously issued under article twenty-three and/or thirty-one of this chapter shall remain in full force and effect until they are converted to operating certificates for the provision of chemical dependence services

pursuant to this chapter. Conversion shall occur upon promulgation of applicable chemical dependence operating regulations by the commissioner, taking into consideration time which is reasonably needed by providers of services to come into compliance with such applicable regulations.

(c) All providers of chemical dependence services issued operating certificates pursuant to this section shall be subject to all provisions of this chapter applicable to providers of alcoholism services and to all provisions of this chapter applicable to providers of substance abuse services.

(d) Providers of chemical dependence services not previously certified or licensed pursuant to articles twenty-three and/or thirty-one of this chapter shall be certified for the provision of such services pursuant to article thirty-two of this chapter.

§ 19.41 Facilities; receivership.

a. The owner or owners of any facility may at any time request the office to take over the operation of such facility by the appointment of a receiver. Upon receiving such a request, the office may, if it deems such action desirable, enter into an agreement with any such owners with respect to the appointment of a receiver to take charge of the facility under conditions as found acceptable by both parties. Receivership commenced in accordance with the provisions of this subdivision shall terminate at such time as may be provided in the receivership agreement, or at such time as either party notifies the other in writing that he or she wishes to terminate such receivership.

b. (1) Upon issuing a notice that the commissioner will revoke or suspend a license or operating certificate in accordance with this article and article thirty-two of this chapter, or that he or she will disapprove an application of renewal of such certificate or license pursuant to this article and article thirty-two of this chapter the commissioner may apply to the supreme court in the county where the facility is located for an order to show cause why a receiver should not be appointed to operate the facility. The court shall, upon determining

that the notice was properly issued and that it would be in the best interests of the persons served by the facility to have services continued after the effective date of the revocation or suspension, appoint a receiver for the facility to take effect upon the revocation or suspension of the operating certificate or license in accordance with the provisions of this article.

The order to show cause shall be returnable not less than five days after service is completed and shall provide for personal service of a copy thereof and the papers upon which it is based on the operator of the facility and upon the owner or owners of the land and/or owners of the land and/or structure on or in which the facility is located. If any such operator or owner cannot with due diligence be served personally within the county where the property is located and within the time fixed in such order, then service may be made on such person by posting a copy thereof in a conspicuous place within the facility in question, and by sending a copy thereof by registered mail, return receipt requested, to such owner at the last address registered to him or her with the office, or in the absence of such registration, to the address set forth in the last recorded deed with respect to such facility. Service shall be deemed complete on filing proof of service thereof in the office of the county clerk, or the clerk of the city of New York, as the case may be.

(2) The commissioner may, prior to suspending an operating certificate or license pursuant to this article and article thirty-two of this chapter, request a temporary restraining order appointing a receiver for a facility effective with the commissioner's issuance of the notice of the suspension. The court shall issue the temporary restraining order if it is satisfactorily shown by the commissioner that he or she has reasonable grounds for finding that continued operation of the facility by the current provider of services presents an imminent danger to the health and welfare of any of the public or any of the individuals served by the facility.

(3) The court shall appoint a receiver which should, where reasonably possible, be a voluntary association or other not-for-profit corporation recommended by the commissioner which holds a valid and current operating certificate or license for a similar type facility, or which

shall satisfactorily demonstrate to the commissioner its qualifications for such operating certificate or license.

(4) On the return of said order to show cause, determination shall have precedence over every other business of the court unless the court shall find that some other pending proceeding, having similar statutory precedence, shall have priority. The court may conduct a hearing at which all interested parties shall have the opportunity to present evidence pertaining to the application. If the court shall find that the facts warrant the granting thereof, the court shall determine a fair monthly rental for the facility consistent with its usage as such facility, which amount shall, except in the case where the receiver is assuming an existing bona fide arm's length lease, not exceed the amount which would be reimbursable to the facility in accordance with current guidelines established by the office. Such rental shall be paid by the receiver to the owner or owners of the facility for each month that the receivership remains in effect, provided, however, that nothing contained herein shall be construed to alter and diminish any rental obligation the operator may have under any currently valid bona fide arm's length lease.

(5) If the operating certificate or license of the operator of the facility is revoked or suspended, then the receiver shall apply for the issuance of an appropriate operating certificate or license for the facility and shall for the duration of the receivership comply with all applicable statutes and regulations.

(6) Any receiver appointed pursuant to this subdivision shall have all of the powers and duties of a receiver appointed in an action to foreclose a mortgage on real property, together with such additional powers and duties as are herein granted and imposed. The receiver shall with all reasonable speed, but in any case, within eighteen months after the date on which the receivership was ordered, provide for the orderly transfer of all clients in the facility to other care or make other arrangements as authorized in subparagraph (a) of paragraph eight of this subdivision. During the interim period when such clients must remain in the facility, the receiver may correct or eliminate those deficiencies in the facility that seriously endanger the life, health, or safety of such clients; provided that such correction or elimination of deficiencies does not include major alterations of the physical

structure of the facility. The receiver shall, during this period, operate the facility in such a manner as to guarantee safety and adequate care for such clients. The receiver shall have the power to let contracts therefor or incur expenses in accordance with the provisions of applicable statutes, rules and regulations, and applicable guidelines established by the office. Any receiver who is an official or employee of the state of New York shall not be required to file any bond. Such receiver shall collect incoming payments from all sources and apply them to the costs incurred in the performance of its functions as a receiver. The receiver shall honor all existing leases, mortgages, and chattel mortgages that had previously been undertaken as obligations of the owners or operators of the facility. However, such receiver may make application to the appointing court for rescission, reformation, or such other relief as may be appropriate with respect to the executory covenants or provisions of any contractual obligations of such owners or operators as may be necessary or appropriate to protect the best interests of the clients served by such facility. No security interest in any real or personal property comprising the facility or contained within the facility shall be impaired or diminished in priority by the receiver. The receiver shall compensate the owner or owners of any goods held in inventory for those goods which it uses or causes to be used, except that no such compensation shall be made for any such goods for which the owner or operators of the facility have already been reimbursed. Neither the receiver nor the office shall engage in any activity that constitutes a confiscation of property without the payment of fair compensation.

(7) The appointing court, upon application of the receiver, may make such provision as justice may require for a reasonable compensation and reimbursement of the reasonable expenses of such receiver. The receiver shall be liable only in its official capacity for injury to person and property by reason of conditions of the facility in a case where an owner would have been liable; provided that it operates such facility in compliance with the terms of its appointment, it shall not have any liability in its personal capacity, except for gross negligence and intentional acts.

(8) (a) The court shall terminate the receivership only under any of the following circumstances:

(i) eighteen months after the date on which it is ordered;

(ii) when the receiver, or other voluntary agency or not-for-profit corporation satisfactory to the commissioner, has (A) agreed to continue the operation of the facility, (B) entered into a satisfactory long-term (not less than two years) arrangement reached on a bona fide arm's length basis with the owner or owners of land and/or structure on or in which the facility is or is to be located, and (C) applied for and received from the commissioner a new operating certificate or license, as appropriate, for the continued operation of the facility; or

(iii) at such times as all of the persons served by the facility have been provided alternative services.

(b) At the time of termination, the receiver shall render a full and complete accounting to the court and shall make disposition of surplus money at the direction of the court.

(9) (a) Any person who is served a copy of an order of the court appointing the receiver shall, upon being notified of the name and address of the receiver, make all payments for goods supplied by the facility, or services rendered by the facility, to the receiver. A receipt shall be given for each such payment, and copies of all such receipts shall be kept on file by the receiver. The amount so received shall be deposited by the receiver in a special account, which shall also be used for all disbursements made by the receiver.

(b) Any person refusing or omitting to make such a payment after such service and notice may be sued therefor by the receiver. Such person shall not in such suit dispute the authority of the receiver to incur or order such expenses, or the right of the receiver to have such payments made to it. The receipt of the receiver for any sum paid to it shall, in all suits and proceedings and for every purpose, be as effectual in favor of any person holding the same as actual payment of the amount thereof to the owner or other person or persons who would, but for the provisions of this subdivision, have been entitled to receive the sum to be paid. No person shall be discharged, nor shall any contract or rights be forfeited or impaired, nor any forfeiture or liability be incurred, by reason of any omission to pay any owner, contractor or other person any sum so paid to the receiver.

(10) (a) No provision contained herein shall be deemed to relieve the owner or operator of any civil or criminal liability incurred, or any

duty imposed by law, by reason of acts or omissions of the owner or operator prior to the appointment of any receiver hereunder, nor shall anything contained herein be construed to suspend during the receivership any obligation of the owner or operator for the payment of mortgages or liens.

(b) The receiver shall not be responsible for any obligations incurred by the owner, operator, or prime lessor, if any, prior to the appointment of the receiver.

(c) The receiver shall be entitled to use for operating and maintenance expenses and the basic needs of persons served by the facility a portion of the revenues due the operator during the month in which the receiver is appointed, which portion shall be established on the basis of the amounts of the unpaid operating and maintenance expenses for such month.

(d) Any sums determined to be due and owing by the receiver to the owner, operator, or prime lessor shall be off-set by any charges determined to be the obligations of the owner, operator, or prime lessor.

c. (1) Subject to paragraph two of this subdivision, and subject to the approval of the director of the budget, the commissioner is authorized to make payments to receivers appointed pursuant to the provisions of subdivision b of this section only if the receiver demonstrates to the satisfaction of the commissioner that the facility's funds which are available are insufficient to meet the operating and maintenance expenses of the facility and the basic needs of those served by the facility.

(2) Notwithstanding any inconsistent provisions of law, payments made pursuant to this section shall be made from funds appropriated therefor and such payments shall be made only if a certificate of allocation and a schedule of amounts to be available therefore shall have been issued by the director of the budget and a copy of such certificate filed with the comptroller, the chairman of the senate finance committee, and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget, and a copy of each such amendment shall be filed with the comptroller, the chairman of the senate finance committee, and the chairman of the assembly ways

and means committee.

§ 19.42 Medical advisory panel.

There is hereby created within the office, a medical advisory panel.

(a) The panel shall consist of such officers and members as are appointed by, and who serve at the pleasure of the commissioner. Members shall include physicians and other medical, health services and/or scientific professionals as are deemed appropriate by the commissioner.

(b) The panel shall advise the commissioner on medical issues relevant to alcoholism and/or substance abuse.

(c) The panel shall meet with such frequency as may be determined by the panel or the commissioner.

(d) The panel may establish such committees as it deems necessary.

(e) The panel may establish written bylaws.

(f) The commissioner, upon request of the panel, shall designate an employee of the office to provide support services to the panel, and may assign from time to time such other employees as the panel may request.

(g) The officers or members of the panel shall receive no compensation for their services but shall be reimbursed for expenses actually and necessarily incurred in the performance of their duties.

(h) No civil action shall be brought in any court against any officer or member of the medical advisory panel of the office for any act done, failure to act, or statement or opinion made, while discharging his or her duties as an officer or member of the panel, without leave from a justice of the supreme court, first had and obtained. In any event such officer or member shall not be liable for damages in any such action if he or she shall have acted in good faith, with reasonable care and upon probable cause. Officers and members of the panel shall be considered public officers for the purposes of section seventeen of the public officers law.

§ 19.43 Retaliatory personnel actions.

Employees of facilities, programs and providers operated, licensed,

certified, authorized or funded by the office shall have protection from retaliatory action from employers as provided for in sections seven hundred forty and seven hundred forty-one of the labor law.

*** § 19.45 Substance use disorder education and recovery grants.**

(a) The office shall develop and implement a program which provides grants to organizations engaged in activities which are dedicated to providing education, prevention, treatment or recovery to those suffering from substance use disorders.

(b) On or before the first day of February each year, the state comptroller shall certify to the governor, temporary president of the senate, speaker of the assembly, chair of the senate finance committee and chair of the assembly ways and means committee, the amount of money deposited in the substance use disorder education and recovery fund, established pursuant to section eighty-nine-j of the state finance law, during the preceding calendar year as the result of revenue derived pursuant to section six hundred twenty-nine-b of the tax law.

(c) On or before the first day of February each year, the commissioner of addiction services and supports shall provide a written report to the temporary president of the senate, speaker of the assembly, chair of the senate finance committee, chair of the assembly ways and means committee, chair of the senate committee on mental health and developmental disabilities, and chair of the assembly mental health committee. Such report shall include how the monies of the substance use disorder education and recovery fund were utilized during the proceeding calendar year and shall include:

- (1) the amount of money dispersed from the fund;
- (2) recipients of awards from the fund;
- (3) the amount awarded to each recipient; and
- (4) the purposes for which such awards were granted.

* NB There are 2 § 19.45's

*** § 19.45 The council for treatment equity.**

1. Definitions. As used in this section:

(a) "Council" shall mean the council for treatment equity, within the office of addiction services and supports, created pursuant to this section which shall consist of a director and any additional full or part-time staff the commissioner deems necessary to effectuate the provisions of this section.

(b) "Vulnerable populations" shall mean those who have experienced injustices and disadvantages as a result of their race, ethnicity, sexual orientation, gender identity, disability status, age, socioeconomic status and/or any other status which has caused a person to experience injustices and disadvantages.

(c) "Racially and ethnically diverse areas" shall mean counties where the non-white population is forty percent or more or the service area of an agency, corporation, facility or individual providing substance use disorder services where the non-white population of said area is forty percent or more.

(d) "Provider of services" shall mean any agency, corporation, facility or individual providing substance use disorder services to vulnerable populations.

(e) "Treatment disparities" shall mean measurable differences in access to and quality of substance use disorder services as determined by race, ethnicity, sexual orientation, gender identity, disability status, age and socioeconomic status.

(f) "Treatment equity" shall mean achieving the highest level of substance use disorder services for all people and shall entail focused efforts to address avoidable inequalities by equalizing those conditions for substance use disorder services for those that have experienced injustices and socioeconomic disadvantages.

2. The council for treatment equity. There is hereby created, within the office of addiction services and supports, a council for treatment equity. The council, in conjunction with the behavioral health services advisory council, shall have the following powers and duties:

(a) Work collaboratively with relevant state agencies, local governmental units as defined in article forty-one of this chapter and other affected stakeholders, including, but not limited to, providers to and representatives of vulnerable populations, in order to set priorities to achieve treatment equity in both racial and ethnically

diverse areas and for vulnerable populations throughout the state;

(b) Analyze collected data to determine the causes of treatment disparities in both racially and ethnically diverse areas and for vulnerable populations throughout the state, including any economic, physical, social or cultural barriers;

(c) Develop and implement strategies aimed at achieving treatment equity in racially and ethnically diverse areas and among vulnerable populations;

(d) Promote community involvement by conducting promotional and educational outreach programs regarding substance use disorders and available services; and

(e) Review the impact of current laws, rules, regulations, policies and programs that may be affecting the ability to achieve treatment equity.

3. Report. The council shall submit a written report to the governor, the temporary president of the senate and the speaker of the assembly no later than one year succeeding the effective date of this section and annually thereafter, setting forth the findings, recommendations and activities of the council on matters within the scope of its powers and duties as set forth in this section.

* NB There are 2 § 19.45's

ARTICLE 22

CHEMICAL DEPENDENCE PROGRAMS, TREATMENT FACILITIES, AND SERVICES

Section 22.01 Admission to chemical dependence programs, treatment facilities and services.

22.03 Patient rights; notice to all patients of their rights.

22.05 Patient's records.

22.07 Informal admission.

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

22.11 Treatment of minors.

§ 22.01 Admission to chemical dependence programs, treatment facilities

and services.

Unless otherwise specifically provided for by statute, a person suffering from chemical abuse or dependence shall be admitted to a chemical dependence program, service, or treatment facility pursuant to the provisions of this article. For purposes of this article, the term "chemical dependence programs, treatment facilities and services" shall mean and include alcoholism and/or substance abuse programs, treatment facilities, and services.

§ 22.03 Patient rights; notice to all patients of their rights.

(a) Notwithstanding any other provision of law including but not limited to the election law, no person's rights as a citizen of the United States or of the state of New York shall be forfeited or abridged because of such person's participation in chemical dependence programs, treatment facilities or services. Such participation shall include but is not limited to the certification as substance dependent of a person to the care and custody of the office under previously existing provisions of law. The fact, proceedings, application, or treatment relating to a person's participation in chemical dependence programs, treatment facilities, or services shall not be used against such person in any action or proceeding in any court.

(b) Immediately upon the admission of any patient to a chemical dependence program, service, or treatment facility, the director of such program, service, or facility, or his or her designee, shall inform the patient in writing of his or her status, including the section of this chapter under which he or she is admitted, and of his or her rights under this article.

(c) The director of every chemical dependence program, service, or treatment facility shall post copies of a notice in a form and manner to be determined by the commissioner, at places throughout the facility or program where such notice shall be conspicuous and visible to all patients, stating the following:

1. a general statement of the rights of patients under the various admission or retention provisions of this article; and

2. the right of the patient to communicate with the director, the board of visitors, if any, and the commissioner.

§ 22.05 Patient's records.

(a) After the admission of any patient, the director of a chemical dependence program or treatment facility shall, within five days excluding Sunday and holidays, forward to the office such information from the record in such time and manner as the commissioner shall require by regulation. Such information from the record in the office shall be accessible only in the manner set forth in sections 33.13 and 33.16 of this chapter.

(b) All records of identity, diagnosis, prognosis, or treatment in connection with a person's receipt of chemical dependence services shall be confidential and shall be released only in accordance with applicable provisions of the public health law, any other state law, federal law and duly executed court orders.

§ 22.07 Informal admission.

For purposes of this chapter, the director of any chemical dependence program or treatment facility may receive therein as a patient any person found by such director to be suitable for, and in need of, such care and treatment and requesting admission thereto, provided however, that nothing in this section shall be construed to guarantee reimbursement for such treatment.

(a) Such person may be admitted as a patient without making formal or written application therefor, and any such person shall be discharged from such program or facility upon his or her request at any time after admission, provided, however, that such action may have other legal or fiscal consequences pursuant to other state and federal laws, and provided further that minors shall be admitted and discharged in accordance with section 22.11 of this article.

(b) Participation in chemical dependence treatment is voluntary. The office or any chemical dependence program or treatment facility shall

not force or otherwise coerce any person to participate in such program or treatment, provided however that receipt of emergency services for incapacitated persons shall be governed in accordance with section 22.09 of this article, and provided further, a person's failure to complete treatment required by judicial mandate may have legal consequences under the terms of such mandate.

(c) The commissioner shall promulgate rules and regulations and take any other necessary action to insure that the rights of individuals who have received or are receiving chemical dependence services are protected.

§ 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.

§ 22.11 Treatment of minors.

(a) For the purposes of this section, the word "minor" shall mean a person under eighteen years of age, but does not include a person who is the parent of a child or has married or who is emancipated, or is a homeless youth, as defined in section five hundred thirty-two-a of the executive law, or receives services at an approved runaway and homeless youth crisis services program or a transitional independent living

support program as defined in section five hundred thirty-two-a of the executive law.

(b) In treating a minor for chemical dependence on an inpatient, residential, or outpatient basis, the important role of the parents or guardians shall be recognized. Steps shall be taken to involve the parents or guardians in the course of treatment, and consent from such a person for inpatient, residential, or outpatient treatment for minors shall be required, except as otherwise provided by subdivision (c) of this section.

(c) Minors admitted for inpatient, residential or outpatient treatment without parental or guardian involvement.

1. If, in the judgment of a physician, parental or guardian involvement and consent would have a detrimental effect on the course of treatment of a minor who is voluntarily seeking treatment for chemical dependence or if a parent or guardian refuses to consent to such treatment and the physician believes that such treatment is necessary for the best interests of the child, such treatment may be provided to the minor by a licensed physician on an inpatient, residential or outpatient basis, a staff physician in a hospital, or persons operating under their supervision, without the consent or involvement of the parent or guardian. Such physician shall fully document the reasons why the requirements of subdivision (b) of this section were dispensed within the minor's medical record, provided, however, that for providers of services which are not required to include physicians on staff, pursuant to regulations promulgated by the commissioner, a qualified health professional, as defined in such regulations, shall fulfill the role of a physician for purposes of this paragraph.

2. If the provider of services cannot locate the parents or guardians of a minor seeking treatment for chemical dependence after employing reasonable measures to do so, or if such parents or guardians refuse or fail to communicate with the provider of services within a reasonable time regarding the minor's treatment, the program director may authorize that such minor be treated on an inpatient, residential or outpatient basis by the provider of services without the consent or involvement of the parent or guardian. Such program director shall fully document the

reasons why the requirements of subdivision (b) of this section were dispensed within the minor's medical record, including an explanation of all efforts employed to attempt to contact such parents or guardians.

3. Admission and discharge for inpatient or residential treatment shall be made in accordance with subdivision (d) of this section.

(d) Inpatient or residential treatment. 1. Admission procedures. (i) A copy of the patient's rights established under this section and under section 22.03 of this article shall be given and explained to the minor and to the minor's consenting parent or guardian at the time of admission by the director of the facility or such person's designee.

(ii) The minor shall be required to sign a form indicating that the treatment is being voluntarily sought, and that he or she has been advised of his or her ability to access the mental hygiene legal service and of his or her rights under this section and section 22.03 of this article. The signed form shall be included in the minor's medical record.

(iii) At the time of admission, any minor so admitted shall be informed by the director of the facility or the director's designee, orally and in writing, of the minor's right to be discharged in accordance with the provisions of this section within twenty-four hours of his or her making a request therefor.

(iv) Emergency contacts.

(A) At the time of admission, the provider of services shall use its best efforts to obtain from the minor's consenting parent or guardian a telephone number or numbers where he or she may be reached by the facility at any time during the day or night. In addition, such provider of services shall also use its best efforts to obtain from the parent or guardian a name, address and appropriate telephone number or numbers of an adult designated by such parent or guardian as an emergency contact person in the event the facility is unable to reach such parent or guardian.

(B) If the minor is admitted in accordance with subdivision (c) of this section, the provider of services shall use its best efforts to obtain from the minor the name, address, and telephone number of an adult who may serve as an emergency contact, and the facility shall verify the existence and availability of such contact upon notice to and

with the prior written consent of the minor.

(C) Failure to obtain emergency contacts, after reasonable effort, in accordance with this section shall not preclude admission of the minor to treatment.

(v) Notice of admission and discharge procedures.

(A) A copy of the facility's admission and discharge procedures shall be provided to the minor and to the minor's consenting parent or guardian at the time of admission by the director of the facility or such person's designee. Such information shall also be mailed to the designated emergency contact person by regular mail.

(B) If the minor is admitted in accordance with subdivision (c) of this section, a copy of the facility's admission and discharge procedures shall be provided to the minor. Such information shall also be mailed to the designated emergency contact person by regular mail.

(vi) Each minor admitted for inpatient or residential chemical dependence treatment pursuant to this subdivision shall be provided with written notice regarding the availability of the mental hygiene legal service for legal counsel, and shall be provided access to the service upon request.

2. Discharge procedures. All minors admitted pursuant to this subdivision shall be discharged in accordance with the following:

(i) Any minor admitted to an inpatient or residential chemical dependence treatment facility has the right to be discharged within twenty-four hours of his or her request in accordance with the provisions of this subdivision.

(ii) If discharge is requested prior to completion of a minor's treatment plan, such minor must request discharge in writing.

(A) Upon receipt of any form of written request for discharge, the director of the facility in which the minor is admitted shall immediately notify the minor's parent or guardian. If the facility is unable to contact such parent or guardian within a reasonable time, or if the minor has been admitted pursuant to subdivision (c) of this section, the facility shall notify the designated emergency contact person.

(B) The minor shall not be discharged from such facility until it is determined:

(1) that the safety and well being of such minor will not be threatened or the expiration of twenty-four hours, whichever is sooner; or

(2) that the parent, guardian, or designated emergency contact person has made appropriate and timely departure arrangements with the facility. However, unless otherwise directed by the minor's parent or guardian or designated emergency contact person pursuant to this item, such minor shall be discharged within twenty-four hours after submission of the request.

(iii) Writing materials for use in requesting a discharge shall be made available at all times to all minors admitted under this section. The staff of the facility shall assist such minors in preparing or submitting requests for discharge.

ARTICLE 25

FUNDING FOR SERVICES OF THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES

Section 25.01 Definitions.

25.03 Financial support and disbursement of funds.

25.05 Reimbursement from other sources.

25.06 Disclosures by closely allied entities of a voluntary agency.

25.07 Non-substitution.

25.09 Administrative costs.

25.11 Distribution of state aid to a local governmental unit.

25.13 Office is authorized state agency.

25.15 Optimizing federal aid.

25.17 Fees for services.

25.18 Statewide opioid settlements.

§ 25.01 Definitions.

(a) As used herein:

1. "Local governmental unit" shall have the same meaning as that contained in article forty-one of this chapter.

2. "Operating expenses" shall mean expenditures approved by the office and incurred for the maintenance and operation of substance use disorder and/or compulsive gambling programs, including but not limited to expenditures for treatment, administration, personnel, and contractual services. Operating expenses do not include capital costs and debt service unless such expenses are related to the rent, financing or refinancing of the design, construction, acquisition, reconstruction, rehabilitation or improvement of a substance use disorder and/or compulsive gambling program facility pursuant to the mental hygiene facilities finance program through the dormitory authority of the state of New York (DASNY; successor to the Facilities Development Corporation), or otherwise approved by the office.

3. "Debt service" shall mean amounts, subject to the approval of the office, required to be paid to amortize obligations including principal and interest, assumed by or on behalf of a voluntary agency or a program operated by a local governmental unit.

4. "Capital costs" shall mean the costs of a program operated by a local governmental unit or a voluntary agency with respect to the acquisition of real property estates, interests, and cooperative interests in realty, their design, construction, reconstruction, rehabilitation and improvement, original furnishings and equipment, site development, and appurtenances of a facility.

5. "State aid" shall mean financial support provided through appropriations of the office to support the provision of substance use disorder treatment, compulsive gambling, prevention or other authorized services, with the exclusion of appropriations for the purpose of medical assistance.

6. "Voluntary agency contributions" shall mean revenue sources of voluntary agencies exclusive of state aid and local tax levy.

7. "Approved net operating cost" shall mean the remainder of total operating expenses approved by the office, less all sources of revenue,

including voluntary agency contributions and local tax levy; provided, however, that any federal paycheck protection program loan forgiveness funding, or other extraordinary federal funding provided in response to the COVID-19 pandemic, as determined by the office, shall not be considered a source of revenue.

8. "Voluntary agency" shall mean a corporation organized or existing pursuant to the not-for-profit corporation law for the purpose of providing substance use disorder, treatment, compulsive gambling, prevention or other authorized services.

§ 25.03 Financial support and disbursement of funds.

(a) In accordance with the provisions of this article, and within appropriations made available, the office may provide state aid to a program operated by a local governmental unit or voluntary agency up to one hundred per centum of the approved net operating costs of such program operated by a local governmental unit or voluntary agency, and state aid may also be granted to a program operated by a local governmental unit or a voluntary agency for capital costs associated with the provision of services at a rate of up to one hundred percent of approved capital costs. Such state aid shall not be granted unless and until such program operated by a local governmental unit or voluntary agency is in compliance with all regulations promulgated by the commissioner regarding the financing of capital projects. Such state aid for approved net operating costs shall be made available by way of advance or reimbursement, through either contracts entered into between the office and such voluntary agency or by distribution of such state aid to local governmental units through a grant process pursuant to section 25.11 of this article.

(b) Financial support by the office shall be subject to the approval of the director of the budget and within available appropriations.

(c) All federal financial assistance granted or allocated to the office by the United States shall only be paid out on the audit and warrant of the comptroller on the certificate of the commissioner or his authorized representative.

(d) Nothing in this section shall be construed to require the state to

increase such state aid should a local governmental unit choose to remove any portion of its local tax levy support of voluntary agencies, although the state may choose to do so to address an urgent public need, or conversely, may choose to reduce its state aid up to the same percentage as the reduction in local tax levy.

§ 25.05 Reimbursement from other sources.

The office shall not provide a voluntary agency or a program operated by a local governmental unit with financial support for obligations incurred by or on behalf of such program or agency for substance use disorder and/or compulsive gambling services for which reimbursement is or may be claimed under any provision of law other than this article, unless such financial support was provided as part of any federal paycheck protection program loan forgiveness funding, or other extraordinary federal funding provided in response to the COVID-19 pandemic, as determined by the office.

§ 25.06 Disclosures by closely allied entities of a voluntary agency.

(a) A closely allied entity of a voluntary agency that is funded or has applied for funding from the office shall provide the office with the following information:

1. A schedule of the dates, nature and amounts of all fiscal transactions between the closely allied entity and the voluntary agency that is funded or has applied for funding from the office.

2. A copy of the closely allied entity's certified annual financial statements.

3. With respect to any lease agreement between the closely allied entity, as lessor, and the voluntary agency that is funded or has applied for funding from the office, as lessee, of real or personal property:

- (i) A certified statement by an independent outside entity providing a

fair market appraisal of the real property space to be rented, as well as of any rental of personal property.

(ii) A statement of projected operating costs of the allied entity relative to any such leased property for the budget period. The closely allied entity must furnish the office with a certified statement of its actual operating costs relative to the leased property.

4. A statement of the funds received by the closely allied entity in connection with its fund raising activities conducted on behalf of the substance use disorder and/or compulsive gambling program that is funded or has applied for funding from the office which clearly identifies how such funds were and will be distributed or applied to such program.

5. Any other data or information which the office may deem necessary for purposes of making a funding decision.

(b) The office shall have access to the books and records of the closely allied entity for purposes of verifying the accuracy of the information furnished to the office.

(c) For purposes of this section, a "closely allied entity" shall mean, but not be limited to, a corporation, partnership or unincorporated association or other body that has been formed or is organized to provide financial assistance and aid for the benefit of a voluntary agency that is funded or has applied for funding from the office and which financial assistance and aid shall include, but not be limited to, engaging in fund raising activities, administering funds, holding title to real property, having an interest in personal property of any nature whatsoever, and engaging in any other activities for the benefit of any such program. Moreover, an entity shall be deemed closely allied to a voluntary agency that is funded or has applied for funding from the office to the extent that such entity and applicable fiscal transactions are required to be disclosed within the annual financial statements of the voluntary agency that is funded or has applied for funding from the office, under the category of related party transactions, as defined by and in accordance with generally accepted accounting principles (GAAP) and generally accepted auditing standards (GAAS), as promulgated by the American institute of certified public accountants (AICPA).

§ 25.07 Non-substitution.

A voluntary agency or a program operated by a local governmental unit shall not substitute state monies for cash contributions, federal aid otherwise committed to or intended for use in such program or by such agency, revenues derived from the operation of such program or agency, or the other resources available for use in the operation of the program or agency.

§ 25.09 Administrative costs.

Subject to the approval of the director of the budget, the office shall establish a limit on the amount of financial support which may be advanced or reimbursed to a voluntary agency or a program operated by a local governmental unit for the administration of a program.

§ 25.11 Distribution of state aid to a local governmental unit.

Notwithstanding section one hundred twelve of the state finance law, the office is authorized to grant state aid annually to local governmental units in the following manner:

(a) Local governmental units shall be granted state aid by a state aid funding authorization letter issued by the office for approved net operating costs for voluntary agencies to support the base amount of state aid provided to such voluntary agencies for the prior year provided that the local governmental unit has approved and submitted budgets for the voluntary agencies to the office. The voluntary agency budgets shall identify the nature of the services to be provided which must be consistent with the local services plan submitted by the local governmental unit pursuant to article forty-one of this chapter, the areas to be served and include a description of the voluntary agency contributions and local governmental unit funding provided. The local governmental unit shall enter into contracts with the voluntary agencies

receiving such state aid. Such contracts shall include funding requirements set by the office including but not limited to responsibilities of voluntary agencies relating to work scopes, program performance and operations, application of program income, prohibited use of funds, recordkeeping and audit obligations. Upon designation by the office, local governmental units shall notify voluntary agencies as to the source of funding received by such voluntary agencies.

(b) State aid made available to a local governmental unit for approved net operating costs for a program operated by a voluntary agency or a local governmental unit may be reduced where a review of such voluntary agency's prior year's budget and/or performance indicates:

(1) that the program operated by a local governmental unit or voluntary agency has failed to meet minimum performance standards and requirements of the office including, but not limited to, maintaining service utilization rates and productivity standards as set by the office provided however, that upon determination that the program is not meeting the minimum standards and requirements, the office shall notify such program operated by a local governmental unit or voluntary agency of their deficiencies, and if appropriate, a corrective action plan that includes specific actions to address any deficiencies and a timetable for implementation shall be developed. State aid may be reduced if a corrective action plan is not approved by the office or is not implemented in a timely and satisfactory manner;

(2) that the voluntary agency has had an increase in voluntary agency contributions that reduces the approved net operating costs necessary, except where the office has approved an alternative use of such voluntary agency contributions or such voluntary agency contributions are necessary to ensure financial viability.

§ 25.13 Office is authorized state agency.

(a) The office when designated by the governor is the agency of the state to administer and/or supervise the state plan or plans concerning substance use disorder and/or compulsive gambling services specified in the federal drug abuse office and treatment act of nineteen hundred seventy-two and to cooperate with the duly designated federal authorities charged with the administration thereof.

(b) The office and all entities to which it provides financial support shall do all that is required and shall render necessary cooperation to ensure optimum use of federal aid for substance use disorder and/or compulsive gambling services.

(c) The commissioner is authorized and empowered to take such steps, not inconsistent with law, as may be necessary for the purpose of procuring for the people of this state all of the benefits and assistance, financial and otherwise, provided, or to be provided for, by or pursuant to any act of congress relating to substance use disorder and/or compulsive gambling services.

§ 25.15 Optimizing federal aid.

(a) A program operated by a local governmental unit or voluntary agency shall, unless a specific written waiver of this requirement is made by the office, cause applications to be completed on such forms and in such manner as directed by the office and submit the same to the office for the purpose of causing a determination to be made whether the cost of the services provided individuals and groups qualify for federal aid which may be available for services provided pursuant to titles IV, XVI, XIX and XX of the federal social security act, or any other federal law. A program operated by a local governmental unit or a voluntary agency shall furnish to the office such other data as may be required and shall render such cooperation as may be necessary to maximize such potential federal aid. All information concerning the identity of individuals obtained and provided pursuant to this subdivision shall be kept confidential.

(b) To the extent that federal aid may be available for any substance use disorder and/or compulsive gambling services, the office, notwithstanding any other inconsistent provision of law, and with the approval of the director of the budget, is hereby authorized to seek such federal aid on behalf of voluntary agencies and a program operated by a local governmental unit either directly or through the submission of claims to another state agency authorized to submit the same to an appropriate federal agency. The office is further authorized to certify for payment to voluntary agencies and a program operated by a local governmental unit any federal aid received by the state which is

attributable to the activities financed by such programs and agencies.

§ 25.17 Fees for services.

Voluntary agencies and programs operated by local governmental units funded in whole or in part by the office shall establish, subject to the approval of the office, fee schedules for substance use disorder and/or compulsive gambling services, not specifically covered by the rates established pursuant to article twenty-eight of the public health law or title two of article five of the social services law. Such fees shall be charged for substance use disorder and/or compulsive gambling services furnished to persons who are financially able to pay the same, provided, that such services shall not be refused to any person because of his inability to pay therefor.

§ 25.18 Statewide opioid settlements.

(a) Definitions. As used in this section, the following terms shall have the following meanings: 1. Eligible expenditures shall include services and programs that are consistent with the approved uses and terms of the statewide opioid settlement agreement as defined in this section, which may only include:

(i) to prevent substance use disorders through an evidence-based youth-focused public health education and prevention campaign, including school-based prevention and health care services and programs to reduce the risk of substance use by school-aged children;

(ii) to develop and implement statewide public education campaigns to reduce stigma against individuals with a substance use disorder, provide information about the risks of substance use, best practices for addressing substance use disorders, and information on how to locate services that reduce the adverse health consequences associated with substance use disorders or provide treatment for substance use disorders;

(iii) to provide substance use disorder treatment and early recovery programs for youth and adults, with an emphasis on programs that provide a continuum of care that includes screening and assessment for substance

use disorders and co-occurring disorders, active treatment, family involvement, case management, relapse management for substance use and other co-occurring behavioral health disorders, vocational services, literacy services, parenting classes, family therapy and counseling services, crisis services, recovery services, evidence-based treatments, medication-assisted treatments, including medication assisted treatment provided in correctional facilities, psychiatric medication, psychotherapy and transitional services programs;

(iv) to provide harm reduction counseling and services to reduce the adverse health consequences associated with substance use disorders, including overdose prevention and prevention of communicable diseases related to substance use, provided by a substance use disorder service provider or qualified community-based organization;

(v) to provide housing services for people who are recovering from a substance use disorder. Such housing services shall be appropriate, based on the individual's current need and stage of recovery. Such housing services may include but are not limited to supportive housing services;

(vi) to support community-based programs that reduce the likelihood of criminal justice involvement for individuals who have or are at risk of having a substance use disorder;

(vii) to provide programs for pregnant women and new parents who currently or formerly have had a substance use disorder and newborns with neonatal abstinence syndrome; and/or

(viii) to provide vocational and educational training for individuals with or at risk for a substance use disorder.

2. "Government entity" means (i) departments, agencies, divisions, boards, commissions and/or instrumentalities of the state of New York, excluding the department of financial services, provided however, the department of financial services shall be considered a government entity for purposes of claims or proceedings filed by it against Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and/or Janssen Pharmaceutica, Inc.; the superintendent of the department of financial services; and the department of law; and

(ii) any governmental subdivision within the boundaries of the state

of New York, including, but not limited to, counties, municipalities, districts, towns and/or villages, and any of their subdivisions, special districts and school districts, and any department, agency, division, board, commission and/or instrumentality thereof.

3. "Participating entities" means participating entities as such term is defined in any statewide opioid settlement agreement.

4. "Opioid settlement fund" means the fund created by section ninety-nine-nn of the state finance law, the funds of which shall be used or distributed by the commissioners, as authorized by the legislature by statute or appropriation, for the purposes of preventing addiction and reducing the harms caused by the overdose and substance use disorder epidemic consistent with the terms of any statewide opioid settlement agreement.

5. "Released claims" means released claims as such term is defined in the statewide opioid settlement agreements.

6. "Released entities" means released entities as such term is defined in the statewide opioid settlement agreements.

7. "New York subdivisions" means each county, city, town, village, or special district in the state of New York.

8. "Statewide opioid settlement agreements" means agreements of statewide applicability entered into on or after June first, two thousand twenty-one by the office of the attorney general, including but not limited to consent judgments, consent decrees filed or unfiled, and related agreements or documents between the state and any party, the purpose of which is to resolve claims for conduct related to the manufacture, promotion, dispensing, sale, overutilization and/or distribution of opioid products which are consistent with subdivision sixteen of section sixty-three of the executive law. Copies of such agreements, including any amendments thereto, shall be kept on file by the attorney general, who shall make such available for inspection and copying pursuant to the provisions of article six of the public officers

law.

(b) Eligible expenditures for opioid settlement funds. 1. The legislature shall appropriate funds to be used for eligible expenditures that are consistent with the approved uses and terms of the statewide opioid settlement agreement. Such expenditures shall be distributed regionally and in accordance with the statewide opioid settlement agreements to ensure adequate geographic disbursement across the state.

2. New York subdivisions may apply to the appropriate agency for funding for eligible expenditures consistent with the terms of any statewide opioid settlement agreement. Any New York subdivision which receives funding pursuant to this section shall be required to annually certify to the appropriate state agency in which funding was received that such New York subdivision is utilizing such funds in accordance with the requirements of this section and section ninety-nine-nn of the state finance law.

3. Each New York subdivision shall provide a detailed accounting of how the funds were used as well as an analysis and evaluation of the services and programs funded. Such information shall be included in the report provided pursuant to paragraph ten of subdivision (c) of this section.

(c) Advisory board establishment and responsibilities. 1. The opioid settlement board is hereby established under the office of addiction services and supports to provide recommendations on how funding received by the opioid settlement fund pursuant to section ninety-nine-nn of the state finance law shall be allocated by the legislature. Recommendations shall be evidence-based and may take into consideration federal, state or local initiatives and activities that have shown to be effective in preventing and treating substance use disorders as well as maintaining recovery and assisting with the collateral effects of substance use disorders for individuals and their families or support system. Such recommendations shall also take into account any gaps in access to services or programs identified as eligible expenditures and incorporate mechanisms for measurable outcomes for determining the effectiveness of funds expended. The office and any other relevant agency that provides or regulates eligible expenditures shall provide any necessary staff,

resources and technical assistance to assist with the functions of the advisory board. Such assistance shall be supported pursuant to an appropriation by the legislature, in accordance with the statewide opioid settlement agreements.

2. The opioid settlement board may make recommendations to the legislature and the governor regarding the addition or removal of any eligible expenditures in response to changing substance use disorder needs in the state. No recommendation may be made to remove an eligible expenditure without three-fourths approval of present board members.

3. The opioid settlement board shall consist of twenty-one members appointed as follows:

(i) the commissioner of addiction services and supports, the commissioner of mental health, the commissioner of health, and the director of the division of budget, or their designees;

(ii) two appointments by the governor;

(iii) three appointments by the temporary president of the senate;

(iv) three appointments by the speaker of the assembly;

(v) one appointments by the attorney general;

(vi) one appointment by the mayor of the city of New York; and

(vii) seven appointments from a list of nominees submitted, pursuant to a statewide opioid settlement agreement, by an association of counties that represents at least ninety percent of the counties in New York, counting both by number of counties and by population at the time such statewide opioid settlement agreement was finalized. Such appointments shall be selected as follows: three from the governor, one from the temporary president of the senate, one from the speaker of the assembly, one from the minority leader of the senate and one from the minority leader of the assembly.

4. Each member shall be appointed to serve three-year terms and in the event of a vacancy, the vacancy shall be filled in the manner of the original appointment for the remainder of the term. The appointed members and commissioners shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties as board members.

5. Every effort shall be made to ensure a balanced and diverse board, representing the geographic regions and racial and ethnic demographics of the state as well as those with lived experiences of a substance use disorder. Appointed members shall have an expertise in public and behavioral health, substance use disorder treatment, harm reduction, criminal justice, public finance, or drug policy. Further, the board shall include individuals with personal or professional experience with substance use and addiction issues and co-occurring mental illnesses as well as providing services to those that have been disproportionately impacted by the enforcement and criminalization of addiction.

6. The chairperson of the board and the vice chairperson shall be elected from among the members of the board by the members of such board. The vice chairperson shall represent the board in the absence of the chairperson at all official board functions. A majority of the voting members of the board shall constitute a quorum.

7. Members of the board shall not take any action to direct funding from the opioid settlement fund to any entity in which they or their family members have any interest, direct or indirect, or receive any commission or profit whatsoever, direct or indirect. Members of the board shall recuse themselves from any discussion or vote relating to such interest.

8. The board shall meet at least quarterly, to ensure recommendations are updated and consistent with the needs of the state. Such meetings shall be held in accordance with article seven of the public officers law and pursuant to the federal americans with disabilities act of nineteen hundred ninety, as amended.

9. On or before November first of each year, beginning November first, two thousand twenty-one, the board shall provide their recommendations for how such funds shall be appropriated, consistent with the requirements of this section and section ninety-nine-nn of the state finance law. Such recommendations shall be provided in a written report to the governor, the temporary president of the senate, the speaker of

the assembly, the chair of the senate finance committee, the chair of the assembly ways and means committee, the chair of the senate alcoholism and substance abuse committee and the chair of the assembly alcoholism and drug abuse committee.

10. On or before November first of each year, beginning one year after the initial deposit of monies in the opioid settlement fund, the relevant commissioners shall provide a written report to the governor, temporary president of the senate, speaker of the assembly, chair of the senate finance committee, chair of the assembly ways and means committee, chair of the senate alcoholism and substance use disorders committee, chair of the assembly alcoholism and drug abuse committee, and the opioid settlement advisory board. Such report shall be presented as a consolidated dashboard and be made publicly available on the respective offices' websites. The report shall, to the extent practicable after making all diligent efforts to obtain such information, include the following: (i) the baseline funding for any entity that receives funding from the opioid settlement fund, prior to the receipt of such funds; (ii) how funds deposited in the opioid settlement fund had been utilized in the preceding calendar year, including but not limited to: (A) the amount of money disbursed and the award process used for such disbursement, if applicable; (B) the names of the recipients, the amounts awarded to such recipient and details about the purpose such funds were awarded for, including what specific services and programs the funds were used on and what populations such services or programs served; (C) the main criteria utilized to determine the award, including how the program or service assists to reduce the effects of substance use disorders; (D) an analysis of the effectiveness of the services and/or programs that received opioid settlement funding in their efforts to reduce the effects of the overdose and substance use disorder epidemic. Such analysis shall utilize evidence-based uniform metrics when reviewing the effects the service and/or program had on prevention, harm reduction, treatment, and recovery advancements; (E) any relevant information provided by the New York subdivisions pursuant to this section; and (F) any other information the commissioner deems necessary to help inform future appropriations and funding decisions, and ensure such funding is not being used to supplant local, state, or

federal funding.

(c-1) On or before November first of each year, any New York subdivision that directly received funds pursuant to a statewide opioid settlement agreement shall publicly post on their website information regarding how such funding was utilized and shall submit such information to the office of addiction services and supports. Such information shall be updated on an annual basis. The office of addiction services and supports shall re-post such information on its website.

(d) Limitation on authority of government entities to bring lawsuits. No government entity shall have the authority to assert released claims against entities released by the department of law in a statewide opioid settlement agreement executed by the department of law and the released party on or after June first, two thousand twenty-one. Any action filed by a government entity after June thirtieth, two thousand nineteen asserting released claims against a released party in a statewide opioid settlement agreement, shall be extinguished by operation of law upon being released pursuant to such statewide opioid settlement agreement.

TITLE E

GENERAL PROVISIONS

Article 29 General provisions relating to in-patient facilities

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31 Regulation and quality control of services for the mentally disabled

32 Regulation and quality control of chemical dependence services and compulsive gambling services

33 Rights of patients

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ARTICLE 29

GENERAL PROVISIONS RELATING TO IN-PATIENT FACILITIES

Section 29.01 Regulations and forms.

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- 29.28 Payment of costs for prosecution of incarcerated individual-patients.
- 29.29 Incident reporting procedures.

§ 29.01 Regulations and forms.

The commissioner shall have the power to make regulations governing admissions to hospitals, schools, and alcoholism facilities and the identification and processing of patients. He shall prescribe and furnish forms for use in procedures for admission. Admission shall be had only upon such forms.

§ 29.03 Effect of court order authorizing retention of a patient.

No order or determination under this article that a person is in need of involuntary care and treatment or that there was need for retention of such person shall be construed or deemed to be a determination or finding that such person is incompetent or is unable adequately to conduct his personal or business affairs.

§ 29.05 Community agreements regarding admission procedures.

A director of community services and the commissioner may enter into an agreement concerning screening of applications for admission to a facility pursuant to this chapter. The agreement may provide procedures for submitting certain applications to the director or his authorized representative for review, for examining a person allegedly in need of or suitable for care and treatment, for obtaining additional information, and for offering recommendations on appropriate or alternate modes of care and treatment or any other guidelines on determining options in the community for the care and treatment of an individual.

§ 29.07 Commissioner's powers over admissions to department facilities.

(a) The commissioner may by order defer admissions to any facility in the department when the total number of patients therein exceeds its capacity to an extent which will not permit adequate care and treatment to be provided patients.

(b) If the commissioner shall determine that overcrowding exists in the department schools, he may, within the amounts appropriated therefor, authorize admission for care and treatment of any person with a developmental disability to a designated facility approved for such purposes by the commissioner. The patient and any liable relatives shall be liable for payment of fees in accordance with article forty-three of this chapter.

§ 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.

§ 29.13 Treatment plans.

(a) Subject to the regulations of the commissioner, the director of each departmental facility shall require the development of a written treatment plan to assure adequate care and treatment for each patient.

(b) The written treatment plan shall include, but not be limited to, a statement of treatment goals; appropriate programs, treatment or therapies to be undertaken to meet such goals; and a specific timetable for assessment of patient programs as well as for periodic mental and physical reexaminations. In causing such a plan to be prepared or when such a plan is to be revised, the following persons shall be interviewed

and provided an opportunity to actively participate in such preparation or revision: the patient; 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 indicating that the involvement of the parent or parents is not clinically appropriate and such determination is documented in the record; upon the request of the patient sixteen years of age or older, a significant individual 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.

§ 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.

§ 29.16 Discharge; certain cases.

The director of a facility shall, with respect to any patient admitted to such facility pursuant to section five hundred nine of the executive law or 353.4 of the family court act and article nine or fifteen of this chapter, give immediate written notice to the director of the division for youth and to the mental hygiene legal service when any such patient leaves the facility without the consent of its director. Such patient shall not be discharged so long as there is a valid order of the family court placing such person with the division for youth, except in accordance with the provisions of section five hundred nine of the executive law or section 353.4 of the family court act.

§ 29.17 Clothing and money to be furnished patients discharged or released.

No patient shall be discharged or released from a department facility without suitable clothing adapted to the season in which he is discharged or released; and if it cannot be otherwise obtained, the facility shall upon the order of the director, or of the commissioner, as the case may be, furnish the same, and money not exceeding fifty dollars, to defray his expenses until he can reach his relatives or friends, or find employment to earn a subsistence.

§ 29.18 Client service report.

(a) The commissioner shall establish a client service report system for the purpose of providing notification of services or treatment provided to individual patients or clients to such patients or clients, to persons duly authorized to represent such patients or clients, including a parent or parents, legal guardian or next-of-kin if a patient or client is a minor, and to appropriate directors of community services and social services as hereinafter prescribed.

(b) A client service report shall be prepared for each patient or client receiving services or treatment in a department facility, or program to include, but not be limited to, information regarding the types, location, date and estimated costs of services and names of persons responsible for providing such services to each patient or client during the course of his treatment or during each twelve month period of treatment, whichever time period is shorter. Such report shall be made available as hereinafter prescribed no later than thirty days after the end of such course of treatment if such course is less than twelve months in duration, or after the anniversary date of the patient's admission to a department facility or of the initial participation in a program or course of treatment of an individual who is not a resident of the department facility if the program or course of treatment is more than twelve months in duration.

(c) Upon request, such client service report shall be made available to the patient or client, or to a person or persons representing him on his behalf, including the parent or parents, legal guardian or next-of-kin, if such patient or client is a minor. At their request and with the consent of the commissioner and the patient or client, such

client service report shall be made available to the appropriate director of community services and/or social services and the mental hygiene legal service.

(d) The commissioner shall establish procedures for making such client service reports available to the persons provided in this section, and for advising patients and clients, their representatives, directors of community services and social services and the mental hygiene legal service of the availability of such reports and the established procedures for obtaining them.

*** § 29.19 Powers and duties of peace officers acting pursuant to their special duties and police officers to apprehend, restrain, and transport persons to facilities.**

A person who has been committed or admitted to a department facility or a hospital licensed or operated by the office of mental health and who has been reported as escaped therefrom or from lawful custody, or who resists or evades lawful custody; and any patient for whom the director of a hospital operated by the office of mental health, or the director's designee, has terminated a conditional release and ordered such patient to return to such facility; and any patient for whom a director of an assisted outpatient treatment program, as defined in subdivision (a) of section 9.60 of this chapter, or the director's designee, or anyone designated pursuant to section 9.37 of this chapter, has directed the removal to a hospital pursuant to subdivision (n) of section 9.60 of this chapter, may be apprehended, restrained, transported to, and returned to such school or hospital by any peace officer, acting pursuant to his special duties, or any police officer who is a member of an authorized police department or force or of a sheriff's department, and it shall be the duty of any such officer to assist any representative of a department or licensed facility, or an assisted outpatient treatment program, to take into custody any such person or patient upon the request of such representative, director or designee.

* NB Effective until June 30, 2027

* § 29.19 Powers and duties of peace officers acting pursuant to their

special duties and police officers to apprehend, restrain, and transport persons to facilities.

A person who has been committed or admitted to a department facility and who has been reported as escaped therefrom or from lawful custody, or who resists or evades lawful custody, may be apprehended, restrained, transported to, and returned to such school or hospital by any peace officer, acting pursuant to his special duties, or any police officer, and it shall be the duty of any such officer to assist any representative of a department facility to take into custody any such person upon the request of such representative.

* NB Effective June 30, 2027

§ 29.20 In-patient nasogastric feeding procedures.

The commissioners of the office of mental health and the office for people with developmental disabilities of the department shall each promulgate and administer regulations and policies governing the maximum size of nasogastric feeding tubes with the principal purposes of protecting patients from undue discomfort, for the benefit of any patient in a facility subject to the jurisdiction of the commissioners.

§ 29.21 Care of children born to patients.

If a child is born to a patient in a department facility, the director shall determine, with suitable social service advice, whether the mother is able to care for the child. If, in his opinion, she is unable to do so, he shall make provision for such child in accordance with article three of the family court act. Pending a determination by the family court, the director may, in his discretion, make a temporary placement of the child.

*** § 29.23 Powers with respect to property of persons receiving services.**

The commissioner may authorize the directors of department facilities, to receive or obtain funds or other personal property, excepting jewelry, due or belonging to a person receiving services from such facility who has no guardian authorized to receive such funds or property, up to an amount or value not exceeding twenty-five thousand dollars; and also from a guardian upon his discharge when the final order so provides where the balance remaining in the hands of such guardian does not exceed such amount. Such personal property, excepting jewelry, other than moneys shall be retained by the director for the benefit of the person for whom received until sold as hereinafter provided. Such funds and the proceeds of the sale of other personal property so received shall be placed to the credit of the person for whom received and disbursed on the order of the director, to provide, in the first instance, for luxuries, comforts, and necessities for such person, including burial expenses and such director shall be authorized to seek to place, to the extent permissible by law, funds in excess of the appropriate eligibility level for government benefits, into a qualifying Medicaid exception trust, including a special needs trust, or similar device. The director of a department facility shall ensure that the treatment team meet with, and determine the current and future personal needs of, the person receiving services. For purposes of this section, a treatment team is one that is responsible for the following, including but not limited to, clinical assessments, treatment plan development, any necessary discharge planning, and personal expenditure planning. The commissioner may authorize directors, on behalf of any such person, to give receipts, execute releases and other documents required by law or court order, to endorse checks and drafts, and to convert personal property excepting jewelry into money by sale for an adequate consideration, and to execute bills of sale or to permit such person to do so, in order that the proceeds may be deposited to the credit of such person in accordance with the provisions of this section.

Whenever, under the provisions of this section, the commissioner shall authorize the director of a facility in the department to receive moneys or other personal property excluding jewelry belonging to a person which are on deposit in any bank or other institution or which are due to the person from any person or agency, such bank, institution, person, or

agency shall, upon the written request of the director, forthwith turn over to such director from such moneys or personal property the amount or value hereinbefore specified. Any moneys received by the director of such facility shall be deposited by him in such bank or trust company as shall be designated by the comptroller, except that the commissioner may, in his discretion, invest so much thereof as he may deem advisable in bonds issued by the United States government or any of its agencies.

Moneys belonging to a person received by the director of such facility pursuant to law shall be received by him in his official capacity as such director and such receipt shall be deemed an exercise or performance by him of a power and duty duly conferred by this section. In the event that a director of a department facility receives a windfall payment on behalf of a person which, in combination with other funds held on behalf of such person, would cause such person to become ineligible for government benefits, such director shall, to the extent permissible by law, apply the funds in excess of the appropriate eligibility level to the person's personal needs or seek to place such excess funds into a qualifying Medicaid exception trust, including a special needs trust, or similar device. For purposes of this section, a windfall payment shall mean a one-time payment such as a gift, an inheritance, lottery winnings, or court-ordered judgment or settlement.

This section shall not apply to any federal or state benefits received by the director as representative payee, which benefits shall be handled in accordance with section 33.07 of this title and regulations promulgated thereunder.

* NB Effective until June 30, 2027

* § 29.23 Powers with respect to property of patients.

The commissioner may authorize the directors of department facilities, to receive or obtain funds or other personal property, excepting jewelry, due or belonging to a patient who has no committee, up to an amount or value not exceeding five thousand dollars; and also from a committee upon his discharge when the final order so provides where the balance remaining in the hands of such committee does not exceed such amount. Such personal property, excepting jewelry, other than moneys

shall be retained by the director for the benefit of the patient for whom received until sold as hereinafter provided. Such funds and the proceeds of the sale of other personal property so received shall be placed to the credit of the patient for whom received and disbursed on the order of the director, to provide, in the first instance, for luxuries, comforts, and necessities for such patient, including burial expenses, and, if funds are thereafter available, for the support of such patient. The commissioner may authorize directors, on behalf of any such patient, to give receipts, execute releases and other documents required by law or court order, to endorse checks and drafts, and to convert personal property excepting jewelry into money by sale for an adequate consideration, and to execute bills of sale or to permit such patient to do so, in order that the proceeds may be deposited to the credit of such patient in accordance with the provisions of this section.

Whenever, under the provisions of this section, the commissioner shall authorize the director of a facility in the department to receive moneys or other personal property excluding jewelry belonging to a patient which are on deposit in any bank or other institution or which are due to the person from any person or agency, such bank, institution, person, or agency shall, upon the written request of the director, forthwith turn over to such director from such moneys or personal property the amount or value hereinbefore specified. Any moneys received by the director of such facility shall be deposited by him in such bank or trust company as shall be designated by the comptroller, except that the commissioner may, in his discretion, invest so much thereof as he may deem advisable in bonds issued by the United States government or any of its agencies.

Moneys belonging to a patient received by the director of such facility pursuant to law shall be received by him in his official capacity as such director and such receipt shall be deemed an exercise or performance by him of a power and duty duly conferred by this section.

* NB Effective June 30, 2027

§ 29.25 Sale or delivery of alcoholic beverages to patients prohibited.

Any person who knowingly sells, delivers, or gives away or causes, permits, or procures to be sold, delivered, or given away any alcoholic beverage to a patient on the grounds of a department facility, except as part of the patient's prescribed medical regimen or as part of a duly authorized religious ceremony or observance, shall be guilty of a class B misdemeanor.

§ 29.27 Incarcerated individual-patients placed in the custody of the department.

(a) As used in this section, the term "incarcerated individual-patient" means a person committed pursuant to the provisions of article sixteen of the correction law to the custody of the department of mental hygiene for care and treatment.

(b) The commissioner shall provide a facility or facilities in which incarcerated individual-patients may be retained for care and treatment.

(c) An incarcerated individual-patient may be retained for care and treatment in the facility designated by the commissioner for the period stated in the order committing the incarcerated individual-patient to the custody of the department unless sooner transferred or discharged in accordance with law. If the incarcerated individual-patient requires inpatient care and treatment for mental illness beyond such authorized period, the director of the facility where he or she is kept in custody shall apply for an order of retention or subsequent orders of retention in accordance with the procedures set forth in article nine of this chapter for the retention of patients. The provisions of this chapter applying to the rights of patients with respect to notices, hearings, judicial review, writ of habeas corpus, and the services of the mental hygiene legal service shall apply to incarcerated individual-patients except that in no case shall an incarcerated individual-patient be discharged or released from custody prior to the time that such incarcerated individual-patient has completed his or her term of imprisonment or that his or her release from custodial confinement in the correctional facility or jail from which he or she was delivered to

the department has been duly authorized.

(d) During the period of his or her custody in the department of mental hygiene pursuant to this section, an incarcerated individual-patient shall be entitled to the rights to care and treatment set forth in section 15.03 of this chapter and to such other rights granted to patients by this chapter, as determined by regulation of the commissioner, which are not inconsistent with his or her status as a person legally subject to confinement in a correctional facility or jail or with the mandate of secure custody of such incarcerated individual-patient.

(e) When the director of the facility in which the incarcerated individual-patient is in custody finds that the incarcerated individual-patient is no longer mentally ill or no longer requires hospitalization for care and treatment, he or she shall so notify the incarcerated individual-patient and commissioner of corrections and community supervision or, in the case of an incarcerated individual-patient coming from a jail or correctional institution operated by local government, the officer in charge of the jail or correctional institution from which the incarcerated individual-patient was committed. The commissioner of corrections and community supervision or such officer, as the case may be, shall immediately arrange to take such incarcerated individual-patient into custody and return him or her to a correctional facility or to the jail or correctional institution operated by local government.

(f) Upon delivery of the incarcerated individual-patient to the representative of the commissioner of corrections and community supervision or of an officer in charge of a jail or correctional institution operated by local government, the responsibility of the department and its facilities for the custody of the incarcerated individual-patient shall terminate. Where the incarcerated individual is returned to a state correctional facility, the department shall continue to be responsible for the incarcerated individual-patient's psychiatric care if the incarcerated individual-patient upon his or her return is in a program established pursuant to section four hundred one of the correction law.

(g) If an incarcerated individual-patient in the custody of the department escapes from custody, immediate notice shall be given to the

commissioner of corrections and community supervision or, in the case of an incarcerated individual-patient coming from a jail or correctional institution operated by local government, to the officer in charge of such jail or correctional institution. Notice shall also be given to appropriate law enforcement authorities.

(h) The cost of care and treatment of an incarcerated individual-patient in a department facility shall be a charge upon the department if the incarcerated individual-patient was committed from a state correctional facility or upon the local government from which the incarcerated individual-patient was committed.

(i) Upon release of an incarcerated individual-patient from a facility, the director shall forward a copy of all health and psychiatric records to the commissioner of corrections and community supervision or to the officer in charge of a jail or correctional institution operated by local government, as the case may be.

(j) If the sentence for which an incarcerated individual-patient is confined expires or is vacated or modified by court order, the director shall so notify the commissioner of corrections and community supervision or such officer in charge of a jail or correctional institution operated by local government, as appropriate.

§ 29.28 Payment of costs for prosecution of incarcerated individual-patients.

(a) When an incarcerated individual-patient, as defined in subdivision (a) of section 29.27 of this article, who was committed from a state correctional facility, is alleged to have committed an offense while in the custody of the department, the department of corrections and community supervision shall pay all reasonable costs for the prosecution of such offense, including but not limited to, costs for: a grand jury impaneled to hear and examine evidence of such offense, petit jurors, witnesses, the defense of any incarcerated individual financially unable to obtain counsel in accordance with the provisions of the county law, the district attorney, the costs of the sheriff and the appointment of additional court attendants, officers or other judicial personnel.

(b) It shall be the duty of the governing body of any county wherein such prosecution occurs to cause a sworn statement of all costs to be

forwarded to the department of corrections and community supervision. Upon certification by such department that such costs as authorized by this section have been incurred, the commissioner of corrections and community supervision shall forward the proper vouchers to the state comptroller. It shall be the duty of the comptroller to examine such statement and to correct same by striking therefrom any and all items which are not authorized pursuant to the provisions of this section and after correcting such statement, the comptroller shall draw his or her warrant for the amount of any such costs in favor of the appropriate county treasurer, which sum shall be paid to said county treasurer out of any moneys appropriated therefor.

(c) The department shall, after consultation with the director of the budget, promulgate rules and regulations to carry out the provisions of this section.

§ 29.29 Incident reporting procedures.

The commissioners of the office of mental health and the office for people with developmental disabilities of the department shall establish policies and uniform procedures for their respective offices for the reporting, compilation, and analysis of incident reports. Incident reports shall, for the purposes of this chapter, mean reports of accidents and injuries affecting patient health and welfare at facilities. These policies and procedures shall include but shall not be limited to:

1. The establishment of a patient care and safety team at the facility level which shall include but not be limited to a: physician, nurse, social worker and therapy aide, to investigate and report to the facility director on:

- (i) suicides or attempted suicides;
- (ii) violent behavior exhibited by either patients or employees;
- (iii) frequency and severity of injuries incurred by either patients or employees;
- (iv) frequency and severity of injuries occurring on individual wards or in buildings at such facility;

(v) patient leave without consent;
(vi) medication errors; and
(vii) recommendations for corrective actions in response to incident reports to ensure the care and safety of all patients.

2. The establishment of cumulative record keeping of incident reports which identifies patient and employee involvement.

3. A compilation of uniform and measurable information, first on a facility basis, then on an office-wide basis, that will indicate where the greatest number and types of incidents occur.

4. Each facility shall aggregate its data monthly for the director and that aggregated information shall be submitted, at least semi-annually to the commissioner of the office of mental health and to the commissioner of the office for people with developmental disabilities.

5. The commissioners shall transmit a copy of any report received pursuant to subdivision four of this section to the state commission on quality of care and advocacy for persons with disabilities.

ARTICLE 30

COMPREHENSIVE CARE CENTERS FOR EATING DISORDERS

Section 30.01 Legislative findings.

30.02 Definitions.

30.03 Comprehensive care centers for eating disorders;
established.

30.04 Qualifying criteria.

30.05 State identification of comprehensive care centers for
eating disorders; commissioner's written notice.

30.06 Restricted use of title.

§ 30.01 Legislative findings.

The legislature hereby finds that effective diagnosis and treatment

for citizens struggling with eating disorders, a complex and potentially life-threatening condition, requires a continuum of interdisciplinary providers and levels of care. Such effective diagnosis and treatment further requires the coordination and comprehensive management of an individualized plan of care specifically oriented to the distinct needs of each individual.

The legislature further finds that, while there are numerous health care providers in the state with expertise in eating disorder treatment, there is no generally accessible, comprehensive system for responding to these disorders. Due to the lack of such a system the legislature finds that treatment, information/referral, prevention and research activities are fragmented and incomplete. In addition, due to the broad, multifaceted needs of individuals with eating disorders, insurance payments for the necessary plan of care and providers is usually fragmented as well, leaving citizens with insufficient coverage for essential services and, therefore, at risk of incomplete treatment, relapse, deterioration and potential death.

The legislature therefore declares that the state take positive action to facilitate the development and public identification of provider networks and care centers of excellence to provide a coordinated, comprehensive system for the treatment of such disorders, as well as to conduct community education, prevention, information/referral and research activities. The legislature further declares that health coverage by insurers and health maintenance organizations should include covered services provided through such centers and that, to the extent possible and practicable, health plan reimbursement should be structured in a manner to facilitate the individualized, comprehensive and integrated plans of care which such centers are required to provide.

§ 30.02 Definitions.

For purposes of this article:

(a) "Eating disorder" is defined to include, but not be limited to, conditions such as anorexia nervosa, bulimia and binge eating disorder,

identified as such in the ICD-9-CM International Classification of Disease or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, or other medical and mental health diagnostic references generally accepted for standard use by the medical and mental health fields.

(b) "Comprehensive care centers for eating disorders" or "comprehensive care centers" means a provider-sponsored system of care, organized by either corporate affiliation or clinical association for the common purpose of providing a coordinated, individualized plan of care for an individual with an eating disorder, across a continuum that includes all necessary non-institutional, institutional and practitioner services and treatments, from initial patient screening and evaluation, to treatment, follow-up care and support.

§ 30.03 Comprehensive care centers for eating disorders; established.

The commissioner shall provide for the public identification of comprehensive care centers for persons with eating disorders for the purposes of:

(a) Promoting the operation of a continuum of comprehensive, coordinated care for persons with eating disorders;

(b) Promoting ready access to information, referral and treatment services on eating disorders for consumers, health practitioners, providers and insurers, with access in every region of the state;

(c) Promoting community education, prevention and patient entry into care; and

(d) Promoting and coordinating regional and statewide research efforts into effective methods of education, prevention and treatment, including research on the various models of care.

§ 30.04 Qualifying criteria.

(a) In order to qualify for state identification as a comprehensive care center for eating disorders pursuant to this article, applicants must demonstrate to the commissioner's satisfaction that, at a minimum:

1. The applicant can provide a continuum of care tailored to the specialized needs of individuals with eating disorders, with such continuum including at least the following levels of care:

(i) Individual health, psychosocial and case management services, in both noninstitutional and institutional settings, from licensed and certified practitioners with demonstrated experience and expertise in providing services to individuals with eating disorders;

(ii) Medical/surgical, psychiatric and rehabilitation care in a general hospital or a hospital licensed under this chapter; provided that, whenever practicable and appropriate, the service setting for any such care shall be oriented to the specific needs, treatment and recovery of persons with eating disorders;

(iii) Residential care and services in a residential health care facility licensed under article twenty-eight of the public health law, or a facility licensed under article thirty-one of this chapter which will provide a program of care and service setting that is specifically oriented to the needs of individuals with eating disorders;

2. The care of individuals will be managed and coordinated at each level and throughout the continuum of care;

3. The applicant is able to conduct activities for community education, prevention, information/referral and research; and

4. The applicant meets such additional criteria as are established by the commissioner.

(b) Eligible applicants shall include but are not limited to providers licensed under article twenty-eight of the public health law or article thirty-one of this chapter or health or mental health practitioners licensed under title eight of the education law.

(c) The commissioner shall seek the recommendation of the commissioner of health prior to identifying an applicant as a comprehensive care center under this article.

§ 30.05 State identification of comprehensive care centers for eating disorders; commissioner's written notice.

(a) The commissioner shall identify a sufficient number of comprehensive centers to ensure adequate access to services in all regions of the state, provided that, to the extent possible, the commissioner shall identify such care centers geographically dispersed throughout the state, and provided further, however, that the commissioner shall, to the extent possible, initially identify at least three such centers.

(b) The commissioner's identification of a comprehensive care center for eating disorders under this article shall be valid for not more than a two year period from the date of issuance. The commissioner may reissue such identifications for subsequent periods of up to five years, provided that the comprehensive care center has notified the commissioner of any material changes in structure or operation based on its original application, or since its last written notice by the commissioner, and that the commissioner is satisfied that the center continues to meet the criteria required pursuant to this article.

(c) The commissioner may suspend or revoke his or her written notice upon a determination that the comprehensive care center has not met, or would not be able to meet, the criteria required pursuant to this article, provided, however that the commissioner shall afford such center an opportunity for a hearing, in accordance section 31.17 of this chapter, to review the circumstances of and grounds for such suspension or revocation and to appeal such determination.

§ 30.06 Restricted use of title.

No person or entity shall claim, advertise or imply to consumers, health plans or other health care providers that such provider or practitioner is a state-identified comprehensive care center for eating disorders unless it is qualified pursuant to section 30.04 of this article.

ARTICLE 31

REGULATION AND QUALITY CONTROL OF SERVICES FOR THE MENTALLY DISABLED

Section 31.01 Evaluation of services for the mentally disabled.

- 31.02 Operating certificate required.
- 31.03 Operating certificates for family care homes.
- 31.04 Regulatory powers of the commissioner.
- 31.05 Issuance of an operating certificate.
- 31.06 Child abuse prevention.
- 31.07 Investigations and inspections.
- 31.08 Compliance with operational standards by general hospitals.
- 31.09 Powers of the department regarding investigation and inspection.
- 31.11 Certain duties of providers of services.
- 31.13 Powers of subpoena and examination.
- 31.16 Suspension, revocation, or limitation of an operating certificate and imposition of fines by the commissioner of mental health.
- 31.17 Formal hearings; procedure.
- 31.19 Confinement, care, and treatment of the mentally disabled.
- 31.20 Temporary operator.
- 31.21 Injunction and temporary restraining order.
- 31.22 Approval of certain certificates of incorporation or articles of organization; granting of operating certificates.
- 31.23 Approval of new construction.
- 31.25 Residential services for treatment of eating disorders.
- 31.26 Residential treatment facilities for children and youth.
- 31.27 Comprehensive psychiatric emergency programs.
- 31.28 Facilities; receivership.
- 31.29 Monthly personal allowances.
- 31.30 Abuse, neglect, and significant incidents involving vulnerable persons.
- 31.31 Improper expenditure of moneys.
- 31.33 Mental health special needs plans.
- 31.35 Review of criminal history information concerning certain prospective employees.
- 31.36 Crisis stabilization services.
- 31.37 Mental health incident review panels.

§ 31.01 Evaluation of services for the mentally disabled.

(a) The commissioner shall ensure that all services for the mentally disabled, whether provided by the department, by a local governmental unit or by a provider of services, are periodically evaluated and that departmental budget requests reflect such evaluations.

(b) In order to ensure that such evaluations and the resulting reports and data generated are comparable for all services to the mentally disabled throughout the state, the commissioner shall promulgate rules and regulations requiring the development of evaluation criteria and methods which shall include, but not be limited to:

- (1) uniform definitions of services for the mentally disabled;
- (2) uniform financial and clinical reporting procedures;
- (3) requirements for the generation and maintenance of uniform data for all individuals receiving services from any provider of services;
- (4) uniform criteria for evaluating categories of need; and
- (5) uniform standards for all comparable services and programs.

(c) A timetable for development and implementation of evaluation criteria and methods shall be included in such rules and regulations to ensure the orderly and adequate compliance by the department and its facilities, local governmental units and providers of services. Such timetable shall also include specific dates by which such evaluation criteria and methods, and the evaluation reports and data developed with such criteria and methods shall be included in the budget request submitted to the department by the department facilities, local governmental units and providers of services.

(d) (1) Notwithstanding any other provision of law, the commissioner, or his designee, may require from any hospital, as defined under article twenty-eight of the public health law, any information, report, or record necessary for the purpose of carrying out the functions, powers and duties of the commissioner related to the investigation of deaths and complaints of abuse, mistreatment, or neglect concerning mentally disabled individuals who receive services, or had prior to death received services, in a facility as defined in section 1.03 of this chapter, and have been treated at such hospitals.

- (2) Any information, report, or record requested by the commissioner

or his designee pursuant to this subdivision shall be limited to that information that the commissioner determines necessary for the completion of his investigation.

(3) The information, report or record received by the commissioner or his designee pursuant to this subdivision shall be subject to section two thousand eight hundred five-m, section eighteen, as added by chapter four hundred ninety-seven of the laws of nineteen hundred eighty-six and article twenty-seven-F of the public health law, section 33.13 of this chapter, and any applicable federal statute or regulation.

§ 31.02 Operating certificate required.

(a) * Except as provided in subdivision (b) of this section no provider of services shall engage in any of the following activities without an operating certificate issued by the commissioner pursuant to this article:

* NB Effective until the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

* Except as provided in subdivisions (b) and (f) of this section no provider of services shall engage in any of the following activities without an operating certificate issued by the commissioner pursuant to this article:

* NB Effective on the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

1. operation of a residential facility or institution, including a community residence, for the care, custody, or treatment of the mentally disabled; provided, however, that giving domestic care and comfort to a person in the home shall not constitute such an operation.

2. operation of any part of a general hospital for the purpose of providing residential or non-residential services for the mentally disabled.

3. operation of a facility established or maintained by a public

agency, board, or commission, or by a corporation for the rendition of out-patient or non-residential services for the mentally disabled; provided, however, that such operation shall not be deemed to include (i) professional practice, within the scope of a professional license or certificate issued by an agency of the state, by an individual practitioner or by a partnership of such individuals or by a professional service corporation duly incorporated pursuant to the business corporation law or by a university faculty practice corporation duly incorporated pursuant to the not-for-profit corporation law or (ii) non-residential services which are licensed, supervised, or operated by another agency of the state and nonresidential services which are chartered or issued a certificate of incorporation pursuant to the education law or (iii) pastoral counseling by a clergyman or minister, including those defined as clergyman or minister by section two of the religious corporations law.

4. operation of a residential treatment facility for children and youth.

5. operation of a residential care center for adults.

* 6. operation of a comprehensive psychiatric emergency program.

* NB Repealed July 1, 2027

(b) A provider of services operating a community residence on April first, nineteen hundred seventy-six, shall be issued an operating certificate by the commissioner without requiring proof that there is a public need for such residence, providing application for such operating certificate to the department in accordance with this article is submitted prior to September first, nineteen hundred seventy-six. Pending the determination of any such application the continuance of such operation shall be lawful. An application pursuant to this section shall be deemed filed with the department upon being mailed to the department by registered or certified mail.

(c) The operation of a facility for which an operating certificate is required shall be in accordance with the terms of the operating certificate and the regulations of the commissioner.

(d) Any provider of services who knowingly fails to comply with the provisions of this section or of section 31.03 of this article shall be

guilty of a misdemeanor.

(e) If the commissioner has reason to believe that there is a provider of services for the mentally disabled who does not possess a required current valid operating certificate, he or she shall proceed pursuant to applicable sections of this chapter including but not limited to sections 31.07, 31.09, 31.11, 31.13 and 31.21 of this article.

* (f) No provision of this article or any other provision of law shall be construed to require a provider licensed pursuant to article twenty-eight of the public health law or certified pursuant to article sixteen or article thirty-two of this chapter to obtain an operating certificate from the office of mental health if such provider has been authorized to provide integrated services in accordance with regulations issued by the commissioner of the office of mental health in consultation with the commissioner of the department of health, the commissioner of the office of alcoholism and substance abuse services and the commissioner of the office for people with developmental disabilities, including regulations issued pursuant to subdivision seven of section three hundred sixty-five-l of the social services law or part L of chapter fifty-six of the laws of two thousand twelve.

* NB Effective until the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

* (f) No provision of this article or any other provision of law shall be construed to: (i) require a provider licensed pursuant to article twenty-eight of the public health law or certified pursuant to article sixteen or article thirty-two of this chapter to obtain an operating certificate from the office of mental health if such provider has been authorized to provide integrated services in accordance with regulations issued by the commissioner of the office of mental health in consultation with the commissioner of the department of health, the commissioner of the office of addiction services and supports and the commissioner of the office for people with developmental disabilities, including regulations issued pursuant to subdivision seven of section three hundred sixty-five-l of the social services law or part L of chapter fifty-six of the laws of two thousand twelve; or (ii) require a provider licensed under section 36.08 of this title to obtain a license from the office of mental health. Furthermore, no provision of this

article or any other provision of law shall be construed to limit the volume of mental health services by a program licensed to provide integrated behavioral health services, as defined in section 36.08 of this title.

* NB Effective on the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

§ 31.03 Operating certificates for family care homes.

(a) No provider of services as a family care home for mentally disabled persons shall engage in any such activities on or after April first, nineteen hundred seventy-seven, unless it possesses an operating certificate issued by the commissioner pursuant to this article.

(b) The operation of a family care home for which an operating certificate is required shall be in accordance with the terms of the operating certificate and the regulations of the commissioner.

(c) The operating certificate issued for a family care home shall be valid for two years. There shall be no initial or renewal certification fee required.

(d) Application for the operating certificate shall be made by the owner of the family care home. The application shall be made in writing, be verified under oath, shall state the name and address of the owner and shall be in such form and contain such information as required by regulations promulgated by the commissioner pursuant to this article.

(e) Notice of an application for an operating certificate as a family care home shall be forwarded by the department to the appropriate local governmental unit pursuant to the provisions of section 31.23 of this chapter, to the directors of department facilities and to the regional director in the area proposed to be served.

(f) Except as otherwise provided in subdivision (g) of this section, the commissioner shall not be required to approve an application for an initial operating certificate as a family care home unless he shall be satisfied that it would be in the public interest to approve such certificate in consideration of the public need for the home in the area proposed to be served, availability of adequate finances for the establishment and continued operation of the home and such other factors

as may be pertinent.

(g) If any person is in bona fide operation as a family care home on April first, nineteen hundred seventy-six, within the local governmental unit for which application for an operating certificate is made pursuant to the provisions of this section, and has so operated since that time, the commissioner shall issue such operating certificate without requiring proof that there is a public need for such family care home, providing application for such operating certificate to the department in accordance with this article is submitted prior to April first, nineteen hundred seventy-seven. Pending the determination of any such application the continuance of such operation shall be lawful. An application pursuant to this section shall be deemed filed with the department upon being mailed to the department by registered or certified mail.

(h) In order more effectively to assure that the life, health, safety and comfort of persons cared for in family care homes will be adequately protected and promoted and that such persons will receive the kind and quality of care, supervision and attention required by reason of their condition:

(1) Operating certificates for family care homes shall be issued only to natural persons, and corporations for profit shall not be formed under the business corporation law for any such purpose.

(2) Except as provided in paragraph three, no family care home shall be issued an operating certificate for the purpose of providing suitable care therein to more than six persons.

(3) Any provider of service providing family care to more than six persons on July first, nineteen hundred seventy-five shall be issued an operating certificate for a family care home effective April first, nineteen hundred seventy-seven, pursuant to the provisions of this section, provided that such person fulfills all requirements of this section except for the number of persons in care, and that such person agrees to provide family care to no more than ten persons on and after April first, nineteen hundred seventy-seven.

(4) No operating certificate issued under this section shall be transferable.

(5) The commissioner shall promulgate and distribute a caretaker's manual for the operation of family care homes, and any amendments

thereto, and regulations pursuant to this section.

(6) The department shall investigate the financial condition, income and good moral character of every applicant for an operating certificate under this section.

(7) The department shall provide substitute caretakers to each family care home for a maximum of ten days per year, either directly or as a purchase of service.

(8) The commissioner shall establish a procedure, subject to the approval of the state comptroller, whereby payments may be made to operators of family care homes for one or more of the following needs of clients residing in such facilities, limited to two hundred ninety dollars per client per year and paid semi-annually in the manner specified by such procedures:

- (i) Replacement of necessary clothing;
- (ii) Personal requirements and incidental needs of clients;
- (iii) Recreational and cultural activities of clients. Such payments may be made from monies appropriated to the offices for this purpose. Such payments shall be audited by each office pursuant to an audit plan approved by the comptroller.

§ 31.04 Regulatory powers of the commissioner.

(a) The commissioner shall have the power to adopt regulations to effectuate the provisions and purposes of this article, including, but not limited to, the following:

1. establishing classes of operating certificates based upon such factors as physical plant, program, and staff.

2. setting standards of quality and adequacy of facilities, equipment, personnel, services, records, and programs for the rendition of services for the mentally disabled pursuant to an operating certificate.

3. specifying a definite period for which the operating certificate will be in effect for each class.

* 4. establishing procedures for the issuance, amendment, and renewal of operating certificates, including temporary operating certificates,

and for the suspension or revocation of operating certificates. Such procedures shall specify that no application for the issuance or renewal of an operating certificate for a hospital, which is operated as part of a hospital as defined in article twenty-eight of the public health law, shall be effective until such hospital is granted approval to admit patients in emergencies for immediate observation, care and treatment in accordance with section 9.39 or 9.40 of this chapter, provided that the commissioner shall waive this requirement for two year periods upon his determination that (i) there is no need for additional beds for emergency psychiatric admissions in the local geographic area, (ii) the hospital lacks the physical capacity to reasonably accommodate such emergency admissions without extensive structural changes, (iii) the hospital does not and reasonably could not provide the scope of services necessary to assure adequate and appropriate psychiatric care and treatment for patients in emergency situations, or (iv) the hospital has agreed to accept referrals of involuntary psychiatric patients under an emergency admissions system which has been approved by the commissioner. Provided, however, nothing in this paragraph shall be interpreted to require a hospital without an onsite emergency room to accept patients in need of emergency observation, care and treatment.

* NB Effective until July 1, 2027

* 4. establishing procedures for the issuance, amendment, and renewal of operating certificates, including temporary operating certificates, and for the suspension or revocation of operating certificates. Such procedures shall specify that no application for the issuance or renewal of an operating certificate for a hospital, which is operated as part of a hospital as defined in article twenty-eight of the public health law, shall be effective until such hospital is granted approval to admit patients in emergencies for immediate observation, care and treatment in accordance with section 9.39 of this chapter, provided that the commissioner shall waive this requirement for two year periods upon his determination that (i) there is no need for additional beds for emergency psychiatric admissions in the local geographic area, (ii) the hospital lacks the physical capacity to reasonably accommodate such emergency admissions without extensive structural changes, (iii) the hospital does not and reasonably could not provide the scope of services necessary to assure adequate and appropriate psychiatric care and

treatment for patients in emergency situations, or (iv) the hospital has agreed to accept referrals of involuntary psychiatric patients under an emergency admissions system which has been approved by the commissioner. Provided, however, nothing in this paragraph shall be interpreted to require a hospital without an onsite emergency room to accept patients in need of emergency observation, care and treatment.

* NB Effective July 1, 2027

5. setting for the operation of certified family care homes standards governing adequacy of the building and equipment, fire protection, safety, sanitation, food service, programs for the rendition of service, recreation and religious participation, medical services, personnel, insurance, record keeping procedures and statistical records as well as appropriate standards governing or precluding ownership of more than one such home.

6. establishing criteria for use by staff of department facilities, social services officials and directors of local governmental units for determining the appropriateness of referring patients to family care homes, other community residences and residential care centers for adults.

7. establishing criteria for determining the public need for family care homes, other community residences and residential care centers for adults in each geographical area of the state.

8. establishing a schedule of fees for the purpose of processing applications for the issuance of operating certificates. All fees pursuant to this section shall be payable to the office for deposit into the general fund.

* (b) The commissioner shall promulgate regulations establishing criteria for the operation of certified comprehensive psychiatric emergency programs including but not limited to criteria governing the staffing, staff qualifications, equipment, record keeping, safety requirements, required services, discharge planning, appropriate linkages to alcohol and substance abuse programs, space requirements, quality and adequacy of such programs, and the required posting of a

notice of patient rights. In addition, the regulations shall require such programs to include appropriate facilities to permit persons to rest comfortably while awaiting observation, care or treatment.

* NB Repealed July 1, 2027

* (c) Prior to the adoption, amendment, suspension or repeal of any regulation under this article, the commissioner shall give notice and offer any person or other agency an opportunity to present data, views, or arguments, as follows:

1. The commissioner shall, at least sixty days prior to the adoption, amendment, suspension or repeal of a regulation, notify the mental health services council for its advice, in accordance with subdivision (i) of section 7.05 of this chapter.

2. The commissioner shall, at least twenty-one days prior to the adoption, amendment, suspension or repeal of a regulation, (i) publish notice of its proposed action in the state bulletin and, when appropriate in the judgment of the commissioner, in such newspaper or newspapers of general circulation or, in such professional publications as the commissioner may select, and (ii) notify any person or agency filing written request, such request to be renewed yearly in December, for notice of proposed action which may affect that person or agency, notification being by mail or otherwise in writing to the last address specified by the person or agency. The commissioner may charge for such notice a fee, which shall consist of the cost of preparation, handling, and postage for the notice.

3. The notice shall (i) refer to the statutory authority under which the action is proposed, (ii) give the time and place of any public hearing, or state the manner in which data, views, or arguments may be submitted to the commissioner by any person or state agency, whether orally or in writing, (iii) either state the express terms or indicate where the express terms may be obtained and describe the substance of the proposed regulation, amendment, suspension or repeal, or state the subjects and issues involved, and (iv) include any additional matter required by any statute.

4. Irrespective of the requirements of any other statute, if the commissioner finds that it is necessary for the preservation of the public health, safety, or general welfare to dispense with the requirements of notice and opportunity to present views on the proposed regulation, amendment, suspension, or repeal under the provisions of this subdivision, the commissioner may dispense with such requirements, or any part thereof, and adopt the regulation, amendment, suspension, or repeal as an emergency measure. The commissioner's finding and a brief statement of the reasons for his finding shall accompany the emergency measure. Such emergency measure shall not remain in effect for longer than sixty days unless within that time the commissioner complies with paragraphs (1) and (2) of this subdivision, and takes final action relating to the emergency measure.

5. Upon the adoption, amendment, suspension, or repeal of a regulation, the commissioner shall publish notice of the action taken in the state bulletin. The notice shall refer to the statutory authority under which the action was taken and shall include either the express terms or describe the substance of such action and where the express terms may be obtained.

6. No regulation hereafter adopted is valid unless adopted in substantial compliance with this subdivision, provided, however, that the inadvertent failure to mail notice to any person or agency as provided in this subdivision shall not invalidate any regulation adopted hereunder. A proceeding to contest any regulation on the ground of non-compliance with the procedural requirements of this subdivision must be commenced within four months from the effective date of the regulation.

7. The validity or applicability of any regulation may be determined upon petition presented under article four of the civil practice law and rules or in an action for a declaratory judgment when it appears that the regulation or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights, property or privileges of the petitioner. The department shall be made a party to the proceedings. Such a special proceeding may not be maintained or a

declaratory judgment rendered unless the petitioner has first requested the commissioner to pass upon the validity or applicability of the regulation in question. The court shall declare the regulation invalid or inapplicable if it finds that it violates constitutional provisions or exceeds the statutory authority of the department. Nothing in this section shall be construed to prohibit the determination of the validity or applicability of the regulation in any other action or proceeding in which its invalidity or inapplicability is asserted, and nothing in this section shall be construed to limit any rights which may exist under article seventy-eight of the civil practice law and rules.

* NB Effective until July 1, 2027--on which date this subdivision (c) becomes subdivision (b)

(d) The commissioner of mental health shall be authorized to promulgate regulations which impose reasonable restrictions on the marketing and advertising practices by or on behalf of any facility, which are targeted toward the provision of services to persons aged twenty-one years or younger. These reasonable restrictions may include, but not be limited to, prohibitions against false, deceptive or misleading advertising. However, the regulations may not restrict advertising which solely provides factual information that describes the product or services offered or information regarding the cost of products or services, nor may the regulations require prior submission or approval of advertising by the office of mental health. The commissioner shall be authorized to inquire into the marketing practices of any applicant or holder of an operating certificate.

(e) The commissioner shall promulgate rules and regulations prohibiting the co-mingling of children and adolescent patients with adult patients, in hospitals licensed by the office. Such rules and regulations shall provide that children and adolescents shall not be co-mingled with adults in residential areas of such hospitals, nor shall children and adolescents receive services in groups which include adults. In extraordinary circumstances, such co-mingling may be permitted upon written approval of the office, considering the clinical needs of patients, as well as applicable health and safety concerns. The provisions of this subdivision shall not apply to residential treatment facilities for children and youth.

§ 31.05 Issuance of an operating certificate.

(a) No operating certificate shall be issued by the commissioner unless the commissioner finds:

1. that the premises, equipment, personnel, records, and program are adequate and appropriate to provide the services for the mentally disabled which are sought to be authorized,

2. that such services will be provided in compliance with applicable law and regulations,

3. that, in the case of a community residence or residential care center for adults, residents will be evaluated upon admission and periodically thereafter to determine their need for mental health services which are not provided on site,

4. that, in the case of any community residence or residential care center for adults, adequate and appropriate aftercare services are available (i) through a department facility or (ii) within the community in which such residence is located; and

5. that, in the case of any community residence or residential care center for adults, the provider of services of such residence will assist residents in gaining access to such aftercare services.

* 6. that, in the case of any comprehensive psychiatric emergency program, there are services and necessary agreements, contracts or affiliations to provide crisis intervention services, crisis outreach services, crisis residence services, extended observation beds, triage and referral services as part of an approved comprehensive psychiatric emergency services plan submitted pursuant to section 31.27 of this article.

* NB Repealed July 1, 2027

7. that an application for the establishment or operation of a facility for which an operating certificate is required by this article from the commissioner of mental health has been approved in accordance

with applicable provisions of this article.

(b) The commissioner may disapprove an application for an operating certificate, may authorize fewer services than applied for, and may place such limitations and conditions on the operating certificate as he deems desirable. In such case he shall afford the applicant an opportunity to be heard and such hearing shall be public, if so requested by the applicant.

(c) The commissioner shall specify on each operating certificate the kind or kinds of services for the mentally disabled that are authorized, any limitations or conditions, and the expiration date of the certificate.

§ 31.06 Child abuse prevention.

All facilities described in subdivision (a) of section 31.02 of this article, shall, pursuant to regulations of the commissioner: (i) develop, maintain and disseminate written policies and procedures pursuant to title six of article six of the social services law and applicable provisions of article ten of the family court act, regarding the mandatory reporting of child abuse or neglect, reporting procedures and obligations of persons required to report, provisions for taking a child into protective custody, mandatory reporting of deaths, immunity from liability, penalties for failure to report, and obligations for the provision of services and procedures necessary to safeguard the life or health of the child; and (ii) establish, and implement on an ongoing basis, a training program for all current and new employees regarding the policies and procedures established pursuant to this section.

§ 31.07 Investigations and inspections.

The commissioner shall have the power to conduct investigations into the operations of providers of services which are required by this article to have operating certificates and to make inspections and examine records, including, but not limited to, medical service and financial records of facilities to determine whether such providers of

services are complying with the provisions of this chapter and applicable laws, rules, and regulations. Inspections shall be made as frequently as the commissioner may deem necessary, but in any event such inspections shall be made on at least two occasions during each calendar year, one of which shall be without prior notice, provided, however, that where, in the discretion of the commissioner, an operating certificate has been issued to a program with a history of compliance and a record of providing a high quality of care, the periodic inspection and visitation required by this section shall be made at least once during each calendar year provided such visit shall be without prior notice.

§ 31.08 Compliance with operational standards by general hospitals.

(a) Notwithstanding the provisions of section 31.07 of this article, with respect to a general hospital, as defined in article twenty-eight of the public health law, which provides services for persons with mental illness pursuant to an operating certificate issued by the commissioner, the requirements of section 31.07 of this article may be deemed to be met if such hospital has been accredited by The Joint Commission, or any other hospital accrediting organization to which the Centers for Medicare and Medicaid Services has granted deeming status, and which the commissioner shall have determined has accrediting standards sufficient to assure the commissioner that hospitals so accredited are in compliance with the provisions of this chapter and applicable laws, rules and regulations in regard to services provided at such hospital. Such accreditation shall have the same legal effect as a determination by the commissioner under section 31.07 of this article that the hospital is in compliance with such provisions. The commissioner may exempt any such hospital from the annual inspection and visitation requirements established in section 31.07 of this article, provided that:

1. such hospital has a history of compliance with such provisions of law, rules and regulations and a record of providing good quality care, as determined by the commissioner;

2. a copy of the survey report and the certificate of accreditation of The Joint Commission or other approved accrediting organization is submitted by the accrediting body or the hospital to the commissioner, within seven days of issuance to the hospital;

3. The Joint Commission or other accrediting organization has agreed to and does evaluate, as part of its accreditation survey, any minimal operational standards established by the commissioner which are in addition to the minimal operational standards of accreditation of The Joint Commission or other accrediting organization; and

4. there are no constraints placed upon access by the commissioner to The Joint Commission or other approved accrediting organization survey reports, plans of correction, interim self-evaluation reports, notices of noncompliance, progress reports on correction of areas of noncompliance, or any other related reports, information, communications or materials regarding such hospital.

(b) Any general hospital as defined in article twenty-eight of the public health law, which is governed by the provisions of subdivision (a) of this section shall at all times be subject to inspection or visitation by the commissioner to determine compliance with applicable law, regulations, standards or conditions as deemed necessary by the commissioner. Any such hospital shall be subject to the full range of licensing enforcement authority of the commissioner.

(c) Any general hospital as defined in article twenty-eight of the public health law, which is governed by the provisions of subdivision (a) of this section shall notify the commissioner immediately upon receipt of notice by The Joint Commission or other approved accrediting organization, or any communication the hospital may receive that such organization will be recommending that such hospital not be accredited, not have its accreditation renewed, or have its accreditation terminated, or upon receipt of notice or other communication from the Centers for Medicare and Medicaid Services regarding a determination that the hospital will be terminated from participation in the Medicare program because it is not in compliance with one or more conditions of participation in such program, or has deficiencies that either individually or in combination jeopardize the health and safety of

patients or are of such character as to seriously limit the provider's capacity to render adequate care.

§ 31.09 Powers of the department regarding investigation and inspection.

(a) In conducting an investigation or inspection, the commissioner or his authorized representative shall have the power to inspect facilities, examine records, conduct examinations and interviews, and obtain such other information as may be required in order to carry out his responsibilities under this article.

(b) All investigations and inspections of clinical records shall be made by persons competent to conduct such investigations and inspections. Information obtained by the commissioner from the records of patients receiving services shall be kept confidential in accordance with the provisions of this chapter.

§ 31.11 Certain duties of providers of services.

It shall be the duty of every holder of an operating certificate, or program funded or administered by the office of mental health to assist the department and the commission on quality of care for the mentally disabled in carrying out their respective regulatory and oversight functions by:

1. complying with the applicable provisions of this chapter, other applicable laws, and the regulations of the commissioner.

2. making such reports as are necessary to provide notification to the district attorney or other appropriate law enforcement official and the commissioner or his or her authorized representative as soon as possible, or in any event within three working days, if it appears that a crime may have been committed against a patient receiving services from such provider, unless it appears that the crime includes an employee, intern, volunteer, consultant, contractor, or visitor and the alleged conduct caused physical injury or the patient was subject to unauthorized sexual contact, or if it appears the crime is endangering

the welfare of an incompetent or physically disabled person pursuant to section 260.25 of the penal law, or if the crime was any felony under state or federal law, then the district attorney or other appropriate law enforcement official must be contacted immediately, and in any event no later than twenty-four hours and such other reports, uniform and otherwise, as are required by the commissioner or his or her authorized representative with respect to its operations. If there is reasonable cause to believe that the crime against the client may have occurred in a facility or program of any other service provider licensed, certified, funded or operated by a state agency, the administrator or chief executive officer of such other service provider shall also be notified as soon as possible, or in any event within three working days. Provided however, nothing herein shall require such report to an administrator or chief executive officer of a provider who is alleged to have committed the crime. The commissioner may execute a memorandum of understanding with the commissioners of other appropriate state agencies to ensure the coordination and cooperation of such agencies and providers of services with regard to the conduct of any investigation and prevention of unnecessary duplicative investigations resulting from the report of an alleged crime that may have occurred in a facility or program of another service provider. Information obtained by the commissioner or the commission on quality of care for the mentally disabled from the records of patients receiving services shall be kept confidential in accordance with the provisions of this chapter.

3. cooperating with the commissioner or his or her authorized representative and the commission on quality of care for the mentally disabled or any representative authorized by the chair of such commission in any investigation or inspection conducted by the department of mental hygiene or commission on quality of care for the mentally disabled.

4. permitting the commissioner or his or her authorized representative and the commission on quality of care for the mentally disabled or any representative authorized by the chair of such commission to inspect its facility and all books and records, including patient records, kept by it and to interview and examine any patient at its facility except that

no such patient may be examined against his or her will.

5. providing, to the office of mental health, in a form or format requested by the commissioner, records requested by such office relating to persons as described in subdivision (j) of section 7.09 of this chapter who may be disqualified from possessing a firearm pursuant to 18 USC 922(4)(d).

§ 31.13 Powers of subpoena and examination.

In conducting any investigation, inspection, or hearing under this chapter, the commissioner and his authorized representative are empowered to subpoena witnesses, compel their attendance, administer oaths to witnesses, examine witnesses under oath, and require the production of any books or papers deemed relevant to the investigation, inspection, or hearing. A subpoena issued under this section shall be regulated by the civil practice law and rules. The confidentiality of information obtained by the commissioner from patients' records shall be maintained in accordance with the provisions of this chapter.

§ 31.16 Suspension, revocation, or limitation of an operating certificate and imposition of fines by the commissioner of mental health.

(a) The commissioner of mental health may revoke, suspend, or limit an operating certificate or impose the penalties described in subparagraph (i), (ii) or (iii) of paragraph one of subdivision (b) or in subdivision (g) of this section upon a determination that the holder of the certificate has failed to comply with the terms of its operating certificate or with the provisions of any applicable statute, rule or regulation. The holder of the certificate shall be given notice and an opportunity to be heard prior to any such determination except that no such notice and opportunity to be heard shall be necessary prior to an emergency suspension or limitation of the facility's operating certificate imposed pursuant to paragraph one of subdivision (b) of this section.

(b) 1. A certificate may be temporarily suspended or limited without a hearing for a period not in excess of sixty days upon written notice to the facility following a finding by the office of mental health that a patient's health or safety is in imminent danger or there exists any condition or practice or a continuing pattern of conditions or practices which poses imminent danger to the health or safety of any patient. Upon such finding and notice, the power of the commissioner temporarily to suspend or limit an operating certificate shall include, but shall not be limited to, the power to:

- (i) Prohibit or limit the placement of new patients in the facility;
- (ii) Remove or cause to be removed some or all of the patients in the facility; or
- (iii) Suspend or limit or cause to be suspended or limited the payment of any governmental funds to the facility provided that such action shall not in any way jeopardize the health, safety and welfare of any person with a mental illness in such program or facility.

2. At any time subsequent to the suspension or limitation of any operating certificate pursuant to paragraph one of this subdivision where said suspension or limitation is the result of correctable physical plant, staffing or program deficiencies, the facility may request the office to reinspect the facility to redetermine whether a specific condition or practice continues to exist. After the receipt of such a request, the office shall reinspect the facility within ten days and in the event that the previously found condition or practice has been eliminated, the suspension or limitation shall be withdrawn. If the condition or practice has not been eliminated, the commissioner shall not thereafter be required to reinspect the facility during the emergency period of suspension or limitation.

3. During the sixty day suspension or limitation period provided for in paragraph one of this subdivision the commissioner shall determine whether to reinstate or remove the limitations on the facility's operating certificate or to revoke, suspend or limit the operating certificate pursuant to subdivision (a) of this section. Should the commissioner choose to revoke, suspend or limit the operating certificate, then the emergency suspension or limitation provided for in

this subdivision shall remain in effect pending the outcome of an administrative hearing on the revocation, suspension or limitation.

4. The facility operator, within ten days of the date when the emergency suspension or limitation pursuant to paragraph one of this subdivision is first imposed or within ten days of the date of receipt of notice from the commissioner to revoke, suspend or limit the facility's operating certificate, may request an evidentiary hearing to contest the validity of the emergency suspension or limitation. Such an evidentiary hearing shall commence within ten days of the facility operator's request and no request for an adjournment shall be granted without the concurrence of the facility operator, office of mental health and the hearing officer. The evidentiary hearing shall be limited to a determination of whether a patient's health or safety is in imminent danger or there exists any condition or practice or a continuing pattern of conditions or practices which poses imminent danger to the health or safety of any patient. The emergency suspension or limitation shall be upheld upon a determination that the office of mental health had reasonable cause to believe that a patient's health or safety was in imminent danger. A record of such hearing shall be made available to the facility operator upon request. Should the commissioner determine to revoke, suspend or limit the facility's operating certificate pursuant to subdivision (a) of this section, no administrative hearing on that action shall commence prior to the conclusion of the evidentiary hearing, the rendering of the hearing officer's report and the commissioner's final review and determination concerning the emergency suspension or limitation. The commissioner shall issue a ruling within ten days after the receipt of the hearing officer's report.

(c) When the holder of an operating certificate shall request an opportunity to be heard, the commissioner shall fix a date, time and place for the hearing. A copy of the charges stating the substance of the alleged violations of the terms of the operating certificate or the alleged violation of any applicable statute, rule or regulation, together with the notice of the date, time and place of the hearing, shall be served in person or mailed by registered or certified mail to the facility at least ten days before the date fixed for the hearing.

The facility shall file with the office, not less than three days prior to the hearing, a written answer to the charges.

(d) 1. When a hearing must be afforded pursuant to this section or other provisions of this article, the commissioner, acting as hearing officer, or any person designated by him as hearing officer, shall have power to:

- (i) administer oaths and affirmations;
- (ii) issue subpoenas, which shall be regulated by the civil practice law and rules;
- (iii) take testimony; or
- (iv) control the conduct of the hearings.

2. The rules of evidence observed by courts need not be observed except that the rules of privilege recognized by law shall be respected. Irrelevant or unduly repetitious evidence may be excluded.

3. All parties shall have the right of counsel and be afforded an opportunity to require the production of witnesses and evidence in manner and form as prescribed by the civil practice law and rules, to cross-examine witnesses, to examine evidence produced against them, and to have subpoenas issued on their behalf.

4. If evidence at the hearing relates to the identity, condition, or clinical record of a patient, the hearing officer may exclude all persons from the room except parties to the proceeding, their counsel and the witness. The record of such proceeding shall not be available to anyone outside the office, other than a party to the proceeding or his counsel, except by order of a court of record.

5. The commissioner may establish regulations to govern the hearing procedure and the process of determination of the proceeding.

6. The commissioner shall issue a ruling within ten days after the termination of the hearing or, if a hearing officer has been designated, within ten days from the hearing officer's report. The ruling shall be based upon a preponderance of the evidence and shall contain conclusions concerning the alleged violations of the terms of the operating

certificate or the alleged violation of any applicable statute, rule or regulation.

(e) All orders or determinations hereunder shall be subject to review as provided in article seventy-eight of the civil practice law and rules.

(f) 1. Except as provided in paragraph two of this subdivision, anything contained in this section to the contrary notwithstanding, an operating certificate of a facility shall be revoked upon a finding by the office that any individual, member of a partnership or shareholder of a corporation to whom or to which an operating certificate has been issued, has been convicted of a class A, B or C felony or a felony related in any way to any activity or program subject to the regulations, supervision, or administration of the office or of the office of temporary and disability assistance, the department of health, or another office of the department of mental hygiene, or in violation of the public officers law in a court of competent jurisdiction of the state, or in a court in another jurisdiction for an act which would have been a class A, B or C felony in this state or a felony in any way related to any activity or program which would be subject to the regulations, supervision, or administration of the office or of the office of temporary and disability assistance, the department of health, or another office of the department of mental hygiene, or for an act which would be in violation of the public officers law. The commissioner shall not revoke or limit the operating certificate of any facility, solely because of the conviction, whether in the courts of this state or in the courts of another jurisdiction, more than ten years prior to the effective date of such revocation or limitation, of any person of a felony, or what would amount to a felony if committed within the state, unless the commissioner makes a determination that such conviction was related to an activity or program subject to the regulations, supervision, and administration of the office or of the office of temporary and disability assistance, the department of health, or another office of the department of mental hygiene, or in violation of the public officers law.

2. In the event one or more members of a partnership or shareholders of a corporation shall have been convicted of a felony as described in

paragraph one of this subdivision, the commissioner shall, in addition to his other powers, limit the existing operating certificate of such partnership or corporation so that it shall apply only to the remaining partner or shareholders, as the case may be, provided that every such convicted person immediately and completely ceases and withdraws from participation in the management and operation of the facility and further provided that a change of ownership or transfer of stock is completed without delay, and provided that such partnership or corporation shall immediately reapply for a certificate of operation pursuant to this article.

(g) The commissioner may impose a civil penalty upon a finding that the holder of the certificate has failed to comply with the terms of the operating certificate or with the provisions of any applicable statute, rule or regulation. The maximum amount of such civil penalty imposed thereunder shall not exceed two thousand dollars per day or twenty-five thousand dollars, per violation. Penalties may be considered at the individual bed level for beds closed without authorization at inpatient settings.

Such civil penalty may be recovered by an action brought by the commissioner in any court of competent jurisdiction.

Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general. Any such civil penalty may be released or compromised and any action commenced to recover the same may be settled or discontinued by the attorney general with the consent of the commissioner.

1. Such civil penalty under this subdivision shall account for factors which shall include: (i) any officially declared national, state, or municipal emergency; (ii) any unforeseen disaster or other catastrophic event that directly impacts access to health care services; (iii) the frequency, duration, scope, and nature of non-compliance; and (iv) any other factors as established by the commissioner.

2. In determining whether an operating certificate holder has violated its obligation to comply with the terms of the operating certificate, it

shall not be a defense that the operator was unable to secure proper staff or other necessary resources if the lack of staff or other resources was foreseeable and could be prudently planned for or involved routine staffing needs that arose due to typical staffing patterns, typical levels of absenteeism, and time off typically approved by the operator for vacation, holidays, sick leave, and personal leave.

(h) It shall be the duty of the attorney general upon the request of the commissioner to bring an action for an injunction against any person who violates, disobeys or disregards any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto; provided, however, that the commissioner shall furnish the attorney general with such material, evidentiary matter or proof as may be requested by the attorney general for the prosecution of such an action.

(i) Where a proceeding has been brought pursuant to section 31.28 of this article, and a receiver is appointed pursuant thereto, the commissioner may assume operation of the facility subject to such receivership, upon termination of such receivership, and upon showing to the court having jurisdiction over such receivership that no voluntary association, not-for-profit corporation or other appropriate provider is willing to assume operation of the facility subject to receivership and is capable of meeting the requirements of this article; provided that the commissioner notifies the chairman of the assembly ways and means committee, the chairman of the senate finance committee and the director of the budget of his intention to assume operation of such facility at least six months prior to such assumption.

§ 31.17 Formal hearings; procedure.

(a) When a hearing must be afforded pursuant to this chapter, the hearing shall be held without undue delay and all parties shall be given reasonable notice of the time, place, and nature of the hearing.

(b) The commissioner, acting as hearing officer, or any person designated by him as hearing officer shall have power to:

1. administer oaths and affirmations.
2. issue subpoenas, which shall be regulated by the civil practice law

and rules.

3. take testimony.

4. control the conduct of the hearing.

(c) The rules of evidence observed by courts need not be observed except that the rules of privilege recognized by law shall be respected. Irrelevant or unduly repetitious evidence may be excluded.

(d) All parties shall have the right to counsel and be afforded an opportunity to present evidence and cross-examine adverse witnesses.

(e) If evidence at the hearing relates to the identity, condition, or clinical record of a patient, the hearing officer may exclude all persons from the room except parties to the proceeding, their counsel and the witnesses. The record of such proceeding shall not be available to anyone outside the department other than a party to the proceeding or his counsel, except by order of a court of record.

(f) The commissioner may establish regulations to govern the hearing procedure and the process of determination of the proceeding.

(g) The commissioner shall issue a ruling within ten days after the termination of the hearing or, if a hearing officer has been designated, within ten days from the hearing officer's report.

(h) The hearing officer shall submit an initial report and proposed order in writing to the commissioner within sixty days of the conclusion of the hearings.

§ 31.19 Confinement, care, and treatment of the mentally disabled.

(a) No individual who is or appears to be mentally disabled shall be detained, deprived of his liberty, or otherwise confined without lawful authority, or inadequately, unskillfully, cruelly, or unsafely cared for or supervised by any person.

(b) If the commissioner has reason to believe that this section is being violated or that services for the mentally disabled are being provided in violation of this article, he shall promptly investigate the matter. If he finds, after notice to the person accused of the violation and opportunity for such person to be heard, that there has been a violation, the commissioner shall issue an order directed to the

person who has committed the violation directing him to cease and desist from the violation.

(c) The commissioner may bring the following proceedings in the supreme court, in accordance with the provisions of section 31.21:

1. for an injunction where the person to whom a cease and desist order is directed has failed to comply therewith.

2. for a temporary restraining order where the commissioner has reason to believe that a violation of this section may result in injury to any person.

(d) Nothing in this section shall prevent the commissioner from taking whatever action he deems necessary for the suspension, revocation, or limitation of the operating certificate of a provider of services which has been charged with a violation of this section.

*** § 31.20 Temporary operator.**

(a) For the purposes of this section:

(1) "Established operator" shall mean the operator of a mental health program that has been established and issued an operating certificate pursuant to this article.

(2) "Extraordinary financial assistance" shall mean state funds provided to, or requested by, a program for the express purpose of preventing the closure of the program that the commissioner finds provides essential and necessary services within the community.

(3) "Mental health program" shall mean a provider of services for persons with serious mental illness, as such terms are defined in section 1.03 of this chapter, which is licensed or operated by the office.

(4) "Office" shall mean the office of mental health.

(5) "Serious financial instability" shall include but not be limited to defaulting or violating material covenants of bond issues, missed mortgage payments, a pattern of untimely payment of debts, failure to pay its employees or vendors, insufficient funds to meet the general operating expenses of the program, failure to maintain required debt service coverage ratios and/or, as applicable, factors that have

triggered a written event of default notice to the office by the dormitory authority of the state of New York.

(6) "Temporary operator" shall mean any operator of a mental health program that has been established and issued an operating certificate pursuant to this article or which is directly operated by the office of mental health, that:

a. agrees to operate a mental health program on a temporary basis in the best interests of its patients served by the program; and

b. has a history of compliance with applicable laws, rules, and regulations and a record of providing care of good quality, as determined by the commissioner; and

c. prior to appointment as temporary operator, develops a plan determined to be satisfactory by the commissioner to address the program's deficiencies.

(b) (1) In the event that: (i) the established operator is seeking extraordinary financial assistance; (ii) office collected data demonstrates that the established operator is experiencing serious financial instability issues; (iii) office collected data demonstrates that the established operator's board of directors or administration is unable or unwilling to ensure the proper operation of the program; or (iv) office collected data indicates there are conditions that seriously endanger or jeopardize continued access to necessary mental health services within the community, the commissioner shall notify the established operator of his or her intention to appoint a temporary operator to assume sole responsibility for the program's treatment operations for a limited period of time. The appointment of a temporary operator shall be effectuated pursuant to this section, and shall be in addition to any other remedies provided by law.

(2) The established operator may at any time request the commissioner to appoint a temporary operator. Upon receiving such a request, the commissioner may, if he or she determines that such an action is necessary, enter into an agreement with the established operator for the appointment of a temporary operator to restore or maintain the provision of quality care to the patients until the established operator can

resume operations within the designated time period; the patients may be transferred to other mental health programs operated or licensed by the office; or the operations of the mental health program should be completely discontinued.

(c) (1) A temporary operator appointed pursuant to this section shall use his or her best efforts to implement the plan deemed satisfactory by the commissioner to correct or eliminate any deficiencies in the mental health program and to promote the quality and accessibility of mental health services in the community served by the mental health program.

(2) If the identified deficiencies cannot be addressed in the time period designated in the plan, the patients shall be transferred to other appropriate mental health programs licensed or operated by the office.

(3) During the term of appointment, the temporary operator shall have the authority to direct the staff of the established operator as necessary to appropriately treat and/or transfer the patients. The temporary operator shall, during this period, operate the mental health program in such a manner as to promote safety and the quality and accessibility of mental health services in the community served by the established operator until either the established operator can resume program operations or until the patients are appropriately transferred to other programs licensed or operated by the office.

(4) The established operator shall grant access to the temporary operator to the established operator's accounts and records in order to address any deficiencies related to a mental health program experiencing serious financial instability or an established operator requesting financial assistance in accordance with this section. The temporary operator shall approve any financial decision related to a program's day to day operations or program's ability to provide mental health services.

(5) The temporary operator shall not be required to file any bond. No security interest in any real or personal property comprising the established operator or contained within the established operator or in any fixture of the mental health program, shall be impaired or diminished in priority by the temporary operator. Neither the temporary operator nor the office shall engage in any activity that constitutes a confiscation of property.

(d) The temporary operator shall be entitled to a reasonable fee, as determined by the commissioner and subject to the approval of the director of the division of the budget, and necessary expenses incurred while serving as a temporary operator. The temporary operator shall be liable only in its capacity as temporary operator of the mental health program for injury to person and property by reason of its operation of such program; no liability shall incur in the temporary operator's personal capacity, except for gross negligence and intentional acts.

(e) (1) The initial term of the appointment of the temporary operator shall not exceed ninety days. After ninety days, if the commissioner determines that termination of the temporary operator would cause significant deterioration of the quality of, or access to, mental health care in the community or that reappointment is necessary to correct the deficiencies that required the appointment of the temporary operator, the commissioner may authorize an additional ninety-day term. However, such authorization shall include the commissioner's requirements for conclusion of the temporary operatorship to be satisfied within the additional term.

(2) Within fourteen days prior to the termination of each term of the appointment of the temporary operator, the temporary operator shall submit to the commissioner and to the established operator a report describing:

a. the actions taken during the appointment to address the identified mental health program deficiencies, the resumption of mental health program operations by the established operator, or the transfer of the patients to other providers licensed or operated by the office;

b. objectives for the continuation of the temporary operatorship if necessary and a schedule for satisfaction of such objectives; and

c. if applicable, the recommended actions for the ongoing operation of the mental health program subsequent to the temporary operatorship.

(3) The term of the initial appointment and of any subsequent reappointment may be terminated prior to the expiration of the designated term, if the established operator and the commissioner agree on a plan of correction and the implementation of such plan.

(f) (1) The commissioner shall, upon making a determination of an intention to appoint a temporary operator pursuant to paragraph one of subdivision (b) of this section cause the established operator to be notified of the intention by registered or certified mail addressed to the principal office of the established operator. Such notification shall include a detailed description of the findings underlying the intention to appoint a temporary operator, and the date and time of a required meeting with the commissioner and/or his or her designee within ten business days of the receipt of such notice. At such meeting, the established operator shall have the opportunity to review and discuss all relevant findings. At such meeting, the commissioner and the established operator shall attempt to develop a mutually satisfactory plan of correction and schedule for implementation. In such event, the commissioner shall notify the established operator that the commissioner will abstain from appointing a temporary operator contingent upon the established operator remediating the identified deficiencies within the agreed upon timeframe.

(2) Should the commissioner and the established operator be unable to establish a plan of correction pursuant to paragraph one of this subdivision, or should the established operator fail to respond to the commissioner's initial notification, there shall be an administrative hearing on the commissioner's determination to appoint a temporary operator to begin no later than thirty days from the date of the notice to the established operator. Any such hearing shall be strictly limited to the issue of whether the determination of the commissioner to appoint a temporary operator is supported by substantial evidence. A copy of the decision shall be sent to the established operator.

(3) If the decision to appoint a temporary operator is upheld such temporary operator shall be appointed as soon as is practicable and shall operate the mental health program pursuant to the provisions of this section.

(g) Notwithstanding the appointment of a temporary operator, the established operator shall remain obligated for the continued operation of the mental health program so that such program can function in a normal manner. No provision contained in this section shall be deemed to relieve the established operator or any other person of any civil or criminal liability incurred, or any duty imposed by law, by reason of

acts or omissions of the established operator or any other person prior to the appointment of any temporary operator of the program hereunder; nor shall anything contained in this section be construed to suspend during the term of the appointment of the temporary operator of the program any obligation of the established operator or any other person for the maintenance and repair of the facility, provision of utility services, payment of taxes or other operating and maintenance expenses of the facility, nor of the established operator or any other person for the payment of mortgages or liens.

(h) Upon appointment of a temporary operator, the commissioner shall cause the temporary president of the senate, the speaker of the assembly, and the chairs of the senate mental health and developmental disabilities committee and the assembly mental health committee to be notified of such determination. Such notification shall include, but not be limited to, the name of the established operator, the name of the appointed temporary operator and a description of the reasons for such determination to the extent practicable under the circumstances and in the sole discretion of the commissioner.

* NB Repealed March 31, 2028

§ 31.21 Injunction and temporary restraining order.

(a) The supreme court may enjoin violations or threatened violations of any provision of this article or violations of the regulations of the department established pursuant to this article. Upon request of the commissioner, the attorney general may maintain a proceeding in the supreme court in the name of the people of the state to enjoin any such violation, provided that notice of such violation or threatened violation and proposed referral to the attorney general has been given to the violator by mailing notice thereof to the last known address of the violator by registered mail.

(b) If the proceeding is for the enforcement of a cease and desist order issued after notice and hearing pursuant to the provisions of section 31.19 of this article, the facts found by the commissioner shall be conclusive if supported by substantial evidence.

(c) Notwithstanding any limitation in the civil practice law and rules, such court may, on motion and affidavit, and upon proof that such

violation is one which reasonably may result in injury to any person, whether or not such person is a party to such action, grant a temporary restraining order upon such terms as may be just, pending the determination of the proceeding. No security on the part of the state shall be required.

§ 31.22 Approval of certain certificates of incorporation or articles of organization; granting of operating certificates.

(a) No certificate of incorporation of a business or not-for-profit corporation, or articles of organization of a limited liability company, shall hereafter be filed which includes among its corporate purposes or powers the establishment or operation of a facility for which an operating certificate is required by this article from the commissioner of the office of mental health or the solicitation of contributions for any such purpose, except with the written approval of the commissioner and, when otherwise required by law, the approval of a justice of the supreme court endorsed on or annexed to the certificate of incorporation.

(b) An application for approval of the proposed certificate of incorporation or articles of organization shall be filed with the commissioner together with such other forms and information as shall be prescribed by, or acceptable to, the commissioner.

The commissioner shall not approve a certificate of incorporation or articles of organization or grant an operating certificate unless he is satisfied, insofar as applicable, as to (1) the public need for the services or the facility which the proposed corporation or proposed provider of services is empowered to perform or maintain at the time and place and under the circumstances proposed; (2) the character, competence and standing in the community of the proposed incorporators, directors, sponsors, stockholders, members, managers, partners, or operators, provided that in making such determination the commissioner is authorized to consider whether or not, within ten years of the date of the application, any such persons have been denied renewal for cause of an operating certificate, or have had an operating certificate revoked or suspended for cause, and such denial, revocation or

suspension was not reversed after an administrative hearing or other appeal, for a program or facility licensed or operated by a health, mental hygiene, social services or education agency or department of this or any state or have failed to operate a program serving the mentally disabled, other disabled persons as defined in subdivision twenty-one of section two hundred ninety-two of the executive law, the aged, children or other persons receiving health, mental hygiene, residential, social or educational services in continuous compliance with applicable laws or regulations within the previous ten years in any state; (3) the financial resources of the proposed corporation or proposed provider of services and its sources of future revenues; (4) the availability of facilities or services which may serve as alternates or substitutes for the facility or services which the proposed corporation or proposed provider of services is empowered to maintain or render; (5) such other matters as he shall deem pertinent in the public interest. The commissioner in approving the proposed certificate of incorporation or articles of organization or issuing the proposed operating certificate may request and consider information and advice from all available sources including local and regional mental health and health planning agencies and groups as to the matters set forth herein. If the commissioner proposes to disapprove the application he shall afford the applicant an opportunity to request a public hearing. The commissioner shall not take any action contrary to the advice of the health systems agency for facilities other than community residences or residential care centers for adults until he affords an opportunity to the agency to request a public hearing and, if so requested, a public hearing shall be held. The commissioner, on his own motion, may hold a public hearing on the application. Any public hearings held pursuant to this subdivision may be conducted by the commissioner or by an individual designated by the commissioner.

(c) (1) Any change in the person or entity which is the holder of an operating certificate of a facility for which an operating certificate has been issued pursuant to this article shall be approved by the commissioner in accordance with the provisions of this subdivision and subdivisions (a) and (b) of this section, except that: (i) any such change shall be subject to approval by the commissioner in accordance with paragraph two of subdivision (b) of this section only with respect

to the new person or entity, and any remaining persons or entities who have not been previously approved for that facility in accordance with such paragraph; and (ii) any such change shall not be subject to paragraph one of subdivision (b) of this section.

(2) Any transfer, assignment or other disposition of ten percent or more of the stock, membership interest or voting rights thereunder of a corporation or a limited liability company which is the holder of an operating certificate for a facility providing mental hygiene services or any transfer, assignment or other disposition of the stock or voting rights thereunder of such a corporation which results in the ownership or control of more than ten percent of the stock, ownership or voting rights thereunder of such corporation or limited liability company by any person shall be subject to approval by the commissioner in accordance with the provisions of this subdivision and subdivisions (a) and (b) of this section and rules and regulations promulgated pursuant thereto. In the absence of such approval, the operating certificate of such facility shall be subject to revocation or suspension, except that: (i) any such transaction shall be subject to approval by the commissioner in accordance with paragraph two of subdivision (b) of this section only with respect to a new stockholder, member or a new principal stockholder; and (ii) any such transaction shall not be subject to paragraph one of subdivision (b) of this section.

(3) No operating certificate shall be issued for a facility which would be operated by any partnership or limited liability company, any of the members of which are not natural persons.

(4) No operating certificate shall be issued for a facility which would be operated by a corporation any of the stock of which is owned by another corporation or a limited liability company any of the stock of which is owned by another corporation.

(d) Where the approval required by subdivision (a) of this section has not been obtained, the commissioner may institute and maintain an action in the supreme court through the attorney general to procure a judgment dissolving and vacating or annulling (1) the certificate of incorporation of any such corporation or articles of organization of any such limited liability company, or (2) the certificate of incorporation of any corporation or articles of organization of any such limited liability company hereafter incorporated or formed, the name, purposes,

objectives, or activities of which in any manner may reasonably lead to the belief that the corporation or limited liability company possesses or may exercise any of such purposes.

§ 31.23 Approval of new construction.

(a) As used or referred to in this section, unless a different meaning clearly appears from the context:

"Facility" is limited to a facility in which services are offered for which an operating certificate is required by this article. For the purposes of this section facility shall include family care homes.

"Construction" means the erection, building, or substantial acquisition, alteration, reconstruction, improvement, extension or modification of a facility, including its equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

(b) 1. The construction of a facility for which an operating certificate issued by the commissioner of mental health is required pursuant to article thirty-one of this chapter shall require the approval of the commissioner of mental health. An application for such construction shall be submitted to the office of mental health. The office shall forward a copy of the application for approval of the proposed construction, and any accompanying documents, to the local governmental unit responsible for community services for the mentally disabled where the facility is to be located, and, for facilities other than family care homes, community residences or residential care centers for adults, to the concerned health systems agency. The local governmental unit and health systems agency shall report their recommendations on the proposed construction within a reasonable time. Upon receipt of the recommendations of the local governmental unit and the health systems agency, or upon the lapse of a reasonable time for comment by the local governmental unit or health systems agency, the commissioner shall submit the application for facilities other than family care homes, community residences or residential care centers for adults along with the recommendations of the local governmental unit or health systems agency to the mental health services council for its

review and comment. The commissioner shall not act upon an application for construction of a facility other than a family care home, community residence or residential care center for adults without having first given the mental health services council a reasonable opportunity to make a recommendation about the application.

2. The commissioner shall not act upon an application for construction of a facility unless the applicant has obtained all approvals and consents required by law for its incorporation or establishment. The commissioner in approving the construction of a facility shall take into consideration and is empowered to request information and advice from all available sources including local and area mental hygiene and health planning agencies and groups as to (i) the availability of facilities or services which may serve as alternatives or substitutes for the whole or any part of the proposed construction; (ii) the adequacy of financial resources and sources of future revenue; and (iii) the public need for the facility or the services, for facilities other than family care homes, community residences or residential care centers for adults, at the time and place and under the circumstances proposed. If the commissioner proposes to disapprove an application for construction of a facility, he shall afford the applicant an opportunity to be heard in the same manner as prescribed in section 31.17 of this article. The commissioner shall not take any action contrary to the advice of the health systems agency for facilities other than family care homes, community residences or residential care centers for adults until he affords an opportunity to the agency to request a public hearing and if so requested, a public hearing shall be held. The commissioner, on his own motion, may hold a hearing on an application for construction of a facility.

3. Nothing in this subdivision shall limit the application of provisions of article twenty-eight of the public health law.

(c) The commissioner may submit any plans for construction including a substantial change in bed capacity, of a facility operated by the office of mental health, other than a community residence, residential care center for adults or family care home, to the local governmental unit responsible for community services for the mentally disabled where the

facility is located, to the concerned health systems agency and to the mental health services council, for their review and recommendations in accordance with this section.

§ 31.25 Residential services for treatment of eating disorders.

The commissioner shall establish, pursuant to regulation, licensed residential providers of treatment and/or supportive services to children, adolescents, and adults with eating disorders, as that term is defined in section 30.02 of this title. Such regulations shall be developed in consultation with representatives from each of the comprehensive care centers for eating disorders established pursuant to article thirty of this chapter and licensed treatment professionals, such as physicians, psychiatrists, psychologists and therapists, with demonstrated expertise in treating patients with eating disorders.

§ 31.26 Residential treatment facilities for children and youth.

(a) The commissioner may authorize the operation of residential treatment facilities for children and youth. Such residential treatment facilities may only be operated by not-for-profit organizations.

(b) The commissioner shall have the power to adopt rules and regulations governing the establishment and operation of residential treatment facilities for children and youth. Such rules and regulations shall at least require, as a condition of issuance or retention of an operating certificate for a residential treatment facility for children and youth, that admission of children into such facilities be in accordance with priorities for admission of children most immediately in need of such services in accordance with standards established by the commissioner which shall be in accordance with federal regulations.

(c) The commissioner, in consultation with the commissioner of education and the commissioner of the office of children and family services, shall adopt rules and regulations governing the standards for admissions of individuals to residential treatment facilities required in section 9.51 of this chapter in accordance with federal regulations.

(d) The commissioner of mental health and the commissioner of social

services shall enter into a cooperative agreement to govern the operation of residential treatment facilities for children and youth by an authorized agency, visitation, inspection and supervision of such facilities, enforcement of the conditions of operating certificates issued to such facilities by the department of social services and the office of mental health, and protection of the confidentiality of clinical information regarding patients at such residential treatment facilities.

(e) The office of mental health, the department of social services and the department of education shall establish a uniform system by which authorized agencies which operate residential treatment facilities for children and youth report the cost of operating such facilities.

(f) The office of mental health shall, in accordance with the provisions of section four thousand four of the education law, be responsible for paying the tuition costs for children who are receiving care in a residential treatment facility for children and youth if such children are residents of this state and such children were not placed in such a facility by a school district, social services district, the division for youth or the family court.

**** § 31.27 Comprehensive psychiatric emergency programs.**

(a) As used in this section:

(1) "Commissioner" means the commissioner of mental health.

(2) "Crisis intervention services" means services provided in an emergency room located within a general hospital, which shall include but not be limited to: psychiatric and medical evaluations and assessments; prescription or adjustment of medication, counseling, and other stabilization or treatment services intended to reduce symptoms of mental illness when appropriate.

(3) "Crisis outreach services" means psychiatric emergency services provided outside an emergency room setting including evaluation, assessment and stabilization services; crisis reduction services; referral services; and other psychiatric emergency services.

(5) "Extended observation bed" means an inpatient bed which is in or adjacent to an emergency room located within a general hospital or satellite facility approved by the commissioner, designed to provide a

safe environment for an individual who, in the opinion of the examining physician, requires extensive evaluation, assessment, or stabilization of the person's acute psychiatric symptoms, except that, if the commissioner determines that the program can provide for the privacy and safety of all patients receiving services in a hospital, he or she may approve the location of one or more such beds within another unit of the hospital.

(6) "General hospital" shall be defined as in article twenty-eight of the public health law.

(9) "Psychiatric emergency services" means services designed to stabilize and, when possible, reduce acute psychiatric symptoms of an individual who appears to be mentally ill and in crisis.

(10) "Triage and referral services" means services designed to provide preliminary diagnosis, assessment and evaluation of individuals served by a comprehensive psychiatric emergency program in order to direct such person to those services which appropriately address their needs.

(11) "Voluntary agency" shall be defined as in section 41.03 of this chapter.

(12) "Satellite facility" means a medical facility providing psychiatric emergency services that is managed and operated by a general hospital who holds a valid operating certificate for a comprehensive psychiatric emergency program and is located away from the central campus of the general hospital.

(b) (1) The commissioner may license the operation of comprehensive psychiatric emergency programs by general hospitals which are operated by state or local governments or voluntary agencies. The provision of such services in general hospitals may be located either within the state or, with the approval of the commissioner and the director of the budget and to the extent consistent with state and federal law, in a contiguous state. The commissioner is further authorized to enter into interstate agreements for the purpose of facilitating the development of programs which provide services in another state. A comprehensive psychiatric emergency program shall serve as a primary psychiatric emergency service provider within a defined catchment area for persons in need of psychiatric emergency services including persons who require immediate observation, care and treatment in accordance with section 9.40 of this chapter. Each comprehensive psychiatric emergency program

shall provide or contract to provide psychiatric emergency services twenty-four hours per day, seven days per week, including but not limited to: crisis intervention services, crisis outreach services, extended observation beds, and triage and referral services.

(2) The commissioner of mental health shall require that each comprehensive psychiatric emergency program submit a plan. The plan must be approved by the commissioner prior to the issuance of an operating certificate pursuant to this article. Each plan shall include: (i) a description of the program's catchment area; (ii) a description of the program's psychiatric emergency services, including but not limited to crisis intervention services, crisis outreach services, extended observation beds, and triage and referral services, whether or not provided directly or through agreement with other providers of services; (iii) agreements or affiliations with hospitals, as defined in section 1.03 of this chapter, to receive and admit persons who require inpatient psychiatric services; (iv) agreements or affiliations with general hospitals to receive and admit persons who have been referred by the comprehensive psychiatric emergency program and who require medical or surgical care which cannot be provided by the comprehensive psychiatric emergency program; (v) a description of local resources available to the program to prevent unnecessary hospitalizations of persons, which shall include agreements with local mental health, health, substance abuse, alcoholism or alcohol abuse, developmental disabilities, or social services agencies to provide appropriate services; (vi) a description of the program's linkages with local police agencies, emergency medical services, ambulance services, and other transportation agencies; (vii) a description of local resources available to the program to provide appropriate community mental health services upon release or discharge, which shall include case management services and agreements with state or local mental health and other human service providers; (viii) written criteria and guidelines for the development of appropriate discharge planning for persons in need of post emergency treatment or services; (ix) a statement indicating that the program has been included in an approved local services plan developed pursuant to article forty-one of this chapter for each local government located within the program's catchment area; and (x) any other information or agreements required by the commissioner.

(c) Each comprehensive psychiatric emergency program shall have at least one physician, who is a member of the psychiatric staff of the program, on duty and available at all times, provided, however, the commissioner may promulgate regulations to permit the issuance of a waiver of this requirement when the volume of service of a program does not require such level of staff coverage.

(d) The commissioner shall promulgate regulations to establish a maximum number and location of extended observation beds which may be provided in a program, including provisions to maximize the privacy and safety of all patients receiving services in the hospital in which such extended observation beds are located.

(e) The commissioner may prevent new presentations and admissions from entering a comprehensive psychiatric emergency program when the commissioner concludes that the ability of the program to deliver quality services would be jeopardized. Before reaching such a conclusion, the commissioner shall consider the effect presenting new presentations and admissions may have on other hospital emergency rooms which provide psychiatric emergency services, and the commissioner shall review the continued necessity for such prevention at least once every twenty-four hours.

(f) The commissioner and the commissioner of health shall enter into a cooperative agreement to govern the operation of comprehensive psychiatric emergency programs including visitation, inspection and supervision of such programs, enforcement of the conditions of operating certificates issued by the office of mental health and the department of health, and the protection of the confidentiality of clinical information regarding patients at such programs.

(g) The office of mental health, the department of social services and the department of health shall establish a uniform system by which general hospitals which operate comprehensive psychiatric emergency programs shall report the cost of operating such programs.

(h) Notwithstanding any other provision of law, nothing in this section shall be interpreted to create an entitlement for any individual to receive psychiatric emergency services in a comprehensive psychiatric emergency program.

** NB Repealed July 1, 2027

§ 31.28 Facilities; receivership.

(a) The owner or owners of any facility may at any time request the office to take over the operation of such facility by the appointment of a receiver. Upon receiving such a request, the office may, if it deems such action desirable, enter into an agreement with any such owners with respect to the appointment of a receiver to take charge of the facility under conditions as found acceptable by both parties. Receivership commenced in accordance with the provisions of this subdivision shall terminate at such time as may be provided in the receivership agreement, or at such time as either party notified the other in writing that he wishes to terminate such receivership.

(b) (1) Upon issuing a notice that he will revoke or suspend an operating certificate in accordance with subdivision (a) of section 31.16 of this article, or that he will disapprove an application for renewal of such certificate pursuant to section 31.05 of this article the commissioner may apply to the supreme court in the county where the facility is located for an order to show cause why a receiver should not be appointed to operate the facility. The court shall, upon determining that the notice was properly issued and that it would be in the best interests of the person served by the facility to have services continued after the effective date of the revocation or suspension, appoint a receiver for the facility to take effect upon the revocation or suspension of the operating certificate in accordance with the provisions of this article.

The order to show cause shall be returnable not less than five days after service is completed and shall provide for personal service of a copy thereof and the papers upon which it is based on the operator of the facility and upon the owner or owners of the land and/or owners of the land and/or structure on or in which the facility is located. If any such operator or owner cannot with due diligence be served personally within the county where the property is located and within the time fixed in such order, then service may be made on such person by posting a copy thereof in a conspicuous place within the facility in question, and by sending a copy thereof by registered mail, return receipt requested, to such owner at the last address registered to him with the

office, or in the absence of such registration, to the address set forth in the last recorded deed with respect to such facility. Service shall be deemed complete on filing proof of service thereof in the office of the county clerk, or the clerk of the city of New York, as the case may be.

(2) The commissioner may, prior to suspending an operating certificate for up to sixty days pursuant to subdivision (b) of section 31.16 of this article, request a temporary restraining order appointing a receiver for a facility effective with the commissioner's issuance of the notice of the suspension. The court shall issue the temporary restraining order if it is satisfactorily shown by the commissioner that he has reasonable grounds for finding that continued operating of the facility presents an immediate danger to the health and welfare of any of the public or any of the individuals served by the facility.

(3) The court shall appoint a receiver which should, where reasonably possible, be a voluntary association or not-for-profit corporation recommended by the commissioner which holds a valid and current operating certificate for a similar type facility, or which shall satisfactorily demonstrate to the commissioner its qualifications for such operating certificate.

(4) On the return of said order to show cause, determination shall have precedence over every other business of the court unless the court shall find that some other pending proceeding, having similar statutory precedence, shall have priority. The court may conduct a hearing at which all interested parties shall have the opportunity to present evidence pertaining to the application. If the court shall find that the facts warrant the granting thereof, the court shall determine a fair monthly rental for the facility consistent with its usage as such facility, taking into account all relevant factors, including the condition of such facility, which amount shall, except in the case where the receiver is assuming an existing bona fide arm's length lease, not exceed the amount which would be reimbursable to the facility under the medical assistance program for real property costs if each patient in the facility were a recipient of medical assistance. Such rental shall be paid by the receiver to the owner or owners of the facility for each month that the receivership remains in effect, provided, however, that nothing contained herein shall be construed to alter and diminish any

rental obligation the operator may have under any currently valid lease.

(5) If the operating certificate of the operator of the facility is revoked or suspended, then the receiver shall apply for the issuance of an operating certificate for the facility and shall for the duration of the receivership comply with all applicable statute and regulations for such operating certificate.

(6) Any receiver appointed pursuant to this subdivision shall have all of the powers and duties of a receiver appointed in an action to foreclose a mortgage on real property, together with such additional powers and duties as are herein granted and imposed. The receiver shall with all reasonable speed, but in any case, within eighteen months after the date on which the receivership was ordered, provide for the orderly transfer of all clients in the facility to other facilities or make other provisions for their continued safety and care or make other arrangements as authorized in subparagraph (a) of paragraph eight of this subdivision. During the interim period when such clients must remain in the facility, the receiver may correct or eliminate those deficiencies in the facility that seriously endanger the life, health or safety of such clients provided that such correction or elimination of deficiencies does not include major alterations of the physical structure of the facility. He shall, during this period operate the facility in such a manner as to guarantee safety and adequate care for such clients. He shall have the power to let contracts therefor or incur expenses in accordance with the provisions of local laws, ordinances, rules and regulations applicable to contracts for public works except that advertisement shall not be required for each such contract. Notwithstanding any such laws, ordinances, rules or regulations, the receiver may let contracts or incur expenses for individual items of repairs, improvements or supplies without the procurement of competitive bids where the total amount of any such individual item does not exceed five hundred dollars. Any receiver who is an official or employee of the state of New York shall not be required to file any bond. He shall collect incoming payments from all sources and apply them to the costs incurred in the performance of his functions as receiver. The receiver shall honor all existing leases, mortgages and chattel mortgages that had previously been undertaken as obligations of the owners or operators of the facility. However, such receiver may make application to the

appointing court for recision, reformation or such other relief as may be appropriate with respect to the executory covenants or provisions of any contractual obligations of such owners or operators as may be necessary or appropriate to protect the best interests of the clients residing within such facility. No security interest in any real or personal property comprising the facility or contained within the facility, or in any fixture of the facility shall be impaired or diminished in priority by the receiver. The receiver shall compensate the owner or owners of any goods held in inventory for those goods which he uses or causes to be used in reimbursing the costs of such goods, except that no such compensation shall be made for any such goods for which the owner or operators of the facility have already been reimbursed. Neither the receiver nor the office shall engage in any activity that constitutes a confiscation of property without the payment of fair compensation.

(7) The appointing court, upon application of the receiver, may make such provision as justice may require for a reasonable compensation and reimbursement of the reasonable expenses of such receiver. The receiver shall be liable only in his official capacity for injury to person and property by reason of conditions of the facility in a case where an owner would have been liable; provided that he operates such facility in compliance with the terms of his appointment he shall not have any liability in his personal capacity, except for gross negligence and intentional acts.

(8) (a) The court shall terminate the receivership only under any of the following circumstances:

(i) eighteen months after the date on which it was ordered;

(ii) when the receiver, or other voluntary agency or not-for-profit corporation satisfactory to the commissioner, has (A) agreed to continue the operation of the facility, (B) entered into a satisfactory long-term (not less than two years) arrangement reached on a bona fide arm's length basis with the owner or owner's of land and/or structure on or in which the facility is or is to be located, and (C) applied for and received from the commissioner a new operating certificate for the continued operation of the facility; or

(iii) at such time as all of the persons served by the facility have been provided alternative services.

(b) At the time of termination, the receiver shall render a full and complete accounting to the court and shall make disposition of surplus money at the direction of the court.

(9) (a) Any person who is served a copy of an order of the court appointing the receiver shall, upon being notified of the name and address of the receiver, make all payments for goods supplied by the facility, or services rendered by the facility, to the receiver. A receipt shall be given for each such payment, and copies of all such receipts shall be kept on file by the receiver. The amount so received shall be deposited by the receiver in a special account which shall also be used for all disbursements made by the receiver.

(b) Any person refusing or omitting to make such a payment after such service and notice may be sued therefor by the receiver. Such person shall not in such suit dispute the authority of the receiver to incur or order such expenses, or the right of the receiver to have such payments made to him. The receipt of the receiver for any sum paid to him shall, in all suits and proceedings and for every purpose, be as effectual in favor of any person holding the same as actual payment of the amount thereof to the owner or other persons or persons who would, but for the provisions of this subdivision, have been entitled to receive the sum to be paid. No person shall be discharged, nor shall any contract or rights be forfeited or impaired, nor any forfeiture or liability be incurred, by reason of any omission to pay any owner, contractor or other person any sum so paid to the receiver.

(10) (a) No provision contained herein shall be deemed to relieve the owner or operator of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts of omissions of the owner or operator prior to the appointment of any receiver hereunder, nor shall anything contained herein be construed to suspend during the receivership any obligation of the owner or operator for the payment of mortgages or liens.

(b) The receiver shall not be responsible for any obligations incurred by the owner, operator or prime lessor, if any, prior to the appointment of the receiver.

(c) The receiver shall be entitled to use for operating and maintenance expenses and the basic needs of persons served by the facility a portion of the revenues due the operator during the month in

which the receiver is appointed which portion shall be established on the basis of the amounts of the unpaid operating and maintenance expenses for such month.

(d) Any sums determined to be due and owing by the receiver to the owner, operator or prime lessor shall be off-set by any charges, determined to be the obligations of the owner, operator or prime lessor.

(c) (1) Subject to paragraph two of this subdivision, and subject to the approval of the director of the budget, the commissioner is authorized to make payments to receivers appointed pursuant to the provisions of subdivision (b) of this section, only if the receiver demonstrates to the satisfaction of the commissioner that the facility's funds which are available are insufficient to meet operating and maintenance expenses of the facility and the basic needs of those served by the facility.

(2) Notwithstanding any inconsistent provisions of law, payments made pursuant to this section shall be made from funds appropriated therefor and such payments shall be made only if a certificate of allocation and a schedule of amounts to be available therefor shall have been issued by the director of the budget and a copy of such certificate filed with the comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

(d) This section shall apply only to the facilities under the jurisdiction of the office of mental health. Reference to the commissioner in this section shall mean the commissioner of mental health.

§ 31.29 Monthly personal allowances.

(a) Each resident of a residential care center for adults shall be entitled to retain out of his or her income, including supplemental security income or safety net assistance benefits pursuant to the social services law, a monthly personal allowance in an amount equal to the monthly personal allowance established in section one hundred

thirty-one-o of the social services law for persons receiving residential care.

(b) Any resident of a residential care center for adults, or a state operated community residence, who does not receive a monthly personal needs allowance as provided in subdivision (a) of this section shall, in accordance with regulations of the commissioner, be eligible to receive a state payment for personal needs if such resident:

1. does not have countable income, as such term is defined in section two hundred eight of the social services law, in an amount equal to or greater than the amount of the monthly personal allowance for individuals receiving residential care established in section one hundred thirty-one-o of the social services law; and

2. does not have countable resources, as such term is defined in section two hundred eight of the social services law, in an amount equal to or greater than the amount of resources an individual or couple may have and remain eligible for supplemental security income benefits and additional state payments pursuant to title XVI of the federal social security act and title six of article five of the social services law.

(c) The amount of the state payment shall be the amount of the monthly personal allowance established in section one hundred thirty-one-o of the social services law for persons receiving residential care less the resident's countable income.

(d) The provisions of section one hundred thirty-one-o of the social services law shall apply to all allowances and state payments under this section.

(e) The commissioner is authorized to promulgate necessary regulations to provide for the time and manner for such state payments for personal needs.

§ 31.30 Abuse, neglect, and significant incidents involving vulnerable persons.

(a) The commissioner in consultation with the executive director of the justice center for the protection of people with special needs, shall promulgate regulations establishing standards for the protection

of service recipients in the care of facilities and provider agencies operated, licensed or certified by the office from reportable incidents pursuant to article eleven of the social services law, including procedures for:

1. consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law, assisting the justice center for the protection of people with special needs with its review and evaluation of criminal background checks of prospective employees, as set forth in subdivision five of section five hundred fifty-three of the executive law;

2. establishing minimal experiential and educational qualifications for employees that are consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law;

3. assuring adequate and appropriate supervision of employees, volunteers and consultants;

4. demonstrating that appropriate action is taken to assure the safety of the service recipient as well as other persons in care, immediately upon notification that a reportable incident has been made in accordance with article eleven of the social services law;

- 4-a. consistent with applicable collective bargaining agreements assuring that an individual who has committed a category one offense, as defined in paragraph (a) of subdivision four of section four hundred ninety-three of the social services law, that is included on the vulnerable persons' central register is not hired or otherwise used in any position in which such individual would have regular and substantial contact with a service recipient in any program operated, licensed or certified by the office;

5. removing a service recipient when it is determined that there is risk to such person if he or she continues to remain in a facility; and

6. taking appropriate preventive and remedial actions, including legal

action, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law. The commissioner shall adopt standards as established by the justice center for the protection of people with special needs, that:

(i) administrators, employees, volunteers and consultants receive training in at least the following: abuse prevention and identification, safety and security procedures, the principles of child development, the characteristics of persons in care and techniques of group management including crisis intervention, the laws, rules and regulations and procedures governing the protection of vulnerable persons from reportable incidents and other appropriate topics; provided, however, that the office may exempt administrators and consultants from such requirements upon demonstration of substantially equivalent knowledge or experience; and

(ii) service recipients receive instruction consistent with their age, needs and circumstances as well as the needs and circumstances within the facility or program, in techniques and procedures that will enable them to advocate and protect themselves from reportable incidents.

The commissioner, in consultation with the executive director of the justice center for the protection of people with special needs, shall take all reasonable and necessary actions to assure that employees, volunteers or consultants in facilities operated or overseen by the office are kept apprised on a current basis of all policies and procedures relating to the protection of vulnerable persons and shall monitor and supervise the provision of training to such administrators, employees, volunteers, children and consultants. Standards developed pursuant to this subdivision shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes.

(b) The commissioner shall provide necessary assistance to the justice center for the protection of people with special needs in the conduct of investigations pursuant to article eleven of the executive law, shall consider its recommendations for appropriate preventive and remedial action including legal actions, and shall provide or direct a residential facility licensed or operated by the office of mental health to provide written reports thereon to such justice center as to the

implementation of plans of prevention and remediation.

(c) The commissioner shall provide for the development and implementation of a plan of prevention and remediation with respect to a substantiated report of a reportable incident. Such action shall include:

1. within ten days of receipt of a substantiated report of a reportable incident, development and implementation of a plan of prevention and remediation to be taken to assure the continued health, safety, and welfare of service recipients and to provide for the prevention of future acts of reportable incidents; and

2. development and implementation of a plan of prevention and remediation, in the event an investigation of a report of an alleged reportable incident determines that such report is substantiated and such reportable incident may be attributed in whole or in part to noncompliance by the facility with provisions of this chapter or regulations of the respective office applicable to the operation of such facility. Any plan of prevention and remediation required to be developed pursuant to this subdivision by a facility supervised by the office shall be submitted to and approved by such office in accordance with time limits established by rules and regulations of such office. Implementation of the plan shall be monitored by such office or the justice center. In reviewing the continued qualification of a residential facility or program for an operating certificate, the office having supervisory responsibilities shall evaluate such facility's compliance with plans of prevention and remediation developed pursuant to this subdivision.

§ 31.31 Improper expenditure of moneys.

(a) No provider of services licensed pursuant to this article shall make any charitable contribution of state moneys, medical assistance payments or social security or supplemental security income or any interest or other income earned thereon, except as authorized by the commissioner. Provided, however, the provisions of this section shall not apply to receipts or donations from private or non-governmental

sources and any interest or other income earned thereon.

(b) No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by a not-for-profit corporation which is licensed as a provider of services pursuant to this article to its employee who receives an annual salary in excess of thirty thousand dollars, or to any other corporation, firm, association or other entity in which such employee is a director or officer or employee or holds a direct or indirect substantial financial interest, except a loan by one corporation incorporated as a charitable corporation as defined in paragraph (a) of section one hundred two (Definitions) of the not-for-profit corporation law to another charitable corporation, or a loan for a temporary or emergency purpose which will further the health and welfare of the employee so long as the purpose and amount of such loan are disclosed to and approved by the board of directors of such agency. Such disclosure shall be filed with the secretary of the corporation and entered in the minutes of the meeting, and, if approved by such board, such disclosure shall also be forwarded in writing to the commissioner and to the director of community services of each local governmental unit that has, at the time of such disclosure, a contract with such corporation for the rendition of services pursuant to article forty-one of this chapter. A loan made in violation of this section shall be a violation of the duty to the not-for-profit corporation of the directors or officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

(c) (1) No contract or other transaction between a not-for-profit corporation which is licensed as a provider of services pursuant to this article and one or more of its employees who receive an annual salary in excess of thirty thousand dollars, or between a not-for-profit corporation and any other corporation, firm, association or other entity in which one or more of such persons are directors or officers of the board or corporation, or employee who receives an annual salary in excess of thirty thousand dollars, or have an indirect or direct substantial financial interest, shall be either void or voidable for this reason alone:

a. If the material facts as to such person's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the board or committee, and the board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote or votes of such interested person; or

b. If the material facts as to such person's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the members entitled to vote thereon, if any, and such contract or transaction is authorized by vote of such members.

(2) If such good faith disclosure of the material facts as to the person's interest in the contract or transaction and as to any such common directorship, officership or financial interest, is made to the directors or members, or known to the board or committee or members authorizing such contract or transaction, as provided in paragraph one of this subdivision, the contract or transaction may not be voided by the corporation for the reasons set forth in paragraph one of this subdivision. If there was no such disclosure or knowledge the corporation may void the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the corporation at the time it was authorized by the board, a committee or the members.

*** § 31.33 Mental health special needs plans.**

The commissioner, jointly with the commissioner of health, shall be authorized to issue a certificate of authority to operate a mental health special needs plan, in accordance with the procedures of section forty-four hundred three-d of the public health law.

* NB Repealed March 31, 2030

§ 31.35 Review of criminal history information concerning certain prospective employees.

* (a) Every provider of services who contracts with or is approved or otherwise authorized by the office of mental health to provide services, except (1) a department facility, (2) a hospital as defined in article twenty-eight of the public health law, or (3) a licensed professional under title eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, and every applicant to be such a provider of services except (i) a department facility, (ii) a hospital as defined in article twenty-eight of the public health law, or (iii) a licensed professional under title eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, shall request that the justice center for the protection of people with special needs check, and upon such request such justice center shall request and shall be authorized to receive from the division of criminal justice services criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, concerning each prospective operator, employee or volunteer of such provider who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider. For purposes of this section, "operator" shall include any natural person with an ownership interest in the provider of services.

* NB Effective until November 3, 2023

* (a) Every provider of services who contracts with or is approved or otherwise authorized by the office of mental health to provide services, except (1) a department facility, (2) a hospital as defined in article twenty-eight of the public health law, or (3) a licensed professional under title eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, and every applicant to be such a provider of services except (i) a department facility, (ii) a hospital as defined in article twenty-eight of the public health law, or (iii) a licensed professional under title eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, shall request that the

justice center for the protection of people with special needs check, and upon such request such justice center shall request and shall be authorized to receive from the division of criminal justice services criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, concerning each prospective operator, employee or volunteer of such provider who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider. For purposes of this section, "operator" shall include any natural person with an ownership interest in the provider of services. Provided, however, an applicant to be a provider of services, or provider of services approved or otherwise authorized, under article thirty-six of this title shall comply with the requirements of subdivision (a) of section 36.06 of such article to satisfy the requirements of this section, and provided further that an applicant or provider who complies with the requirements of subdivision (b) of section 36.06 of such article, shall be deemed to have satisfied the requirements of this section.

* NB Effective November 3, 2023

(b) Access to and the use of such information shall be governed by the provisions of section eight hundred forty-five-b of the executive law.

§ 31.36 Crisis stabilization services.

The commissioner shall be authorized, in conjunction with the commissioner of the office of addiction services and supports, to create crisis stabilization centers within New York state in accordance with article thirty-six of this title, including the promulgation of joint regulations and implementation of a financing mechanism to allow for the sustainable operation of such programs.

§ 31.37 Mental health incident review panels.

(a) The commissioner shall establish no less than one mental health incident review panel per quarter to review the circumstances and events related to an incident involving a person with serious mental illness

occurring in the community that involved the use of deadly physical force, as defined by subdivision eleven of section 10.00 of the penal law, and resulted in serious physical injury, as defined by subdivision ten of section 10.00 of the penal law, to another. In selecting an incident to be reviewed, the commissioner shall review requests from local governmental units, or non-governmental organizations or not-for-profit entities involved with the provision of mental health care or that represent the interests of people with mental illness and shall identify an incident appropriate for an incident review panel, consistent with the purposes of this section.

(a-1) The commissioner may establish, on their own accord, additional mental health incident review panels for the purposes of reviewing in conjunction with local representation, the circumstances and events related to a serious incident involving a person with mental illness. For purposes of this section, a "serious incident involving a person with mental illness" means an incident occurring in the community in which a person with a serious mental illness suffers physical injury as defined in subdivision nine of section 10.00 of the penal law or causes such physical injury to another person, or suffers a serious and preventable medical complication or becomes involved in a criminal incident involving violence.

(a-2) A panel established under this section shall conduct a review of such incident for the purpose of identifying problems or gaps in mental health delivery systems and to make recommendations for corrective actions to improve the provision of mental health or related services, to improve the coordination, integration and accountability of care in the mental health service system, and to enhance individual and public safety.

(b) A mental health incident review panel shall include representatives from the office of mental health, the division of criminal justice services, and the chief executive officer or designee of the local governmental unit where the serious incident involving a person with a mental illness occurred. A mental health incident review panel may also include, if deemed appropriate by the commissioner based on the nature of the serious incident being reviewed, one or more representatives from mental health providers, local departments of social services, human services programs, hospitals, local schools,

emergency medical or mental health services, the office of the county attorney, state or local police agencies, the office of the medical examiner or the office of the coroner, the judiciary, or other appropriate state or local officials; provided, however, that a local law enforcement official may not serve as a member of such a review panel if such local law enforcement official's office or agency is directly involved in any ongoing investigation or prosecution of a crime under review by the panel, or any appeal of a criminal conviction for such crime.

(c) (i) Notwithstanding any other provision of law to the contrary and to the extent consistent with federal law, a mental health incident review panel shall have access to those relevant client-identifiable mental health records, as well as all records, documentation and reports relating to the investigation of an incident by the justice center, pursuant to article twenty of the executive law and an incident by a facility in accordance with regulations of the commissioner, which are necessary for the investigation of the serious incident involving a person with mental illness and the preparation of a report of such incident, as provided in subdivision (e) of this section. A mental health incident review panel investigating a serious incident involving a person with a mental illness pursuant to this section shall be provided with access to all relevant, non-privileged records in the possession of state or local officials or agencies, within twenty-one days of receipt of a request, except: (A) those records protected by section 190.25 of the criminal procedure law; (B) where providing law enforcement records would interfere with an ongoing law enforcement investigation or judicial proceeding, identify a confidential source or disclose confidential information relating to an ongoing criminal investigation, highly sensitive criminal investigative techniques or procedures, or endanger the safety or welfare of an individual; (C) with respect to any such record that is privileged, where the privilege is held by the official or agency and no separate privilege held by an individual applies, such official or agency shall be authorized to waive such official's or agency's privilege, as applicable, and provide such record; and (D) whenever an agency, director or unit believes pursuant to subparagraph (B) of this paragraph that release of records would interfere with a judicial proceeding, it shall identify that proceeding,

and the mental health incident review panel shall be authorized, upon notice to such agency, director or unit, to request in writing to the judge before whom such judicial proceeding is pending, that such judge determine whether access to such records should be denied on the ground that release of such records would interfere with the pending proceeding. Upon receipt of such a request, the judge shall offer the agency, director or unit and the panel a reasonable opportunity to be heard, and may review the disputed records in camera. The judge shall submit its determination to the agency, director or unit and the mental health incident review panel, and the agency, director or unit shall then proceed in accordance with the judge's determination.

(ii) In any case in which access to records is denied pursuant to this subdivision, the appropriate agency shall inform the panel in writing of the reasoning for such denial.

(d) Mental health incident review panels and members of the review panels shall have immunity from civil and criminal liability for all reasonable and good faith actions taken pursuant to this section, and shall not be questioned in any civil or criminal proceeding regarding any discussions, deliberations or findings relating to the official duties of such review panel. Nothing in this section shall be construed to prevent a person from testifying as to information obtained independently of a mental health incident review panel, or information which is public.

(d-1) Persons who present information to the panel shall have immunity from civil and criminal liability for all reasonable and good faith actions taken pursuant to this section, and shall not be questioned in any civil or criminal proceeding regarding their authorized participation at a meeting of the panel. Neither information nor records relating to the performance of a review panel function, nor a person's participation in a review panel shall be subject to disclosure pursuant to article thirty-one of the civil practice law and rules. Nothing in this section shall be construed to prevent the disclosure of, or testimony regarding, information that exists or is obtained independently of the panel or information that is public.

(e) Notwithstanding any other provision of law to the contrary, all meetings conducted, all reports and records made and maintained and all books and papers obtained by a mental health incident review panel shall

be confidential, and shall not be open or made available, except by court order for good cause shown or as set forth in subdivision (g) of this section. Each mental health incident review panel shall develop a report of the incident investigated. Such report shall not contain any individually identifiable information and shall be provided to the office of mental health upon completion. Records, reports, information regarding testimony and other information gathered by the panel shall not be further disseminated by a panel member.

(f) If quality problems of particular mental health programs are identified based on such reviews, the commissioner is authorized, pursuant to the relevant provisions of this chapter, to take appropriate actions regarding the licensure of particular providers, to refer the issue to other responsible parties for investigation, or to take other appropriate action within the scope of his or her authority.

(g) In accordance with section 33.13 of this title, the commissioner shall provide the final report of a review panel or portions thereof to any individual or entity for whom the report makes recommendations for corrective or other appropriate actions. Any final report or portion thereof shall be confidential. Any individual or entity receiving the report shall be prohibited from further disseminating such report. Further, the commissioner shall notify the temporary president of the senate and the speaker of the assembly of the issuance of the reports.

(h) The commissioner shall, every two years, submit a cumulative report to the governor and the legislature incorporating the data in the mental health incident review panel reports and including a summary of the findings and recommendations made by such review panels and, to the extent practicable, any recommendations that have been implemented, including recommendations from prior reports, and the impact of such implementations. The cumulative reports shall thereafter be made available to the public on the official agency website for the office of mental health, consistent with federal and state confidentiality protections.

ARTICLE 32

REGULATION AND QUALITY CONTROL OF CHEMICAL DEPENDENCE SERVICES AND COMPULSIVE GAMBLING SERVICES

Section 32.01	Regulation and quality control of chemical dependence services.
32.02	Regulation and quality control of compulsive gambling services.
32.03	Evaluation of chemical dependence services.
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§ 32.01 Regulation and quality control of chemical dependence services.

This article sets forth provisions enabling the commissioner to regulate and assure the consistent high quality of services provided within the state to persons suffering from chemical abuse or dependence, their families and significant others, and/or those who are at risk of becoming chemical abusers. The commissioner may adopt and promulgate any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by this article. This article shall govern the operation of programs, provision of services and the facilities hereinafter described including those approved under the former article twenty-three and the former sections 31.15, 31.23 and 31.24 of this chapter, and the commissioner's powers and authority with respect thereto, and shall supersede, as to such matters, sections of the former article twenty-three and article thirty-one of this chapter that are inconsistent with the provisions of this chapter; provided, however valid certificates of approval and operating certificates previously issued under article twenty-three of this chapter or article thirty-one of this title shall remain in full force and effect but shall be subject to conversion upon subsequent review, subject to the provisions of subdivision (b) of section 19.40 of this chapter. Valid operating certificates previously issued under section 19.40 of this chapter shall remain in full force and effect and shall be deemed to be operating certificates issued under this article and will be converted to such operating certificates upon subsequent review, subject to the provisions of subdivision (b) of section 19.40 of this chapter. For purposes of this article, the term "commissioner" means the commissioner of the office of alcoholism and substance abuse services.

§ 32.02 Regulation and quality control of compulsive gambling services.

(a) The commissioner may adopt any regulation reasonably necessary to regulate and ensure high quality of services to individuals suffering from compulsive gambling.

(b) The requirements of this article are applicable to this section.

§ 32.03 Evaluation of chemical dependence services.

(a) The commissioner shall ensure that all chemical dependence services provided under this chapter for persons who abuse and/or are dependent on alcohol and/or substances are periodically evaluated.

(b) The commissioner shall, by regulations, establish and maintain evaluation criteria and methods which assure the utility of data generated in the evaluation of chemical dependence services in different areas of the state provided under this chapter for those persons who abuse or are dependent on alcohol and/or substances, including, but not limited to:

1. Uniform definitions of chemical dependence services to persons who abuse and/or are dependent on alcohol and/or substances;

2. Uniform objectives for all comparable chemical dependence services and programs;

3. Uniform definitions of screening, assessment, evaluation, level of care determination, admission and discharge for comparable providers of services;

4. Uniform clinical reporting procedures; and

5. Uniform requirements for the generation and maintenance of data for all individuals receiving services from any provider of services issued an operating certificate under this article.

§ 32.05 Operating certificate required.

(a) Except as provided in subdivision (b) of this section no provider of services shall engage in any of the following activities without an operating certificate issued by the commissioner pursuant to this article:

1. operation of a residential program, including a community residence

for the care, custody, or treatment of persons suffering from chemical abuse or dependence; provided, however, that giving domestic care and comfort to a person in the home shall not constitute such an operation;

1-a. operation of a certified recovery residence in accordance with section 32.05-a of this article for the promotion of sustained recovery of persons suffering from a substance use disorder;

2. operation of a discrete unit of a hospital or other facility possessing an operating certificate pursuant to article twenty-eight of the public health law for the purpose of providing residential or non-residential chemical dependence services; or

3. operation of a program established or maintained by a provider of services for the rendition of out-patient or non-residential chemical dependence services; provided, however, that such operation shall not be deemed to include (i) professional practice, within the scope of a professional license or certificate issued by an agency of the state, by an appropriately licensed individual or by a partnership of such individuals, or by a professional service corporation duly incorporated pursuant to the business corporation law wherein all professionals bear the same professional license, or a university faculty practice corporation duly incorporated pursuant to the not-for-profit corporation law, unless more than fifty percent of such practice by either such corporation consists of the rendering of chemical dependence services; or (ii) non-residential services which are chartered or issued a certificate of incorporation pursuant to the education law; or (iii) pastoral counseling by a clergyman or minister, including those defined as clergyman or minister by section two of the religious corporations law; or (iv) services which are exclusively prevention strategies and approaches as defined in section 1.03 of this chapter.

* (b) (i) Methadone, or such other controlled substance designated by the commissioner of health as appropriate for such use, may be administered to a person with substance use disorder, as defined in section thirty-three hundred two of the public health law, by individual physicians, groups of physicians and public or private medical facilities certified pursuant to article twenty-eight or thirty-three of

the public health law as part of a chemical dependence program which has been issued an operating certificate by the commissioner pursuant to subdivision (b) of section 32.09 of this article, provided, however, that such administration must be done in accordance with all applicable federal and state laws and regulations. Individual physicians or groups of physicians who have obtained authorization from the federal government to administer buprenorphine to people with substance use disorder may do so without obtaining an operating certificate from the commissioner. (ii) No provision of this article or any other provision of law shall be construed to require a provider licensed pursuant to article twenty-eight of the public health law, article thirty-one of this chapter or a provider certified pursuant to article sixteen of this chapter to obtain an operating certificate from the office of alcoholism and substance abuse services if such provider has been authorized to provide integrated services in accordance with regulations issued by the commissioner of alcoholism and substance abuse services in consultation with the commissioner of the department of health, the commissioner of the office of mental health and the commissioner of the office for people with developmental disabilities, including regulations issued pursuant to subdivision seven of section three hundred sixty-five-l of the social services law or part L of chapter fifty-six of the laws of two thousand twelve.

* NB Effective until the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

* (b) (i) Methadone, or such other controlled substance designated by the commissioner of health as appropriate for such use, may be administered to a person with substance use disorder, as defined in section thirty-three hundred two of the public health law, by individual physicians, groups of physicians and public or private medical facilities certified pursuant to article twenty-eight or thirty-three of the public health law as part of a chemical dependence program which has been issued an operating certificate by the commissioner pursuant to subdivision (b) of section 32.09 of this article, provided, however, that such administration must be done in accordance with all applicable federal and state laws and regulations. Individual physicians or groups of physicians who have obtained authorization from the federal

government to administer buprenorphine to people with substance use disorder may do so without obtaining an operating certificate from the commissioner. (ii) No provision of this article or any other provision of law shall be construed to: (A) require a provider licensed pursuant to article twenty-eight of the public health law, article thirty-one of this title or a provider certified pursuant to article sixteen of this chapter to obtain an operating certificate from the office of addiction services and supports if such provider has been authorized to provide integrated services in accordance with regulations issued by the commissioner of addiction services and supports in consultation with the commissioner of the department of health, the commissioner of the office of mental health and the commissioner of the office for people with developmental disabilities, including regulations issued pursuant to subdivision seven of section three hundred sixty-five-l of the social services law or part L of chapter fifty-six of the laws of two thousand twelve; or (B) require a provider licensed under section 36.08 of this title to obtain an operating certificate from the office of addiction services and supports. Furthermore, no provision of this article or any other provision of law shall be construed to limit the volume of addiction services by a program licensed to provide integrated behavioral health services, as defined in section 36.08 of this title.

* NB Effective on the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

(c) No individual, partnership, association, corporation, limited liability company or partnership, public or private agency or any part thereof shall adopt a corporate name or hold itself out to the public in a manner which indicates, directly or indirectly, the availability of treatment, programs, or services for persons suffering from chemical abuse or dependence unless it has obtained an operating certificate from the commissioner in accordance with the provisions of this article.

(d) The operation of a program for which an operating certificate is required shall be in accordance with the terms of the operating certificate and regulations of the commissioner.

(e) Any individual, partnership, association, corporation, limited liability company or partnership, public or private agency or any part thereof who knowingly fails to comply with the provisions of this

section shall be guilty of a misdemeanor as defined in the penal law.

(f) If the commissioner has reason to believe that there is an individual, partnership, association, corporation, limited liability company or partnership, public or private agency or any part thereof which is providing chemical dependence services or which purports to provide such services and which does not possess a required current valid operating certificate, he or she shall proceed pursuant to applicable sections of this chapter including but not limited to sections 32.13, 32.15, 32.19 and 32.27 of this article.

§ 32.05-a Certified recovery residences.

1. The commissioner shall promulgate regulations consistent with this section for the voluntary certification of certified recovery residences.

2. Such regulations shall be evidence-based, utilizing information from sources with expertise in treatment and recovery. Such regulations shall, at a minimum, provide guidance for:

- (a) staffing;
- (b) referrals to and coordination with community and peer based supports including support related to co-occurring disorders;
- (c) resident safety;
- (d) resident rights;
- (e) confidentiality;
- (f) reoccurrence support;
- (g) application of tenants rights;
- (h) administrative and operational policies and procedures; and
- (i) housing standards which shall meet or exceed the housing quality standards for safe and habitual housing which are established by local housing codes.

3. Once the commissioner has certified a location as a certified recovery residence, such certified recovery residence shall be included on the office's website as an available option for individuals seeking such an environment.

4. The commissioner shall regulate and ensure that residences which are certified to be certified recovery residences are continuing to meet the requirements of this section. The commissioner has the authority to inspect such certified recovery residences and impose penalties, including limiting, revoking or suspending a certification, as appropriate, for failure to comply with the provisions of this section.

§ 32.06 Prohibited practices by providers of substance use disorder services.

1. For purposes of this section, unless the context clearly requires otherwise, "provider" shall mean any person, firm, partnership, group, practice association, fiduciary, employer, representative thereof or any other entity who is providing or purporting to provide substance use disorder services or operating or purporting to operate a certified recovery residence. Provided, however, that "provider" shall not include a person receiving substance use disorder services from the provider.

2. No provider shall intentionally solicit, receive, accept or agree to receive or accept any payment, benefit or other consideration in any form to the extent such payment, benefit or other consideration is given for the referral of a person as a potential patient for substance use disorder services or as a resident at a certified recovery residence.

3. No provider providing or purporting to provide substance use disorder services or operating or purporting to operate a certified recovery residence pursuant to this chapter, shall intentionally make, offer, give, or agree to make, offer, or give any payment, benefit or other consideration in any form to the extent such payment, benefit or other consideration is given for the referral of a person as a potential patient for substance use disorder services.

4. This section shall not apply to any:

(a) lawful payments by a health maintenance organization or health insurer, operating in accordance with article thirty-two or forty-three

of the insurance law or article forty-four of the public health law on behalf of their enrollees for such substance use disorder services or other benefits required to be provided;

(b) lawful payments to or by a provider to a health maintenance organization or health insurer operating in accordance with article thirty-two or forty-three of the insurance law or article forty-four of the public health law, as payment for services provided, a refund for an overpayment, a participating provider fee, or any similar remuneration;

(c) provider for an activity that, at the time of such activity, would have been lawful as specifically exempt, or otherwise not prohibited, under any federal statute or regulations, including but not limited to 42 U.S.C. § 1320a-7b (b) or the regulations promulgated thereunder, if conducted by a person, firm, partnership, group, practice, association, fiduciary, employer representative thereof or any other entity providing substance use disorder services;

(d) any employee or representative of a provider who is conducting marketing activities, where the employee or representative identifies the provider represented or for whom or which the employee or representative works, identifies that the employee or representative is a marketer and not a clinician or other individual who can provide diagnostic, counseling or assessment services, and such marketing activities are limited to educating the potential patient about the program with no effort to steer or lead the potential patient to select or consider selection of the substance use disorder services provider represented or for whom or which the employee or representative works; or

(e) commissions, fees or other remuneration lawfully paid to insurance agents as provided under the insurance law.

5. Any provider who intentionally violates the provisions of subdivision two or three of this section shall be guilty of a misdemeanor as defined in the penal law.

6. If the commissioner has reason to believe a provider has violated subdivision two or three of this section, the commissioner may proceed to investigate and institute enforcement actions, as may be authorized pursuant to the applicable provisions of this article.

7. The provisions of this section are in addition to any other civil, administrative or criminal enforcement actions provided by law. Penalties authorized under this section may be imposed against corporate providers and individual providers.

8. The commissioner shall adopt and may amend rules and regulations to effectuate the provisions of this section.

§ 32.07 Regulatory powers of the commissioner.

(a) The commissioner shall have the power to adopt regulations to effectuate the provisions and purposes of this article, including, but not limited to, the following:

1. establishing classes of operating certificates based upon such factors as physical plant, program, and staff;

2. specifying a definite period for which the operating certificate will be in effect;

3. prescribing standards of quality and adequacy of chemical dependence services rendered pursuant to an operating certificate including but not limited to, qualifications for persons providing such services including moral character, competence and standing in the community, record-keeping requirements, reporting requirements, fiscal responsibility, public need, adequacy and quality of services, and such other matters of public interest as the office shall deem appropriate;

4. providing for ongoing compliance by providers of chemical dependence services with office rules and regulations, including procedures for the limitation or revocation of any previously granted approval.

(b) Nothing herein shall affect the powers and duties of other state agencies to carry out their responsibilities and functions pursuant to the requirements of applicable laws.

§ 32.09 Issuance of operating certificates.

(a) No operating certificate shall be issued by the commissioner unless the commissioner is satisfied as to:

1. the public need for the chemical dependence services to be established upon the issuance of the operating certificate, taking into consideration local, regional, and statewide need; and

2. the character, competence and standing in the community of the person or entity responsible for operating the facility;

3. the overall financial condition of applicants, through review of audited financial statements, taking into consideration financial resources of the proposed facility and its sources of future revenues;

4. the adequacy of the premises, equipment, personnel, records, and program to provide the services which would be authorized by the operating certificate;

5. that such services will be provided in compliance with applicable law and regulations;

6. that the provider of services will provide patients with continuity of care consistent with treatment and discharge plans; and

7. such other matters as the commissioner shall deem pertinent and in the public interest.

(b) In addition to the provisions of subdivision (a) of this section, no operating certificate shall be issued by the commissioner to authorize the administration and dispensing of methadone or other controlled substances by certain physicians and/or medical facilities in accordance with subdivision (b) of section 32.05 of this article unless such commissioner is satisfied that:

1. the applicant is ready, willing and able to properly carry on a chemical dependency program;

2. the applicant will be able to maintain effective control against diversion of controlled substances;

3. it is in the public interest that such certification be granted;

4. the applicant is able to comply with all applicable state and federal laws; and

5. the applicant will establish procedures to effectively implement a detoxification program to further relieve people with substance use disorder from dependence upon methadone or such other controlled substances prescribed for treatment in subject maintenance programs.

(c) Operating certificates shall be valid for up to a five year period as shall be expressly provided upon such certificate or renewal thereof.

(d) The commissioner shall specify on each operating certificate the kind or kinds of services authorized, any limitations or conditions of the certificate, and the expiration date of the certificate.

(e) Notwithstanding the provisions of subdivision (a) of this section, the commissioner shall have the authority to grant temporary approval of an operating certificate for a period not to exceed one hundred twenty days, in the event of a threat or imminent threat of a catastrophic or emergency loss of available services. Such temporary approval may be extended beyond one hundred twenty days as deemed necessary by the commissioner, but not to exceed more than an additional one hundred twenty days.

(f) The commissioner may disapprove an application for an operating certificate, may authorize fewer services than applied for, and may place limitations and conditions on the operating certificate he or she determines to be reasonable and necessary, including, but not limited to compliance with a time limited plan of correction of any deficiency which does not threaten the health or well being of any patient. In such cases the applicant shall be given an opportunity to be heard at a public hearing, if requested by the applicant.

(g) All operating certificates shall remain the property of the office and must be returned to the office upon revocation or expiration thereof, or upon the demand of the commissioner. Operating certificates

are not transferable.

§ 32.11 Child abuse prevention.

All providers of services described in subdivision (a) of section 32.05 of this article, shall:

(a) develop, maintain and disseminate written policies and procedures pursuant to title six of article six of the social services law and applicable provisions of article ten of the family court act, regarding the mandatory reporting of child abuse or neglect, reporting procedures and obligations of persons required to report, provisions for taking a child into protective custody, mandatory reporting of deaths, immunity from liability, penalties for failure to report, and obligations for the provision of services and procedures necessary to safeguard the life or health of the child; and

(b) establish, and implement on an ongoing basis, a training program for all current and new employees regarding the policies and procedures established pursuant to this section.

§ 32.13 Investigations and inspections.

The commissioner shall have the power to conduct investigations into the operations of providers of services which are required by this article to have operating certificates and to make inspections and examine records, including, but not limited to, clinical and medical service and financial records of facilities to determine whether such providers of services are complying with the provisions of this chapter and applicable laws, rules, and regulations. Inspections shall be made as frequently as the commissioner may deem necessary, but in any event such inspections shall be made on at least two occasions during each calendar year, one of which shall be without prior notice, for providers of services which have been issued operating certificates of one year's duration or longer; and at least once during the term of the operating certificate for providers of services which have been issued operating certificates of less than a year's duration; and provided, further, that

where, in the discretion of the commissioner, an operating certificate of more than one year's duration has been issued to a provider of services with a history of compliance and a record of providing a high quality of care, the periodic inspection and visitation required by this section shall be made at least once during each calendar year, provided such visits shall be without prior notice.

§ 32.14 Compliance with operational standards by providers of services in general hospitals.

(a) Notwithstanding the provisions of section 32.13 of this article, with respect to a provider of services as defined in section 1.03 of this chapter that is a general hospital, as defined in article twenty-eight of the public health law, which provides services for persons with mental disabilities pursuant to an operating certificate issued by the commissioner, the requirements of section 32.13 of this article may be deemed to be met if such hospital has been accredited by The Joint Commission, or any other accrediting organization to which the Centers for Medicare and Medicaid Services has granted deeming status, and which the commissioner shall have determined has accrediting standards sufficient to assure the commissioner that such hospital so accredited is in compliance with the provisions of this chapter and applicable laws, rules and regulations in regard to services provided at such hospital. Such accreditation shall have the same legal effect as a determination by the commissioner under section 32.13 of this article that the provider of services is in compliance with such provisions. The commissioner may exempt any such provider of services from the annual inspection and visitation requirements established in section 32.13 of this article, provided that:

1. such provider of services has a history of compliance with such provisions of law, rules and regulations and a record of providing good quality care, as determined by the commissioner;

2. a copy of the survey report and the certificate of accreditation of The Joint Commission or other approved accrediting organization is submitted by the accrediting body or the provider of services to the

commissioner, within seven days of issuance to such provider of services;

3. The Joint Commission or other approved accrediting organization has agreed to and does evaluate, as part of its accreditation survey, any minimal operational standards established by the commissioner which are in addition to the minimal operational standards of accreditation of The Joint Commission or other accrediting organization; and

4. there are no constraints placed upon access by the commissioner to The Joint Commission or other approved accrediting organization survey reports, plans of correction, interim self-evaluation reports, notices of noncompliance, progress reports on correction of areas of noncompliance, or any other related reports, information, communications or materials regarding such provider of services.

(b) Any provider of services governed by the provisions of subdivision (a) of this section shall at all times be subject to inspection or visitation by the commissioner to determine compliance with applicable law, regulations, standards or conditions as deemed necessary by the commissioner. Any such provider of services shall be subject to the full range of certification enforcement authority of the commissioner.

(c) Any provider of services governed by the provisions of subdivision (a) of this section shall notify the commissioner immediately upon receipt of notice by The Joint Commission or other approved accrediting organization, or any communication the provider of services may receive that such organization will be recommending that such provider of services not be accredited, not have its accreditation renewed, or have its accreditation terminated, or upon receipt of notice or other communication from the Centers for Medicare and Medicaid Services regarding a determination that the provider of services will be terminated from participation in the Medicare or Medicaid program because it is not in compliance with one or more conditions of participation in such program, or has deficiencies that either individually or in combination jeopardize the health and safety of patients or are of such character as to seriously limit the provider's capacity to render adequate care.

§ 32.15 Powers of the office regarding investigation and inspection.

(a) In conducting an investigation or inspection, the commissioner or his or her authorized representative shall have the power to inspect facilities, examine records, conduct examinations and interviews, and obtain such other information as may be required in order to carry out his or her responsibilities under this article.

(b) All investigations and inspections of clinical records shall be made by persons competent to conduct such investigations and inspections. Information obtained by the commissioner from the records of patients receiving services shall be kept confidential in accordance with applicable federal and state confidentiality laws and regulations.

§ 32.17 Certain duties of providers of services.

It shall be the duty of every holder of an operating certificate to assist both the office and the commission on quality of care for the mentally disabled in carrying out their respective and joint regulatory functions by:

(a) complying with the provisions of this chapter, other applicable federal, state, and local laws, rules, and regulations, and the regulations of the commissioner.

(b) consistent with federal and state confidentiality laws and regulations, making such reports as are required by the office as well as those necessary to provide notification to the district attorney or other appropriate law enforcement official and the commissioner or his or her authorized representative as soon as possible, or in any event within three working days, if it appears that a crime may have been committed by program personnel against a patient receiving services from such provider, and/or if a crime may have been committed by program personnel against any person on such provider's premises, and making such other reports, uniform and otherwise, as are required by the commissioner or his or her authorized representative with respect to its operations. Information obtained by the commissioner from the records of patients receiving services shall be kept confidential in accordance with applicable federal and state confidentiality laws and regulations.

(c) cooperating with the commissioner or his or her authorized representative and the commission on quality of care for the mentally disabled or any representative authorized by the chairperson of such commission in any investigation or inspection conducted by the department or commission on quality of care for the mentally disabled.

(d) permitting the commissioner or his or her authorized representative and the commission on quality of care for the mentally disabled or any representative authorized by the chairperson of such commission to inspect its facility and all books and records, including patient records, kept by it and to interview and examine any patient at its facility except that no patient may be examined against his or her will.

§ 32.17-a Notification of emergency contact.

Every certified treatment program shall notify every patient of their right to identify individuals who should be contacted in case of emergency, as such term is defined by the commissioner.

§ 32.19 Powers of subpoena and examination.

In conducting any investigation, inspection, or hearing under this chapter, the commissioner and his or her authorized representative are empowered to subpoena witnesses, compel their attendance, administer oaths to witnesses, examine witnesses under oath, and require the production of any books or papers deemed relevant to the investigation, inspection, or hearing. A subpoena issued under this section shall be regulated by the civil practice law and rules. The confidentiality of information obtained by the commissioner from patient's records shall be maintained in accordance with applicable federal and state confidentiality laws and regulations.

§ 32.20 Temporary operator. 1. For the purposes of this section:

(a) "chemical dependence treatment program" shall mean a program

certified pursuant to section 32.05 of this article;

(b) "established operator" shall mean the operator of a chemical dependence treatment program that has been established and issued an operating certificate pursuant to section 32.05 of this article;

(c) "temporary operator" shall mean any OASAS staff member, person or entity that:

(i) agrees to operate a program on a temporary basis in the best interests of its patients and the community served by the program;

(ii) has demonstrated that he or she has the character, competence and ability to operate an OASAS-certified program in compliance with applicable standards; and

(iii) prior to his or her appointment as temporary operator, develops with guidance from the commissioner a satisfactory plan to address the program's deficiencies;

(d) "serious financial instability" shall include but not be limited to defaulting or violating key covenants of bond issues, missed mortgage payments, general untimely payment of debts, failure to pay its employees or vendors, insufficient funds to meet the general operating expenses of the program and/or facility, failure to maintain required debt service coverage ratios and/or, as applicable, factors that have triggered a written event of default notice to the office by the dormitory authority of the state of New York; and

(e) "extraordinary financial assistance" shall mean state funds provided to, or requested by, a program for the express purpose of preventing the closure of the program that the commissioner finds provides essential and necessary services within the community.

2. (a) In the event that: (i) the program is seeking extraordinary financial assistance; (ii) office collected data indicates that the program is experiencing serious financial instability issues; (iii) office collected data indicates that the program's board of directors or administration are unable or unwilling to ensure the proper operation of the program; or (iv) office collected data indicates there are conditions that seriously endanger or jeopardize continued access to necessary chemical dependence treatment services within the community, the commissioner shall notify the established operator of his or her intention to appoint a temporary operator to assume sole responsibility

for the program's treatment operations of that facility for a limited period of time. The appointment of a temporary operator shall be effectuated pursuant to this section, and shall be in addition to any other remedies provided by law.

(b) The established operator of a program may at any time request the commissioner to appoint a temporary operator. Upon receiving such a request, the commissioner may, if he or she determines that such an action is necessary, enter into an agreement with the established operator for the appointment of a temporary operator to restore or maintain the provision of quality care to the patients until the established operator can resume operations within the designated time period; the patients may be transferred to other OASAS-certified providers; or the program operations of that facility should be completely discontinued.

3. (a) A temporary operator appointed pursuant to this section shall use his or her best efforts to implement the plan developed with the guidance of the commissioner to correct or eliminate any deficiencies in the program and to promote the quality and accessibility of chemical dependence treatment services in the community served by the program.

(b) If the identified program deficiencies cannot be addressed in the time period designated in the plan, the patients shall be transferred to other OASAS-certified providers.

(c) During the term of his or her appointment, the temporary operator shall have the authority to direct the program staff of the facility in all aspects necessary to appropriately treat and/or transfer the patients. The temporary operator shall, during this period, operate the program in such a manner as to promote safety and the quality and accessibility of chemical dependence treatment services in the community served by the facility until either the established operator can resume program operations or until the patients are appropriately transferred to other OASAS-certified providers.

(d) The temporary operator shall also be afforded access to a program's accounts and records in order to address any deficiencies related to a program experiencing serious financial instability or a program requesting financial assistance in accordance with this section. The temporary operator shall approve any financial decision related to a

program's day to day operations or program's ability to provide chemical dependence services.

(e) The temporary operator shall not be required to file any bond. No security interest in any real or personal property comprising the facility or contained within the facility or in any fixture of the facility, shall be impaired or diminished in priority by the temporary operator. Neither the temporary operator nor the office shall engage in any activity that constitutes a confiscation of property.

4. The temporary operator shall be entitled to a reasonable fee, as determined by the commissioner, and necessary expenses incurred during his or her performance as temporary operator. The temporary operator shall be liable only in his or her capacity as temporary operator of the program for injury to person and property by reason of his or her operation of such program; he or she shall not have any liability in his or her personal capacity, except for gross negligence and intentional acts.

5. (a) The initial term of the appointment of the temporary operator shall not exceed ninety days. After ninety days, if the commissioner determines that termination of the temporary operator would cause significant deterioration of the quality of, or access to, health care in the community or that reappointment is necessary to correct the deficiencies that required the appointment of the temporary operator, the commissioner may authorize an additional ninety-day term. However, such authorization shall include the commissioner's requirements for conclusion of the temporary operatorship to be satisfied within the additional term.

(b) Within fourteen days prior to the termination of each term of the appointment of the temporary operator, the temporary operator shall submit to the commissioner and to the established operator a report describing:

(i) the actions taken during the appointment to address: the identified program deficiencies; the resumption of program operations by the established operator; or the transfer of the patients to other OASAS-certified providers;

(ii) objectives for the continuation of the temporary operatorship if

necessary and a schedule for satisfaction of such objectives; and

(iii) if applicable, the recommended actions for the ongoing operation of the program subsequent to the temporary operatorship.

(c) The term of the initial appointment and of any subsequent reappointment may be terminated prior to the expiration of the designated term, if the established operator and the commissioner agree on a plan of correction and the implementation of such plan.

6. (a) The commissioner shall, upon making a determination of an intention to appoint a temporary operator pursuant to paragraph (a) of subdivision two of this section cause the established operator of the facility to be notified of the intention by registered or certified mail addressed to the principal office of the established operator. Such notification shall include a detailed description of the findings underlying the intention to appoint a temporary operator, and the date and time of a required meeting with the commissioner and/or his or her designee within ten business days of the receipt of such notice. At such meeting, the established operator shall have the opportunity to review and discuss all relevant findings. At such meeting, the commissioner and the established operator shall attempt to develop a mutually satisfactory plan of correction and schedule for implementation. In such event, the commissioner shall notify the established operator that the commissioner will abstain from appointing a temporary operator contingent upon the established operator remediating the identified deficiencies within the agreed upon timeframe.

(b) Should the commissioner and the established operator be unable to establish a plan of correction pursuant to paragraph (a) of this subdivision, or should the established operator fail to respond to the commissioner's initial notification, there shall be an administrative hearing on the commissioner's determination to appoint a temporary operator to begin no later than thirty days from the date of the notice to the established operator. Any such hearing shall be strictly limited to the issue of whether the determination of the commissioner to appoint a temporary operator is supported by substantial evidence. A copy of the decision shall be sent to the established operator.

(c) If the decision to appoint a temporary operator is upheld such temporary operator shall be appointed as soon as is practicable and

shall operate the program pursuant to the provisions of this section.

(d) Upon appointment of a temporary operator, the commissioner shall cause the temporary president of the senate, the speaker of the assembly, and the chairs of the senate and assembly committees on alcoholism and drug abuse to be notified of such determination. Such notification shall include, but not be limited to, the name of the established operator, the name of the appointed temporary operator and a description of the reasons for such determination to the extent practicable under the circumstances and in the sole discretion of the commissioner.

7. Notwithstanding the appointment of a temporary operator, the established operator remains obligated for the continued operation of the facility so that the program can function in a normal manner. No provision contained in this section shall be deemed to relieve the established operator or any other person of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the established operator or any other person prior to the appointment of any temporary operator of the program hereunder; nor shall anything contained in this section be construed to suspend during the term of the appointment of the temporary operator of the program any obligation of the established operator or any other person for the maintenance and repair of the facility, provision of utility services, payment of taxes or other operating and maintenance expenses of the facility, nor of the established operator or any other person for the payment of mortgages or liens.

§ 32.21 Suspension, revocation, or limitation of operating certificates and imposition of fines.

(a) The commissioner may revoke, suspend, or limit an operating certificate upon a determination that the holder of the certificate has failed to comply with the terms of its operating certificate or with the provisions of any applicable statute, rule, or regulation. The holder of the certificate shall be given notice and an opportunity to be heard prior to any such determination.

(b) The commissioner may impose a fine of up to one thousand dollars

upon a finding that the holder of the certificate has failed to comply with the terms of its operating certificate or with the provisions of any applicable statute, rule or regulations.

(c) The penalty provided for in subdivision (b) of this section may be recovered by an action brought by the commissioner in any court of competent jurisdiction.

(d) Such penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general, and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled or discontinued by the attorney general with the consent of the commissioner.

(e) It shall be the duty of the attorney general upon the request of the commissioner to bring an action for an injunction against any person who violates, disobeys or disregards any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto; provided, however, that the commissioner shall furnish the attorney general with such material, evidentiary matter or proof as may be requested by the attorney general for the prosecution of such an action.

(f) Pending a determination pursuant to the foregoing subdivisions, the commissioner may, upon written notice to the holder thereof, suspend an operating certificate for not more than thirty days if he or she has reasonable grounds for finding that the continued operation of the facility presents an immediate danger to the health and welfare of the public or of any of the persons receiving the services.

(g) The commissioner shall promulgate rules and regulations establishing procedures for the imposition of fines, and suspension, revocation or limitation of operating certificates.

§ 32.23 Formal hearings; procedure.

(a) Unless otherwise provided by law, when a hearing must be afforded pursuant to this article, the hearing shall be held without undue delay and all parties shall be given reasonable notice of the time, place, and nature of the hearing.

(b) The commissioner, acting as hearing officer, or any person designated by him or her as hearing officer shall have power to:

1. administer oaths and affirmations;
2. issue subpoenas, which shall be regulated by the civil practice law and rules;
3. take testimony; and
4. control the conduct of the hearing.

(c) The rules of evidence observed by the courts need not be observed except that the rules of privilege and confidentiality recognized by law shall be respected. Irrelevant or unduly repetitious evidence may be excluded.

(d) All parties shall have the right to counsel and be afforded an opportunity to present evidence and cross-examine adverse witnesses.

(e) If evidence at the hearing relates to the identity, condition, or clinical record of a patient, the hearing officer may exclude all persons from the room except parties to the proceeding, their counsel and the witnesses. The record of such proceeding shall not be available to anyone outside the office other than a party to the proceeding or his or her counsel, except by order of a court of record.

(f) If a hearing officer has been designated, within twenty days of receipt of the stenographic transcript or the date fixed for submission of written memoranda, whichever is later, the hearing officer shall submit a final report of findings and a proposed order to the commissioner, along with the entire record of the hearing.

(g) The commissioner shall issue a determination within ten business days after the termination of the hearing or, if a hearing officer has submitted a report in accordance with subdivision (f) of this section, within ten business days from receipt of such officer's report.

(h) The commissioner may establish regulations to govern the hearing procedure and the process of determination of the proceeding.

§ 32.25 Confinement, care, and treatment of persons suffering from chemical abuse or dependence.

- (a) No individual who is or appears to be suffering from chemical

abuse or dependence shall be detained, deprived of his or her liberty, or otherwise confined without lawful authority, or be inadequately, unskillfully, cruelly, or unsafely cared for or supervised by any person.

(b) If the commissioner has reason to believe that this section is being violated or that services for persons suffering from chemical abuse or dependence or who are at risk of becoming alcohol or substance abusers are being provided in violation of this article, he or she shall promptly investigate the matter. If he or she finds, after notice to the person accused of the violation that there is substantial evidence to support the finding that there has been a violation, the commissioner shall issue an order directed to the person or entity who has committed the violation directing him or her to cease and desist from the violation.

(c) The commissioner may bring the following proceedings in the supreme court, in accordance with the provisions of section 32.27 of this article:

1. for an injunction where the person to whom a cease and desist order is directed has failed to comply therewith; and

2. for a temporary restraining order where the commissioner has reason to believe that a violation of this section may result in injury to any person.

(d) Nothing in this section shall prevent the commissioner from taking whatever action he or she deems necessary for the suspension, revocation, or limitation of the operating certificate of a provider of services which has been charged with a violation of this section.

§ 32.27 Injunction and temporary restraining order.

(a) The supreme court may enjoin violations or threatened violations of any provision of this article or violations of the regulations of the office established pursuant to this article. Upon request of the commissioner, the attorney general may maintain a proceeding in the supreme court in the name of the people of the state to enjoin any such violation, provided that notice of such violation or threatened

violation and proposed referral to the attorney general has been given to the violator by mailing notice thereof to the last known address of the violator by registered mail.

(b) If the proceeding is for the enforcement of a cease and desist order issued after notice and hearing pursuant to the provisions of section 32.23 of this article, the facts found by the commissioner shall be conclusive if supported by substantial evidence.

(c) Notwithstanding any limitation in the civil practice law and rules, such court may, on motion and affidavit, and upon proof that such violation is one which reasonably may result in injury to any person, whether or not such person is a party to such action, grant a temporary restraining order upon such terms as may be just, pending the determination of the proceeding. No security on the part of the state shall be required.

§ 32.29 Approval of new construction.

(a) As used or referred to in this section, unless a different meaning clearly appears from the context:

1. "Facility" is limited to a facility in which services are offered for which an operating certificate is required by this article.

2. "Construction" means the erection, building, or substantial acquisition, alteration, reconstruction, improvement, extension or modification of a facility, including its equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto that require the submission of an application for an operating certificate or amendment to an operating certificate or certificate of approval previously issued by the office of alcoholism and substance abuse services; or which is likely to have an impact on state aid.

(b) The construction of a facility shall require the prior approval of such commissioner if the provider of services seeking to engage in such construction receives funding from the office of alcoholism and substance abuse services pursuant to this chapter and/or seeks a funding source for such construction project other than from the mental health

services facilities improvement program, or its successor agency, directly or indirectly through a closely related entity.

1. An application for such construction together with such other forms and information as shall be prescribed, shall be submitted to the office of alcoholism and substance abuse services.

2. The office shall forward a copy of the application for approval of the proposed construction, and any accompanying documents, to the local governmental unit responsible for community services for the mentally disabled where the facility is to be located. The local governmental unit shall report its recommendations on the proposed construction within a reasonable time.

3. Upon receipt of the recommendations of the local governmental unit, or upon the lapse of a reasonable time for comment by the local governmental unit, the commissioner shall submit the application for facilities other than community residences along with the recommendations of the local governmental unit, if any, to the advisory council on alcoholism and substance abuse services for its review and recommendation. The commissioner shall not act upon an application for construction of a facility other than a community residence without having first given the advisory council on alcoholism and substance abuse services a reasonable opportunity to make its recommendation on the application, provided however, that the commissioner may act upon an application for construction by an applicant possessing a valid operating certificate when the applicant qualifies for review without the recommendation of the council pursuant to regulations adopted by the commissioner with the advice of the council in accordance with the procedures noted in section 19.05 of this chapter.

(c) The commissioner shall not act upon an application for construction of a facility unless the applicant has obtained all approvals and consents required by law for its incorporation or establishment. The commissioner, in approving the construction of a facility, shall take into consideration and is empowered to request information and advice from all available sources including local and area mental hygiene and health planning agencies and groups and shall

not grant approval of an application for construction unless, based on the information and advice received and his or her own review he or she is satisfied as to (i) the public need for the facility or the services at the time and place and under the circumstances proposed, taking into consideration local, regional, and statewide need; (ii) the absence of availability and feasibility for development of facilities or services which may serve as alternatives or substitutes for the whole or any part of the proposed construction; (iii) the overall financial condition of the applicant, through review of audited financial statements, taking into consideration the adequacy of financial resources and sources of future revenue; (iv) the absence of more efficient architectural solutions to construction proposed; and (v) the sufficiency of such other matters as he or she may deem pertinent in the public interest.

(d) If the commissioner proposes to disapprove an application for construction of a facility, he or she shall afford the applicant an opportunity to be heard in accordance with subdivision (e) of this section. The commissioner shall not take any action contrary to the recommendation of the advisory council on alcoholism and substance abuse services, unless he or she first appears before the council and explains his or her reasons therefor. The commissioner shall not take any action contrary to the advice of the local governmental unit for facilities other than community residences until he or she affords an opportunity to the local governmental unit to request a public hearing and if so requested, a public hearing shall be held in accordance with subdivision (e) of this section. The commissioner, on his or her own motion, may hold a hearing on an application for construction of a facility.

(e) At the public hearing the commissioner shall outline all pertinent matters regarding the application. Thereafter, any person in attendance shall be given a reasonable opportunity to present an oral or written statement and to submit other documents concerning the application for construction. A record of the hearing shall be kept, including written statements submitted. Copies of such record shall be available to the public for examination without cost during normal business hours at the office of alcoholism and substance abuse's central office. Copies shall be reproduced upon written request and payment of the cost thereof. Further adjourned hearings may be scheduled.

(f) Nothing in this section shall limit the application of provisions

of article twenty-eight of the public health law.

§ 32.31 Establishment or incorporation of facilities for chemical dependence services.

(a) No provider of services or facility providing chemical dependence services shall be established except with the written approval of the commissioner. No certificate of incorporation of a business, membership or not-for-profit corporation or articles of organization of a limited liability company shall hereafter be filed which includes among its corporate purposes or powers the establishment or operation of a facility providing chemical dependence services or the solicitation of contributions for any such purpose, or two or more of such purposes, except with the written approval of the commissioner and, when otherwise required by law, the approval of a justice of the supreme court endorsed on or annexed to the certificate of incorporation. Notwithstanding any other provision of law, the commissioner shall not require a corporation to amend its certificate of incorporation or a limited liability company to amend its articles of organization which includes among the purposes of the corporation or limited liability company the establishment or operation of a substance abuse program or alcoholism facility. Any such corporate or limited liability company purposes, powers, or provisions previously approved by the office shall be deemed consent by the office for such corporation or limited liability company to provide chemical dependence services. Nothing herein obviates the need for such corporation or limited liability company to possess a valid operating certificate.

(b) With respect to the incorporation or establishment of a provider or facility providing chemical dependence services, the commissioner shall give written approval after all of the following requirements have been met:

1. An application for approval of the proposed certificate of incorporation or articles of organization shall be filed with the commissioner together with such other forms and information as shall be prescribed by, or acceptable to, him or her. Thereafter, the commissioner shall forward a copy of the proposed certificate or

articles or organization and application for establishment and accompanying documents, to the local governmental unit of the area in which such facility is to be located. The commissioner shall not act upon such application until the local governmental unit has had a reasonable time to submit their recommendations.

2. Upon receipt of the recommendations of the local governmental unit, or the lapse of a reasonable time for comment, the commissioner shall submit the application along with the recommendations of the local governmental unit to the advisory council on alcoholism and substance abuse services for its review and recommendation. The commissioner shall not act upon an application for establishment of a facility without having first given such advisory council a reasonable opportunity to make its recommendation on the application.

3. The commissioner shall not take any action contrary to the recommendation of the council unless he or she first appears before the council and explains his or her reasons therefor. The commissioner shall not take any action contrary to the advice of the local governmental unit until he or she affords, to such entity, an opportunity to request a public hearing and if so requested, a public hearing shall be held in accordance with subdivision (e) of section 32.29 of this article. If the commissioner proposes to disapprove the application he or she shall afford the applicant an opportunity to request a public hearing in accordance with subdivision (e) of section 32.29 of this article. The commissioner may hold such a public hearing on the application on his or her own motion. Any public hearing held pursuant to this subdivision may be conducted by the commissioner or by any individual designated by the commissioner.

(c) The commissioner shall not approve a certificate of incorporation or articles of organization or application for establishment unless the provisions of subdivision (a) of section 32.09 of this article have been met and that the commissioner is satisfied, insofar as applicable, as to:

1. the public need for the existence of the facility at the time and place and under the circumstances proposed taking into consideration

local, regional, and statewide need;

2. the absence of availability and feasibility of development of facilities or services which may serve as alternatives or substitutes for the whole or any part of the proposed facility;

3. the character, competence and standing in the community of the proposed incorporators, directors, members, partners, sponsors, stockholders or operators; considering, with respect to any proposed incorporator, director, member, partner, sponsor, stockholder or operator who is already or within the past ten years has been an incorporator, director, member, partner, sponsor, stockholder or operator of any hospital, private proprietary home for adults, residence for adults, or not-for-profit home for the aged or blind which has been issued an operating certificate by the office of children and family services or a halfway house, hostel or other facility or institution for the care, custody or treatment of the mentally disabled which is subject to approval by an office of the department, the level of care being or having been rendered in each such hospital, home, residence, halfway house, hostel, or other residential facility or institution with which such person is or was affiliated;

4. the overall financial condition of the applicant, through review of audited financial statements, taking into consideration the financial resources of the proposed facility and of its sources of future revenues; and

5. the sufficiency of such other matters as he or she shall deem in the public interest.

(d) 1. Any change in the person who or partnership which is the provider of services shall be approved by the commissioner in accordance with the provisions of this subdivision and subdivisions (a) through (c) of this section.

2. Any transfer, assignment or other disposition of ten percent or more of the stock, membership interest or voting rights thereunder of a corporation or a limited liability company which is the provider of

services providing chemical dependence services or any transfer, assignment or other disposition of the stock, ownership or voting rights thereunder of such a corporation or a limited liability company which results in the ownership or control of more than ten percent of the stock, ownership or voting rights thereunder of such corporation or limited liability company by any person shall be subject to approval by the commissioner in accordance with the provisions of this subdivision and subdivisions (a) through (c) of this section and rules and regulations promulgated pursuant thereto. In the absence of such approval, the operating certificate of such facility shall be subject to revocation or suspension.

3. No facility shall be approved for establishment which would be operated by a partnership or limited liability company any of the members of which are not natural persons.

4. No facility shall be approved for establishment which would be operated by a corporation any of the stock of which is owned by another corporation.

5. No corporation having power to solicit contributions for charitable purposes shall be deemed to have authority to solicit contributions for any purposes for which the approval of the commissioner is required pursuant to subdivision (a) of this section, unless the certificate of incorporation or articles of organization specifically makes provisions therefor, and the written approval of the commissioner is endorsed on or annexed to such certificate or articles of organization. Where such approval has not been obtained the commissioner may institute and maintain an action in the supreme court through the attorney general to procure a judgment dissolving and vacating or annulling the certificate of incorporation or articles of organization of any such corporation or limited liability company.

6. Only a natural person or a partnership existing under the partnership law may hereafter undertake to engage in the business of operating or conducting a facility providing chemical dependence services for profit, except that: (i) a person, partnership or

corporation which owned and was operating such a facility on July first, nineteen hundred eighty-three may continue to own and operate such facility; (ii) a business corporation organized pursuant to the business corporation law or a limited liability company organized pursuant to the limited liability company law may, with the approval of the commissioner and in accordance with the provisions of this section, undertake to engage in the business of operating or conducting such a facility provided that such corporation or limited liability company shall not discriminate because of race, color, creed, national origin or sponsor in admission or retention of patients; (iii) any person who, or a partnership which, is operating a private proprietary facility in accordance with applicable provisions of law may, with the approval of the commissioner, and in accordance with the provisions of this section and any rules and regulations thereunder, form a business corporation to engage in the business of operating or conducting such facility, provided, however, that such corporation shall not discriminate because of race, color, creed, national origin or sponsor in admission or retention of patients.

(e) The commissioner shall adopt and amend rules and regulations to effectuate the provisions and purposes of this section, and to provide for the revocation, limitation or annulment of approvals of establishment or formation of limited liability companies or incorporation of corporations.

(f) Where the approval required by subdivision (a) of this section has not been obtained, the commissioner may institute and maintain an action in the supreme court through the attorney general to procure a judgment dissolving and vacating or annulling:

1. the certificate of incorporation of any such corporation or articles of organization of any such limited liability company, or

2. the certificate of incorporation of any such corporation or the articles of organization of any such limited liability company hereafter incorporated or formed, the name, purposes, objectives, or activities of which in any manner may reasonably lead to the belief that the corporation or limited liability company possesses or may exercise any of such purposes.

§ 32.33 Improper expenditures of money.

Improper expenditures of money shall include, but not be limited to, the following:

(a) No provider of services issued an operating certificate pursuant to this article shall make any charitable contribution of state moneys, medical assistance payments or social security or supplemental security income or any interest or other income earned thereon, except as authorized by the commissioner. Provided, however, the provision of this section shall not apply to receipts or donations from private or non-governmental sources and any interest or other income earned thereon, or to monies advanced to employees in accordance with performance of their official duties as employees.

(b) Notwithstanding the not-for-profit corporation law, no loans, consisting in whole or in part of funding provided by the office, shall be made by a not-for-profit corporation issued an operating certificate as a provider of services pursuant to this article to any employee of such corporation, or to any other corporation, firm, association or other entity in which an employee is a director or officer or employee or holds a direct or indirect substantial financial interest. A loan made in violation of this section shall be a violation of the duty to the not-for-profit corporation of the directors or officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

(c) 1. No contract or other transaction between a not-for-profit corporation issued an operating certificate as a provider of services pursuant to this article and one or more of its employees, or between a not-for-profit corporation and any other corporation, firm, association or other entity in which one or more of such persons are directors or officers of the board or corporation, or employee who receives an annual salary in excess of thirty thousand dollars, or have an indirect or direct substantial financial interest, shall be either void or voidable for this reason alone:

(i) If the material facts as to such person's interest in such contract or transaction and as to any such common directorship,

officership or financial interest are disclosed in good faith or known to the board or committee, the board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote or votes of such interested person; or

(ii) If the material facts as to such person's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the members entitled to vote thereon, if any, and such contract or transaction is authorized by vote of such members.

2. If such good faith disclosure of the material facts as to the person's interest in the contract or transaction and as to any such common directorship, officership or financial interest, is made to the directors or member, or known to the board or committee or members authorizing such contract or transaction, as provided in paragraph one of this subdivision, the contract or transaction may not be voided by the corporation for the reasons set forth in paragraph one of this subdivision. If there was no such disclosure of knowledge the corporation may void the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the corporation at the time it was authorized by the board, a committee or the members.

§ 32.35 Disclosure by members, officers and employees.

In the event that a provider of services certified by the office of alcoholism and substance abuse services enters into an agreement or has entered into an agreement for the purchase, lease, rehabilitation or improvement of real property or a cooperative share in real property, any employee who receives an annual salary in excess of thirty thousand dollars, or any board member, partner, or officer of such provider of services who has a direct or indirect interest either financial or beneficial in such property including the interest of any person for whom he or she is related by consanguinity or affinity, shall disclose such interest prior to the making of such agreement or at the time of acquisition of such interest. Disclosure pursuant to this section shall

be made in writing to the board of directors of such provider of services and shall indicate the material facts as to the member's, partner's, officer's, employee's or relative's interest in such property or cooperative share. Such disclosure shall be filed with the secretary of the corporation and entered on the minutes of a meeting of the board. Such disclosure shall also be forwarded in writing to the commissioner and to the director of community services of the local governmental unit within which the property or cooperative share is located prior to the approval of public funding related to the property or cooperative share which is the subject of disclosure made pursuant to this section or at the time of the acquisition of such interest, whichever occurs later.

§ 32.36 Crisis stabilization services.

The commissioner shall be authorized, in conjunction with the commissioner of the office of mental health, to create crisis stabilization centers within New York state in accordance with article thirty-six of this title, including the promulgation of joint regulations and implementation of a financing mechanism to allow for the sustainable operation of such programs.

§ 32.37 Registration and notification of boards of directors or trustees of certain voluntary not-for-profit facilities or corporations.

(a) Notwithstanding any other law, rule, or regulation, the executive director, chairperson or president of a voluntary, not-for-profit corporation which has been issued an operating certificate by or has received funding from the office of alcoholism and substance abuse services shall furnish annually to the commissioner of such office a list of the names and addresses of the current members of the board of directors or trustees of such corporation. Failure to furnish such annual list may remove such corporation from consideration for recertification or refunding.

(b) In the event that such provider of services is found to be in violation of the provisions of this chapter or of rules and regulations

promulgated by the commissioner pursuant to this chapter which could result in the revocation, cancellation, limitation or suspension of the operating certificate of such provider of services and if notice of such violation is provided to the provider of services pursuant to such regulations, a copy of such notice shall be provided to each of the current members of the board of directors or trustees of such provider of services by the commissioner.

(c) Within available appropriations, within the first year of appointment of a member to a board of directors of a provider of services which has been issued an operating certificate by or has received funding from the office of alcoholism and substance abuse services, the commissioner shall ensure that each new member is appropriately provided with information, which may include training, to carry out his or her role as a member of a board of directors of such provider of services pursuant to article seven of the not-for-profit corporation law and applicable laws, rules and regulations governing the operation of chemical dependence services. Training shall be provided for all new members of organizations established to provide or facilitate the provision of chemical dependence services, as appropriate, upon initial appointment and as frequently thereafter as determined by the commissioner.

§ 32.38 The recovery tax credit program.

(a) Authorization. The commissioner is authorized to and shall establish and administer the recovery tax credit program to provide tax incentives to certified employers for employing eligible individuals in recovery from a substance use disorder in part-time and full-time positions in the state. The commissioner is authorized to allocate up to two million dollars of tax credits annually for the recovery tax credit program beginning in the year two thousand twenty.

(b) Definitions. 1. The term "certified employer" means an employer that has received a certificate of tax credit from the commissioner after the commissioner has determined that the employer:

(i) provides a recovery supportive environment for their employees evidenced by a formal working relationship with a local recovery or treatment provider certified by the office to provide support for

employers including any necessary assistance in the hiring process of eligible individuals in recovery from a substance use disorder and training for employers or supervisors; and

(ii) fulfills the eligibility criteria set forth in this section and by the commissioner to participate in the recovery tax credit program established in this section.

2. The term "eligible individual" means an individual with a substance use disorder as that term is defined in section 1.03 of this chapter who is in a state of wellness where there is an abatement of signs and symptoms that characterize active addiction and has demonstrated to the qualified employer's satisfaction, pursuant to guidelines established by the office, that he or she has completed a course of treatment or is currently in receipt of treatment for such substance use disorder. A relapse in an individual's state of wellness shall not make the individual ineligible, so long as such individual shows a continued commitment to recovery that aligns with an individual's relapse prevention plan, discharge plan, and/or recovery plan.

(c) Application and approval process. 1. To participate in the program established by this section, an employer must, in a form prescribed by the commissioner, apply annually to the office by January fifteenth to claim credit based on eligible individuals employed during the preceding calendar year. As part of such application, an employer must:

(i) Agree to allow the department of taxation and finance to share its tax information with the office of alcoholism and substance abuse services. However, any information shared because of this agreement shall not be available for disclosure or inspection under the state freedom of information law.

(ii) Allow the office of alcoholism and substance abuse services and its agents access to limited and specific information necessary to monitor compliance with program eligibility requirements. Such information shall be confidential and only used for the stated purpose of this section.

(iii) Demonstrate that the employer has satisfied program eligibility requirements and provided all the information necessary, including the number of hours worked by any eligible individual, for the commissioner to compute an actual amount of credit allowed.

2. (i) After reviewing the application and finding it sufficient, the commissioner shall issue a certificate of tax credit by March thirty-first. Such certificate shall include, but not be limited to, the name and employer identification number of the certified employer, the amount of credit that the certified employer may claim, and any other information the commissioner of taxation and finance determines is necessary.

(ii) In determining the amount of credit that any employer may claim, the commissioner shall review all claims submitted for credit by employers and, to the extent that the total amount claimed by employers exceeds the amount allocated for the program in that calendar year, shall issue credits on a pro-rata basis corresponding to each claimant's share of the total claimed amount.

(d) Eligibility. A certified employer shall be entitled to a tax credit equal to the product of one dollar and the number of hours worked by each eligible individual during such eligible individual's period of employment. The credit shall not be allowed unless the eligible individual has worked in state for a minimum of five hundred hours for the certified employer, and the credit cannot exceed two thousand dollars per eligible individual employed by the certified employer in the state. The certified employer may claim a credit for each eligible employee starting on the day the employee is hired and ends on December thirty-first of the immediately succeeding calendar year or the last day of the employee's employment by the certified employer, whichever comes first. If an employee has worked in excess of five hundred hours between the date of hiring and December thirty-first of that year, an employer can elect to compute and claim a credit for such employee in that year based on the hours worked by December thirty-first. Alternatively, the employer may elect to include such individual in the computation of the credit in the year immediately succeeding the year in which the employee was hired. In such case, the credit shall be computed on the basis of all hours worked by such eligible individual from the date of hire to the earlier of the last day of employment or December thirty-first of the succeeding year. However, in no event may an employee generate credit for hours worked in excess of two thousand hours. An employer may claim credit only once with respect to any eligible individual and may

not aggregate hours of two or more employees to reach the minimum number of hours.

(e) Duties of the commissioner. The commissioner shall annually provide to the commissioner of the department of taxation and finance information about the program including, but not limited to, the number of certified employers then participating in the program, unique identifying information for each certified employer, the number of eligible individuals employed by each certified employer, unique identifying information for each eligible individual employed by the certified employers, the number of hours worked by such eligible individuals, the total dollar amount of claims for credit, and the dollar amount of credit granted to each certified employer.

(f) Certified employer's taxable year. If the certified employer's taxable year is a calendar year, the employer shall be entitled to claim the credit as shown on the certificate of tax credit on the calendar year return for which the certificate of tax credit was issued. If the certified employer's taxable year is a fiscal year, the employer shall be entitled to claim the credit as shown on the certificate of tax credit on the return for the fiscal year that includes the last day of the calendar year covered by the certificate of tax credit.

(g) Cross references. For application of the credit provided for in this section, see the following provisions of the tax law:

1. Article 9-A: Section 210-B, subdivision 53.
2. Article 22: Section 606, subsection (jjj).
3. Article 33: Section 1511, subdivision (dd).

§ 32.39 Fiscal year report.

(a) Every provider of chemical dependence services which is required to have an operating certificate pursuant to this chapter shall within one hundred twenty days after the end of its fiscal year, file an annual report with the commissioner. Said report shall be in such form and shall contain such information as shall be prescribed in rule by the commissioner, including the following:

1. A balance sheet of the program as of the end of its fiscal year, setting forth assets and liabilities at such date, including all capital, surplus, reserve depreciation and similar accounts.

2. A statement of operations of the program for its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges.

3. To the extent known or reasonably ascertainable, the name and address of each of the following persons:

(i) the operator of the program;

(ii) any person who, directly or indirectly, beneficially owns any interest in the land in which the program is located;

(iii) any person who, directly or indirectly, beneficially owns any interest in the building in which the program is located;

(iv) any person who, directly or indirectly, beneficially owns any interest in or any mortgage, note, deed of trust or other obligation secured in whole or in part by the land on which or the building in which the program is located;

(v) any person who, directly or indirectly, has any interest as lessor or lessee in any lease or sub-lease of the land on which the building in which the program is located; and

(vi) if the names of any of the above are not known or reasonably ascertainable by the provider, then a statement explaining why such names are not ascertainable and a description of the efforts made to ascertain such information.

4. If the program or any person named in response to subparagraph (iii) of paragraph three of this subdivision is a partnership, then the name and address of each partner.

5. If the program or any person named in response to the subparagraph (iii) of paragraph three of this subdivision is a corporation, other than a corporation whose shares are traded on a national securities exchange or are regularly quoted in an over-the-counter market or which is a commercial bank, savings bank or savings and loan association, then

the name and address of each officer, director, stockholder, and, if known, each principal stockholder and controlling person of such corporation.

6. If any corporation named in response to subparagraph (iii) of paragraph three of this subdivision is a corporation whose shares are traded on a national securities exchange or are regularly quoted in an over-the-counter market or which is a commercial bank, savings bank or savings and loan association, then the name and address of the principal executive officers and each director and, if known, each principal stockholder of such corporation.

7. If the program paid or received an aggregate of five hundred dollars or more during the fiscal year in connection with transactions with any person named in response to subparagraph (iii), (iv), or (v) of paragraph three of this subdivision or any affiliate of said person, a description of the transactions, naming the parties thereto and describing the relationships which require the transactions to be described and the goods, services, payment or other consideration received by each party to the transactions.

8. If known, the nature and amount of any interest in, or relationship with, any other program for chemical dependence, held by any person named in response to subparagraph (iii) of paragraph three of this subdivision or by any affiliate of such person.

(b) The following definitions shall be applicable to this section and to any reports filed pursuant hereto:

1. "Affiliate" means:

(i) with respect to a partnership, each partner thereof;

(ii) with respect to a corporation, each officer, director, principal stockholder and controlling person thereof;

(iii) with respect to a natural person (A) each member of said person's immediate family, (B) each partnership and each partner thereof, and (C) each corporation in which said person or any affiliate of said person is an officer, director, principal stockholder or controlling person.

2. "Controlling person" of any corporation, partnership or other entity means any person who by reason of a direct or indirect ownership interest (whether of record or beneficial) has the ability, acting either alone or in concert with others with ownership interest, to direct or cause the direction of the management or policies of said corporation, partnership or other entity. Neither the commissioner nor any employee of the office nor any member of a local legislative body of a county or municipality, nor any county or municipal official shall by reason of his or her official position, be deemed a controlling person of any corporation, partnership or other entity nor shall any person who serves as an officer, administrator or other employee of any corporation, partnership or other entity or as a member of a board of directors or trustees of any corporation be deemed to be a controlling person of such corporation, partnership or other entity as a result of such position or his or her official actions in such position.

3. "Immediate family" means parent, spouse, child, brother, sister, first cousin, aunt and uncle of such person, whether such relationship arises by reason of birth, marriage or adoption.

4. "Principal stockholder" of a corporation means any person who beneficially owns, holds or has the power to vote, ten percent or more of any class of securities issued by said corporation.

(c) The commissioner shall develop such reporting forms as he or she deems necessary to carry out the provisions of this section and in developing such forms shall consider such criteria as program size, total operating budget and modality.

(d) Every report filed by a program pursuant to this section shall contain a written statement, sworn to by or on behalf of such facility and the operator of such program, to the effect that the report is, to the best of such person's knowledge, true and complete and prepared in accordance with the provisions of this section.

ARTICLE 33

RIGHTS OF PATIENTS

- Section 33.01 Protection of patients' rights.
- 33.02 Notice of rights of individuals with mental disabilities.
 - 33.03 Quality of care and treatment.
 - 33.04 Restraint of patients.
 - 33.05 Communications and visits.
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 - 33.07 Care and custody of the personal property of persons receiving services.
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 - 33.27 Independent substance use disorder and mental health ombudsman.
 - 33.28 Independent developmental disability ombudsman program.

§ 33.01 Protection of patients' rights.

Notwithstanding any other provision of law, no person shall be deprived of any civil right, if in all other respects qualified and eligible, solely by reason of receipt of services for a mental disability nor shall the receipt of such services modify or vary any civil right of any such person, including but not limited to civil service ranking and appointment, the right to register for and to vote

at elections, or rights relating to the granting, forfeiture, or denial of a license, permit, privilege, or benefit pursuant to any law.

§ 33.02 Notice of rights of individuals with mental disabilities.

(a) In order to ensure that residents of facilities or programs operated or licensed by the office of mental health and facilities or programs operated or certified by the office for people with developmental disabilities are treated consistently with the laws and regulations assuring quality care, the commissioner of the office of mental health and the commissioner of the office for people with developmental disabilities shall promulgate regulations informing residents of their rights under law. Such regulations shall include, but not be limited to, informing residents that they have the right to:

1. a safe and sanitary environment;
2. a balanced and nutritious diet;
3. appropriate personal clothing for residents of hospitals and developmental centers;
4. practice religion;
5. freedom from abuse and mistreatment by employees or other residents of the facility;
6. adequate grooming and personal hygiene supplies for residents of hospitals and developmental centers;
7. a reasonable amount of safe storage space for clothing and other personal property;
8. a reasonable degree of privacy in sleeping, bathing and toileting areas;
9. receive visitors at reasonable times, to have privacy when visited,

and to communicate freely with persons within or outside the facility;

10. appropriate medical and dental care for residents of hospitals and developmental centers;

11. an individualized plan of treatment or services and to participate in the development of that plan including the opportunity for a patient sixteen years of age or older to request a significant individual to himself or herself including any relative, close friend or individual otherwise concerned with such person's welfare to participate in the development of such plan, except that at comprehensive psychiatric emergency programs such plan shall be in accordance with the commissioner's regulations and the opportunity for participation by a significant individual shall be provided where practicable. For the purposes of this paragraph, a written treatment plan may include the program narrative for clients served by an integrated community certified by the office for people with developmental disabilities;

12. bring any questions or complaints, including complaints regarding any orders limiting such residents' rights, to the facility director, the mental hygiene legal service, the board of visitors if applicable, and the commission on quality of care for the mentally disabled; and

13. authorize those family members and other adults who will be given priority to visit consistent with the patient's ability to receive visitors.

(b) The foregoing rights may not be limited as a punishment or for the convenience of staff. Any limitation on the rights enumerated shall be permitted for an individual resident of a hospital operated or licensed by the office of mental health or developmental center operated by the office for people with developmental disabilities only upon written order of a physician in the resident's clinical record stating the clinical justification for such limitation and the specific period of time such limitation shall remain in effect. Any limitation on the rights enumerated shall be permitted for an individual resident of any other residential facility or program operated or licensed by the office of mental health or operated or certified by the office for people with

developmental disabilities only upon written order by the director or chief executive officer of such facility or program upon receipt of a recommendation by the treating practitioner as defined by paragraph seven of subdivision (a) of section 33.16 of this article with such order to be placed in the resident's clinical record stating the clinical justification for such limitation and the specific period of time such limitation shall remain in effect.

(c) The commissioners and the facility director shall ensure that a notice of the rights included in regulations promulgated pursuant to this section is posted in each ward or living area of every hospital operated or licensed by the office of mental health and every developmental center operated by the office for people with developmental disabilities, and that such notice is provided to every individual resident of any other residential facility or program operated or licensed by the respective offices upon admission to such facility or program, upon limitation on any right, or at the individual's request. The notice shall include the address and telephone numbers of the office of the facility director or such person's designee responsible for receiving questions or complaints, the board of visitors if applicable, the mental hygiene legal service, the vulnerable persons' central register and the justice center for the protection of people with special needs.

§ 33.03 Quality of care and treatment.

(a) Each patient in a facility and each person receiving services for mental disability shall receive care and treatment that is suited to his needs and skillfully, safely, and humanely administered with full respect for his dignity and personal integrity.

(b) Subject to regulations of the commissioner, the director of a facility shall require the following in order to assure protection of patients in their care and treatment:

1. careful reexamination and evaluation of each patient not less than once a year.

2. medical and dental evaluations and evaluations of mental

disabilities of inpatients by qualified professionals no less frequently than once a year.

3. the order of a staff member operating within the scope of a professional license for any treatment or therapy based on appropriate examination.

4. consent for surgery, shock treatment, major medical treatment in the nature of surgery, or the use of experimental drugs or procedures.

5. inclusion in the patient's clinical record of all written treatment plans and notation of examinations, individualized treatment programs, evaluations and reexaminations, orders for treatment, and specific therapies, signed by the personnel involved.

(c) A patient who is removed, but not discharged, from a hospital to receive medical or surgical care at a facility, at a hospital as defined in article twenty-eight of the public health law, or at the offices of a health care professional, shall remain subject to the provisions of article nine of this chapter. During the period of time that the patient is removed for the purpose of receiving such medical or surgical care, all of the patient's rights enumerated by article nine of this chapter shall be preserved. Nothing in this subdivision shall be construed to affect the status or rights of a patient pursuant to article nine of this chapter, who is removed, but not discharged from a hospital for other purposes.

(d) The commissioner shall promulgate and administer regulations and policies for the establishment of minimum standards for the active programming of patients in adult psychiatric centers.

1. Such standards shall take into account the: medical, psychological, social, vocational, educational and recreational needs of patients including the specialized needs of patients such as those whose mental illness is combined with chemical dependency or developmental disability. The standards shall also take into account the type and mix of programs required at a given facility, and the availability of programming at a variety of times and locations.

2. Such standards shall include but not be limited to, a minimum number of required hours of programming per patient per week and staff requirements based on the type of programming and the needs of patients served. Such standards shall provide for programming exemptions for patients whose clinical or medical condition renders program participation inappropriate and for the regular review of those exemptions. Additionally, a patient may refuse participation in programming provided however that such refusal is consistent with applicable provisions of law. The regulations shall also provide for routine evaluations of the implementation of scheduled programming as well as its effect on identified patient needs.

* (e) 1. Notwithstanding the provisions of subdivisions four and five of section twenty-nine hundred eighty-one of the public health law, the commissioners of health, and developmental disabilities may approve and authorize the use of a simplified advance health care directives form by persons receiving supports and services from a provider of services which is authorized to provide services pursuant to article sixteen of this chapter. Such form shall specify, at the option of the principal, what end-of-life treatment the person wishes to receive; may designate a health care agent consistent with the provisions of this article; and may, at the option of the principal, authorize the health care agent to commence making decisions immediately upon the execution of the proxy, provided that all such decisions made prior to a determination of incapacity pursuant to section twenty-nine hundred eighty-three of the public health law shall be made in direct consultation with the principal and the attending physician; and provided, further, that if, after such consultation, the principal disagrees with the agent's proposed decision, the principal's wishes shall prevail; and provided, further, that, in the case of any decision to withhold or withdraw artificial nutrition or hydration, the principal's wishes must have been recorded in the health care directive or stated in the presence of the agent and the attending physician; and further, provided, that the consultation among principal, agent and attending physician must be summarized and recorded in the principal's medical record.

2. The simplified advance health care directives form, authorized by paragraph one of this subdivision, shall be developed by the

commissioner of developmental disabilities, in consultation with the commissioner of health, providers of service authorized to provide services pursuant to article sixteen of this chapter, advocates, including self-advocates, and parents and family members of persons receiving services from such providers.

* NB Effective upon the date of the approval and availability of the simplified advance health care directives form authorized by this subdivision and repealed 2 years after such date.

* NB There are 2 sb (e)'s

* (e) Meals provided by a facility in furtherance of a person's right to a balanced and nutritious diet, as required by section 33.02 of this article, shall be served at appropriate times and in as normal a manner as possible. Altering the composition or timing of regularly served meals shall be prohibited for disciplinary or punishment purposes, the convenience of the staff, or behavior modification. Restrictions may be made for clinical reasons, pursuant to documentation by a qualified professional, which shall specify the clinical justification for the restriction and the time period that such restriction shall be in effect, and which shall be included in the individual's written treatment or services plan.

* NB There are 2 sb (e)'s

§ 33.04 Restraint of patients.

(a) As used in this section, "restraint" means the use of an apparatus on a patient which prevents the free movement of both arms or both legs or which totally immobilizes such patient, and which the patient is unable to remove easily.

(b) Restraint shall be employed only when necessary to prevent a patient from seriously injuring himself or others. It may be applied only if less restrictive techniques have been clinically determined to be inappropriate or insufficient to avoid such injury. It may not be employed as punishment, for the convenience of staff, or as a substitute for treatment programs.

(c) The "camisole" and the "full or partial restraining sheet", or such other less restrictive restraints authorized by the commissioner, shall be the only permissible forms of restraint.

(d) Restraint shall be effected only by written order of a physician after a personal examination of the patient except in an emergency situation, as provided by subdivision (e) of this section. The order shall set forth the facts justifying the restraint and shall specify the nature of the restraint and any conditions for maintaining the restraint. The order shall also set forth the time of expiration of the authorization, with such order to apply for a period of no more than four hours, provided, however, that any such order imposing restraint after nine o'clock p.m. may extend until nine o'clock a.m. of the next day. A full record of restraint, including all signed orders of physicians, shall be kept in the patient's file and shall be subject to inspection by authorized persons.

(e) If an emergency situation exists in which the patient is engaging in activity that presents an immediate danger to himself or others and a physician is not immediately available, restraint may be effected only to the extent necessary to prevent the patient from injuring himself or others at the direction of the senior member of the staff who is present. The senior staff member shall cause a physician to be immediately summoned and shall record the time of the call and the person contacted. Pending the arrival of a physician, the patient shall be kept under constant supervision. If a physician does not arrive within thirty minutes of being summoned, the senior staff member shall record any such delay in the patient's clinical record and also place into the patient's clinical record a written description of the facts justifying the emergency restraint which shall specify the nature of the restraint and any conditions for maintaining the restraint until the arrival of a physician, the reasons why less restrictive forms of restraint were not used, and a description of the steps taken to assure that the patient's needs, comfort and safety were properly cared for. Such physician shall place in the clinical record an explanation for any such delay.

(f) During the time that a patient is in restraint, he shall be monitored to see that his physical needs, comfort, and safety are properly cared for. An assessment of the patient's condition shall be made at least once every thirty minutes or at more frequent intervals as directed by a physician. The assessment shall be recorded and placed in the patient's file. A patient in restraint shall be released from

restraint at least every two hours, except when asleep. If at any time a patient upon being released from restraint makes no overt gestures that would threaten serious harm or injury to himself or others, restraint shall not be reimposed and a physician shall be immediately notified. Restraint shall not be reimposed in such situation unless in the physician's professional judgment release would be harmful to the patient or others.

(g) A record of all restraints shall be kept by the director of the facility.

(h) Nothing in this section shall prevent the use of mechanical supports necessary to keep an infirm or disabled patient in a safe or comfortable position or to provide stability necessary for therapeutic measures such as immobilization of fractures, administration of intravenous or other medically necessary procedures.

§ 33.05 Communications and visits.

(a) Each patient in a facility shall have the right to communicate freely and privately with persons outside the facility as frequently as he wishes, subject to regulations of the commissioner designed to assure the safety and welfare of patients and to avoid serious harassment to others. Correspondence addressed to public officials, attorneys, clergymen, and to the mental hygiene legal service shall be unrestricted and shall be sent along promptly without being opened.

(b) The commissioner by regulation shall establish guidelines to insure that patients at facilities have full opportunity for conducting correspondence, have reasonable access to telephones, and have frequent and convenient opportunities to meet with visitors.

§ 33.06 Reports of abuse, neglect, and significant incidents.

The executive director of the justice center for the protection of people with special needs, in consultation with the commissioner of the office of mental health, the commissioner of the office of alcoholism and substance abuse services and the commissioner of the office for people with developmental disabilities shall establish procedures or

mechanisms pursuant to article eleven of the social services law to receive allegations or complaints of reportable incidents involving individuals served by agencies and providers licensed or operated by the offices, including receipt of anonymous allegations or complaints.

§ 33.07 * Care and custody of the personal property of persons receiving services.

* NB Effective until June 30, 2027

* Care and custody of the personal property of patients.

* NB Effective June 30, 2027

(a) A patient's right to retain his personal belongings upon admission to a facility shall be respected. The director, subject to the regulations of the commissioner, may take temporary custody of the patient's personal property upon the person of the patient. Personal property which is retained for the patient's protection shall be used for the support and benefit of the patient if deemed desirable. Otherwise, it is to be conserved for his benefit. If a patient is transferred to another facility, his personal belongings shall be transferred with him. Gifts received by a patient in a facility shall be handled in the same manner.

(b) The director of a department facility shall have the power to take temporary and immediate custody of the personal property of a patient which is in the possession of other persons upon giving a receipt therefor to the person having possession thereof.

(c) Any interest on money received and held for a patient shall be the property of the individual patient and shall not accrue for the general welfare of all patients in a facility.

* (e) A mental hygiene facility director who is a representative payee for a person pursuant to designation by the social security administration or other federal agency and who assumes management responsibility over the funds of such person, including benefits for which there is a state share, shall maintain such funds in a fiduciary capacity to the person; provided that the application of such funds to the cost of care and treatment of such person shall not, in and of itself, be a violation of such fiduciary obligation if such director acts in accordance with federal law and regulations. The commissioners

of mental health, developmental disabilities, and alcoholism and substance abuse services shall promulgate regulations regarding the management and protection of such funds in collaboration with persons receiving services, advocacy groups representing persons receiving services and families of such persons, and mental hygiene legal service. Such regulations shall include, but not be limited to, the use of Medicaid exception trusts, including special needs trusts or similar devices, notice requirements to qualified persons as defined by section 33.16 of this article regarding the intent of the facility director to apply to be the person's representative payee, and the appropriate establishment and maintenance of a discharge account for future needs.

In the event that a director of a department facility receives a lump sum retroactive payment of a federal or state benefit on behalf of a person in the director's capacity as representative payee and the receipt of such funds would, in combination with other funds held on behalf of such person, make the person ineligible for government benefits, such director shall, to the extent permissible by law, apply the funds in excess of the appropriate eligibility level to the person's personal needs or seek to place such excess funds into a qualifying Medicaid exception trust, including a special needs trust, or similar device; provided, however, that, for purposes of this section, the term "lump sum retroactive payment" shall not apply to any payment that exceeds the expected monthly recurring amount where such excess is due to a delay in processing an application, changing a representative payee or similar administrative delay. The director of a department facility shall ensure that the treatment team meet with, and determine the current and future personal needs of, the person receiving services. For purposes of this section, a treatment team is one that is responsible for the following, including but not limited to, clinical assessments, treatment plan development, any necessary discharge planning, and personal expenditure planning.

* NB Effective until June 30, 2027

* (e) A mental hygiene facility which is a representative payee for a patient pursuant to designation by the social security administration or which assumes management responsibility over the funds of a patient, shall maintain such funds in a fiduciary capacity to the patient. The

commissioners of mental health and developmental disabilities shall develop standards regarding the management of patient funds.

* NB Effective June 30, 2027

* (f) The commissioners of mental health, developmental disabilities, and alcoholism and substance abuse services shall post on the offices' respective websites, in a prominent location, the applicable standards, regulations and/or policies established pursuant to this section.

* NB Repealed June 30, 2027

* (g) Upon request by a person receiving services from a department facility, his or her guardian, qualified persons, as defined by section 33.16 of this article, or other legally authorized representative, the director of such facility shall, on a quarterly basis, make a statement of deposits and disbursements from the personal account of the person receiving services available for review.

* NB Repealed June 30, 2027

* (h) The office of mental health and the office for people with developmental disabilities and mental hygiene legal service shall collaboratively review, at least annually, the management of funds which a department facility director receives as a representative payee or of funds received pursuant to section 29.23 of this title. In such review, the office of mental health and the office for people with developmental disabilities shall make available final federal reviews regarding facility directors' handling of federal benefits and other related documents to aid the proper conduct of such review.

* NB Repealed June 30, 2027

* (i) The office of mental health and the office for people with developmental disabilities shall, by the fifteenth day of December of each year, commencing on December fifteenth, two thousand eleven, submit and publish on its official website, a report to the governor, speaker of the assembly, temporary president of the senate, chair of the assembly committee on mental health, and the chair of the senate committee on mental health, detailing how persons' federal benefits are being utilized.

* NB Repealed June 30, 2027

§ 33.08 Personal needs allowance for residents of state psychiatric

centers and state operated alcoholism facilities.

(a) For the purposes of this section:

1. "countable resources" shall mean cash or other liquid assets or any real or personal property that an individual or couple owns and could convert to cash to be used for his or their support and maintenance, which is not excluded under federal law or regulations to determine the need of an individual for supplemental security income benefits.

2. "countable income" shall mean all of a person's income, in cash or in kind, both earned and unearned, which is not excluded by federal law or regulations in determining the need of an individual for supplemental security income benefits, including the income of the individual's eligible spouse, and, if the individual is a child, certain income of such individual's parent or parents, provided however, such provisions of federal law or regulations which provide a twenty dollar income exclusion in each month shall not apply to this paragraph.

3. "earned income" shall mean wages and earnings from employment of the person, including wages or earnings from participation in a sheltered workshop program.

4. "unearned income" shall mean all income of a person other than earned income.

(b) Any inpatient of a hospital operated by the office of mental health or a state operated alcoholism facility shall be entitled to receive a monthly state payment for personal needs for each full calendar month commencing on or after the effective date of this section, in which the patient is in such hospital or alcoholism facility, if such patient also:

1. does not receive supplemental security income benefits pursuant to title sixteen of the federal social security act;

2. does not have countable resources in an amount equal to or greater than the amount of resources an individual may have and remain eligible for supplemental security income benefits pursuant to title sixteen of

the federal social security act;

3. has countable income in a month of less than thirty-five dollars;
and

4. has applied for or agrees to apply for any federal, state, and local benefits for which such patient may be entitled, provided that someone other than the patient may apply or agree to apply for such benefits on behalf of the patient.

(c) The amount of such monthly state payment for personal needs shall be equal to the maximum amount of countable income allowed under paragraph three of subdivision (b) of this section reduced by such patient's actual countable income.

(d) The director of a hospital shall have the power to take and retain any state payment for personal needs provided pursuant to this section in accordance with the provisions of section 33.07 of this article.

(e) The commissioner of mental health is authorized to obtain reimbursement for a personal needs allowance payment made pursuant to this section for any month for which a patient subsequently receives a retroactive payment or benefit, from any source. Such reimbursement shall not exceed the amount of the personal needs allowance payment made to the patient for such month.

(f) The commissioner of mental health is authorized, on behalf of the state, to enter into an agreement with the secretary of the federal department of health and human services for the purpose of obtaining reimbursement for personal needs allowance payments made pursuant to this section for any month in which a patient is subsequently determined to be eligible to receive supplemental security income payments for such month.

(g) For the purposes of this section, a person who has been admitted to central New York psychiatric center from a state correctional facility or county jail pursuant to section four hundred two of the correction law shall not be considered a patient in a hospital operated by the office of mental health. Notwithstanding any other provision of this section, a person who has been admitted to central New York psychiatric center from a county jail pursuant to section four hundred two of the correction law shall be entitled to receive a monthly state

payment for personal needs in an amount equal to, and calculated in the same manner as, an incentive allowance which is provided to an incarcerated individual of a state correctional institution pursuant to section two hundred of the correction law.

(h) Any patient who is qualified to receive a monthly state payment for personal needs pursuant to this section shall be required to provide the commissioner of mental health with information relating to the amount of income and assets of such patient. If the commissioner discovers that assets or income of the patient were not disclosed because of fraud or negligence, he may collect the difference between the amount of such payments and the amount to which the patient would otherwise have been eligible.

(i) The commissioner is authorized to promulgate regulations to provide for the time and manner of such payments for personal needs of such patients.

§ 33.09 Employment of patients.

(a) The department shall encourage employment of patients as part of therapeutic, community care, or release programs and shall promote training of patients for gainful employment. The commissioner shall adopt regulations to further the purposes of this section.

(b) A patient employed by a facility shall receive compensation for his services in accordance with applicable state and federal labor laws. Any such employment shall be subject to regulations of the commissioner as to the nature and circumstances of the employment.

(c) The provisions of the workers' compensation law, the unemployment insurance law, and articles thirteen, nineteen, and twenty of the labor law shall not apply to any patient in a facility with respect to his participation in a sheltered workshop program, provided, however, that participants in sheltered workshop programs operated by the office of mental health, the office for people with developmental disabilities or voluntary agencies or institutional worker programs operated by the office of mental health shall be eligible for workers' compensation benefits (excluding benefits provided pursuant to article nine of the workers' compensation law) if such offices or agencies elect to provide such benefits. Sheltered workshops operated at department facilities

shall be subject to the laws and regulations applicable to sheltered workshops operated by voluntary agencies.

§ 33.11 Education for children with mental disabilities.

The office of mental health and the office for people with developmental disabilities shall provide the same education for patients in office of mental health hospitals and residents in office for people with developmental disabilities schools who are between the ages of five and twenty-one which they would otherwise be entitled to receive in their local school districts pursuant to article eighty-nine of the education law. The cost of such education shall be a charge upon and shall be paid by the office of mental health or the office for people with developmental disabilities when received within such a hospital or school by a patient or resident therein. Such education shall be adapted to the mental attainments of such children. Provided, however, that such children as can benefit therefrom shall be admitted to the schools of the school district in which such hospital or school is located in accordance with regulations of the commissioner of education developed in consultation with the commissioners of mental health and developmental disabilities. The cost of such instruction less the state aid attributed to such child, shall be a charge upon the school district in which the child resided at the time of admission to the state hospital or school, except in those cases as provided in paragraph c of subdivision five of section thirty-two hundred two of the education law.

§ 33.12 Hearing evaluation.

The office for people with developmental disabilities shall provide suitable hearing evaluations periodically for the residents in state schools. Upon the ascertainment that any resident so evaluated is deaf or hard of hearing, it shall be the duty of the office to provide suitable remedial efforts, to include, but not be limited to, hearing aids, alternative forms of communication and auditory training to overcome this handicap and to ascertain the true level of intelligence

of such residents.

§ 33.13 Clinical records; confidentiality.

(a) A clinical record for each patient or client shall be maintained at each facility licensed or operated by the office of mental health or the office for people with developmental disabilities, hereinafter referred to as the offices. For the purposes of this section, the term "facility" shall mean "facility" as such term is defined in section 1.03 of this chapter, provided, however, such term shall also include any provider of services for individuals with mental illness or developmental disabilities which is operated by, under contract with, receives funding from, or is otherwise approved to render services by, a director of community services pursuant to article forty-one of this chapter or one or both of the offices, including any such provider which is exempt from the requirement for an operating certificate under article sixteen or article thirty-one of this chapter. The record shall contain information on all matters relating to the admission, legal status, care, and treatment of the patient or client and shall include all pertinent documents relating to the patient or client. The commissioners of such offices, by regulation, each shall determine the scope and method of recording information, including data pertaining to admission, legal matters affecting the patient or client, records and notation of course of care and treatment, therapies, restrictions on patient's or client's rights, periodic examinations, and such other information as he or she may require.

* (b) The commissioners may require that statistical information about patients or clients be reported to the offices.

* NB Effective until June 30, 2027

* (b) The commissioners may require that statistical information about patients or clients be reported to the offices. Names of patients treated at out-patient or non-residential facilities shall not be required as part of any such reports. Hospitals licensed by the office of mental health and general hospitals shall provide to the office of mental health, upon request, records relating to persons described in subdivision (j) of section 7.09 of this chapter who may be disqualified from possessing a firearm pursuant to 18 USC 422(4)(d).

* NB Effective June 30, 2027

(c) Such information about patients or clients reported to the offices, including the identification of patients or clients, clinical records or clinical information tending to identify patients or clients, and records and information concerning persons under consideration for proceedings pursuant to article ten of this chapter, at office facilities shall not be a public record and shall not be released by the offices or its facilities to any person or agency outside of the offices except as follows:

1. pursuant to an order of a court of record requiring disclosure upon a finding by the court that the interests of justice significantly outweigh the need for confidentiality, provided, however, that nothing herein shall be construed to affect existing rights of employees in disciplinary proceedings.

2. to the mental hygiene legal service.

3. to attorneys representing patients or clients in proceedings in which the patients' or clients' involuntary hospitalization or assisted outpatient treatment is at issue.

4. to the justice center for the protection of people with special needs.

5. to the medical review board of the state commission of correction when such board has requested such information with respect to the death of a named person, or, with the consent of a patient or client when such board has requested information about the patient or client providing that such board requires such information in the exercise of its statutory functions, powers and duties. Information, books, records or data which are confidential as provided by law shall be kept confidential by the state commission and any limitation on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to the medical review board.

6. to an endangered individual and a law enforcement agency when a

treating psychiatrist or psychologist has determined that a patient or client presents a serious and imminent danger to that individual. The reasons for any such disclosures shall be fully documented in the clinical record. Nothing in this paragraph shall be construed to impose an obligation upon a treating psychiatrist or psychologist to release information pursuant to this paragraph.

7. with the consent of the patient or client or of someone authorized to act on the patient's or client's behalf, to persons and entities who have a demonstrable need for such information and who have obtained such consent, provided that disclosure will not reasonably be expected to be detrimental to the patient, client or another provided, however, that release of such information to a patient or client shall not be governed by this subdivision.

8. to the state board for professional medical conduct or the office of professional discipline or their respective representatives when such persons or entities request such information in the exercise of their statutory function, power and duties provided, however, that no such information shall be released when it concerns the subject of an inquiry who is also a patient or client, except pursuant to paragraph one of this subdivision.

9. with the consent of the appropriate commissioner, to:

(i) governmental agencies, insurance companies licensed pursuant to the insurance law and other third parties requiring information necessary for payments to be made to or on behalf of patients or clients pursuant to contract or in accordance with law, such information to be kept confidential and limited to the information required.

(ii) persons and agencies needing information to locate missing persons or to governmental agencies in connection with criminal investigations, such information to be limited to identifying data concerning hospitalization.

(iii) qualified researchers upon the approval of the institutional review board or other committee specially constituted for the approval of research projects at the facility, provided that the researcher shall in no event disclose information tending to identify a patient or

client.

(iv) a coroner, a county medical examiner, or the chief medical examiner for New York city upon the request of a facility director that an investigation be conducted into the death of a patient or client for whom such record is maintained.

(v) appropriate persons and entities when necessary to prevent imminent serious harm to the patient or client or another person, provided, however, nothing in this subparagraph shall be construed to impose an obligation to release information pursuant to this subparagraph.

(vi) a district attorney when such request for information is in connection with and necessary to the furtherance of a criminal investigation of patient or client abuse.

(vii) appropriate persons and entities when necessary to protect the public concerning a specific sex offender requiring civil management under article ten of this chapter.

(viii) to the attorney general, case review panel, or psychiatric examiners described in article ten of this chapter, when such persons or entities request such information in the exercise of their statutory functions, powers and duties under article ten of this chapter.

10. to a correctional facility, when the chief administrative officer has requested such information with respect to a named incarcerated individual of such correctional facility as defined by subdivision three of section forty of the correction law or to the department of corrections and community supervision, when the department has requested such information with respect to a person under its jurisdiction or an incarcerated individual of a state correctional facility, when such incarcerated individual is within four weeks of release from such institution to community supervision. Information released pursuant to this paragraph may be limited to a summary of the record, including but not limited to: the basis for referral to the facility; the diagnosis upon admission and discharge; a diagnosis and description of the patient's or client's current mental condition; the current course of treatment, medication and therapies; and the facility's recommendation for future mental hygiene services, if any. Such information may be forwarded to the department of corrections and community supervision

staff in need of such information for the purpose of making a determination regarding an incarcerated individual's health care, security, safety or ability to participate in programs. In the event an incarcerated individual is transferred, the sending correctional facility shall forward, upon request, such summaries to the chief administrative officer of any correctional facility to which the incarcerated individual is subsequently incarcerated. The office of mental health and the office for people with developmental disabilities, in consultation with the commission of correction and the department of corrections and community supervision, shall promulgate rules and regulations to implement the provisions of this paragraph.

11. to a qualified person pursuant to section 33.16 of this chapter.

12. to a director of community services as defined in article nine of this chapter or his or her designee, provided that such director or his or her designee (i) requests such information in the exercise of his or her statutory functions, powers and duties pursuant to section 9.37, 9.45, 9.47, 9.48, 9.60 or 41.13 of this chapter; or (ii) the disclosure of information is required pursuant to section 9.46 of this chapter.

13. to the state division of criminal justice services for the sole purposes of:

(i) providing, facilitating, evaluating or auditing access by the commissioner of mental health to criminal history information pursuant to subdivision (i) of section 7.09 of this chapter; or

(ii) providing information to the criminal justice information services division of the federal bureau of investigation by the commissioner of mental health or the commissioner of developmental disabilities, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, in accordance with applicable federal laws or regulations.

14. to the criminal justice information services division of the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system,

regarding attempts to purchase or otherwise take possession of firearms, in accordance with applicable federal laws or regulations.

15. to the division of criminal justice services, names and other non-clinical identifying information for the sole purpose of implementing the division's responsibilities and duties under sections 400.00 and 400.02 of the penal law.

16. to a mental health incident review panel, or members thereof, established by the commissioner pursuant to section 31.37 of this title, in connection with incident reviews conducted by such panel.

17. to the agency designated by the governor pursuant to subdivision (b) of section 558 of the executive law to provide protection and advocacy services and administer the protection and advocacy system as provided for by federal law. Such agency shall not be charged any fee for copies of records obtained from a facility under this article.

18. to the board of correction of the city of New York when such board has requested such information with respect to the death of a named person, or, with the consent of a patient or client when such board has requested information about the patient or client providing that such board requires such information in the exercise of its functions, powers and duties. Information, books, records or data which are confidential as provided by law shall be kept confidential by the board of correction of the city of New York and any limitation on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to the board of correction of the city of New York.

* (d) Nothing in this section shall prevent the electronic or other exchange of information concerning patients or clients, including identification, between and among (i) facilities or others providing services for such patients or clients pursuant to an approved local services plan, as defined in article forty-one of this chapter, or pursuant to agreement with the department, and (ii) the department or any of its licensed or operated facilities. Neither shall anything in this section prevent the exchange of information concerning patients or clients, including identification, between facilities and managed care

organizations, behavioral health organizations, health homes or other entities authorized by the department or the department of health to provide, arrange for or coordinate health care services for such patients or clients who are enrolled in or receiving services from such organizations or entities. Provided however, written patient or client consent shall be obtained prior to the exchange of information where required by 42 USC 290dd-2 as amended, and any regulations promulgated thereunder. Furthermore, subject to the prior approval of the commissioner of mental health, hospital emergency services licensed pursuant to article twenty-eight of the public health law shall be authorized to exchange information concerning patients or clients electronically or otherwise with other hospital emergency services licensed pursuant to article twenty-eight of the public health law and/or hospitals licensed or operated by the office of mental health; provided that such exchange of information is consistent with standards, developed by the commissioner of mental health, which are designed to ensure confidentiality of such information. Additionally, information so exchanged shall be kept confidential and any limitations on the release of such information imposed on the party giving the information shall apply to the party receiving the information.

* NB Effective until June 30, 2027

* (d) Nothing in this section shall prevent the exchange of information concerning patients or clients, including identification, between (i) facilities or others providing services for such patients or clients pursuant to an approved local services plan, as defined in article forty-one, or pursuant to agreement with the department and (ii) the department or any of its facilities. Neither shall anything in this section prevent the exchange of information concerning patients or clients, including identification, between facilities and managed care organizations, behavioral health organizations, health homes or other entities authorized by the department or the department of health to provide, arrange for or coordinate health care services for such patients or clients who are enrolled in or receiving services from such organizations or entities. Provided however, written patient or client consent shall be obtained prior to the exchange of information where required by 42 USC 290dd-2 as amended, and any regulations promulgated thereunder. Information so exchanged shall be kept confidential and any

limitations on the release of such information imposed on the party giving the information shall apply to the party receiving the information.

* NB Effective June 30, 2027

(e) Clinical information tending to identify patients or clients and clinical records maintained at a facility not operated by the offices, shall not be a public record and shall not be released to any person or agency outside such facility except pursuant to subdivisions (b), (c) and (d) of this section. The director of such a facility may consent to the release of such information and records, subject to regulation by the commissioner, pursuant to the exceptions stated in subdivision (c) of this section; provided that, for the purpose of this subdivision, such consent shall be deemed to be the consent otherwise required of the commissioner pursuant to subdivision (c) of this section. Nothing in this subdivision shall be construed to limit, restrict or otherwise affect access to such clinical information or records by the mental hygiene legal service, the commission on quality of care for the mentally disabled or the offices when such access is authorized elsewhere in law.

(f) All records of identity, diagnosis, prognosis, treatment, care coordination or any other information contained in a patient or client's record shall be confidential unless disclosure is permitted under subdivision (c) of this section. Any disclosure made pursuant to this section shall be limited to that information necessary and required in light of the reason for disclosure. Information so disclosed shall be kept confidential by the party receiving such information and the limitations on disclosure in this section shall apply to such party. Except for disclosures made to the mental hygiene legal service, to persons reviewing information or records in the ordinary course of insuring that a facility is in compliance with applicable quality of care standards, or to governmental agents requiring information necessary for payments to be made to or on behalf of patients or clients pursuant to contract or in accordance with law, a notation of all such disclosures shall be placed in the clinical record of that individual who shall be informed of all such disclosures upon request; provided, however, that for disclosures made to insurance companies licensed pursuant to the insurance law, such a notation need only be entered at

the time the disclosure is first made.

§ 33.14 Sealing of records pertaining to treatment for mental illness.

(a) (1) Any person who has been admitted to receive inpatient or outpatient services for mental illness may commence a special proceeding in the supreme court for an order directing the sealing of those records held by the office of mental health, a facility, or any other individual or public or private entity which has been made a party to the proceeding, which identify the petitioner as a recipient of services for mental illness. The court may order that the petitioner's records be sealed, subject to such limitations or exceptions as the court may impose, upon a finding that:

a. the petitioner was illegally detained by a facility by reason of fraud, error or falsified documents, and the records pertain to such illegal detention; or

b. the petitioner has demonstrated by competent medical evidence that he is not currently suffering from a mental illness, has not for a period of three years received inpatient services for the treatment of a mental illness, and the interests of the petitioner and society would best be served by sealing the petitioner's records. It shall be presumed that it would be in the best interests of the petitioner and society to seal any record of a petitioner's receipt of services for the treatment of mental illness prior to his sixteenth birthday.

(2) Except for such limitations as the court may impose, a court order directing the office of mental health, a facility, or other individual or entity to seal records shall require the office of mental health, facility or other individual or entity to respond to any official or unofficial inquiry concerning the petitioner's history of mental illness as though the admission or receipt of services documented in the sealed records had never occurred.

(3) A petitioner who has obtained an order directing that his or her records be sealed may respond to any official or unofficial inquiry by any person or agency concerning the petitioner's history of mental illness as though the admission or receipt of services documented in the

sealed records had never occurred.

(b) Records sealed pursuant to this section may be unsealed and made available only:

(1) upon request of the person who is the subject of the sealed records;

(2) by order of a court upon a demonstration by the party seeking to have the records unsealed that such unsealing is essential to the interests of justice;

(3) upon the commencement of a suit by the person who is the subject of the sealed records or his representative in which such person's confinement or treatment during confinement as documented in the sealed records is at issue; or

(4) seventy-five years after the record has been sealed.

§ 33.15 Habeas corpus.

(a) A person retained by a facility or the department or a relative or friend on his behalf is entitled to a writ of habeas corpus to question the cause and legality of detention upon proper application.

(b) Upon the return of such a writ of habeas corpus, the court shall examine the facts concerning the person's alleged mental disability and detention. The evidence shall include the clinical record of the patient and medical or other testimony as required by the court. The court may review the admission and retention of the person pursuant to the provisions of this chapter. The court shall discharge the person so retained if it finds that he is not mentally disabled or that he is not in need of further retention for in-patient care and treatment.

(c) In a subsequent application for a writ, any party to the proceeding may introduce evidence or records from a prior hearing or trial and such records shall have the same force and effect as testimonial evidence.

(d) The application for a writ of habeas corpus and the proceedings upon it shall follow the procedure set forth in article seventy of the civil practice law and rules.

(e) The director of the facility where the person is detained shall forthwith notify the mental hygiene legal service of any such application for a writ and provide it with information as to the case.

§ 33.16 Access to clinical records.

(a) Definitions. For the purposes of this section:

1. "Clinical record" means any information concerning or relating to the examination or treatment of an identifiable patient or client maintained or possessed by a facility which has treated or is treating such patient or client, except data disclosed to a practitioner in confidence by other persons on the basis of an express condition that such data would never be disclosed to the patient or client or other persons, provided that such data has never been disclosed by the practitioner or a facility to any other person. If at any time such data is disclosed, it shall be considered clinical records for the purposes of this section. For purposes of this subdivision, "disclosure to any other person" shall not include disclosures made pursuant to section 33.13 of this article, to practitioners as part of a consultation or referral during the treatment of the patient or client, to the statewide planning and research cooperative system, or to the committee or a court pursuant to the provisions of this section or to an insurance carrier insuring, or an attorney consulted by, a facility.

2. "Committee" means a clinical record access review committee appointed pursuant to this section.

3. "Facility" means a facility as defined in section 1.03 of this chapter, a program requiring approval for operation pursuant to article thirty-two of this chapter, institutions offering training in psychotherapy, psychoanalysis and related areas chartered pursuant to section two hundred sixteen of the education law, or, notwithstanding section 1.03 of this chapter, any provider of services for persons with mental illness or developmental disabilities which is operated by, under contract with, receives funding from, or is otherwise approved to render services by, a director of community services pursuant to article forty-one of this chapter or one or both of the offices, including any such provider which is exempt from the requirement for an operating certificate under article sixteen or article thirty-one of this chapter.

4. "Mental health practitioner" or "practitioner" means a person employed by or rendering a service at a facility maintaining the clinical record licensed under article one hundred thirty-one of the education law who practices psychiatry or a person licensed under article one hundred thirty-nine, one hundred fifty-three or one hundred fifty-four of the education law or any other person not prohibited by law from providing mental health or developmental disabilities services.

5. "Patient or client" means an individual concerning whom a clinical record is maintained or possessed by a facility as defined in paragraph three of this subdivision.

6. "Qualified person" means any properly identified patient or client, guardian of a person with a developmental disability appointed pursuant to article seventeen-A of the surrogate's court procedure act, or committee for an incompetent appointed pursuant to this chapter or a parent of an infant, or a guardian of an infant appointed pursuant to article seventeen of the surrogate's court procedure act or other legally appointed guardian of an infant who may be entitled to request access to a clinical record pursuant to paragraph three of subdivision (b) of this section, or a parent, spouse, adult child, or adult sibling of an adult patient or client who may be entitled to request access to a clinical record pursuant to paragraph four of subdivision (b) of this section.

7. "Treating practitioner" means the practitioner, who has or had primary responsibility for the care of the patient or client within the facility or if such practitioner is unavailable, a practitioner designated by such facility.

(b) Access by qualified persons. 1. Subject to the provisions of subdivision (c) of this section, upon the written request of any patient or client, a facility shall provide an opportunity, within ten days, for such individual to inspect any clinical record concerning or relating to the examination or treatment of such individual in the possession of such facility.

2. Subject to the provisions of subdivision (c) of this section, upon the written request of a committee for an incompetent appointed pursuant to this chapter or a guardian of the person of a person with a developmental disability appointed pursuant to article seventeen-A of the surrogate's court procedure act, a facility shall provide an opportunity, within ten days, for the committee or such guardian to inspect any clinical record concerning the patient or client in the possession of such facility. Provided, however, in the case of any such request by such a guardian to inspect the clinical record concerning a client eighteen years of age or older, the facility shall notify such client of such request.

3. Subject to the provisions of subdivision (c) of this section and except as otherwise provided by law, upon the written request of a parent of an infant or guardian of an infant appointed pursuant to article seventeen of the surrogate's court procedure act, or any other legally appointed guardian of an infant, a facility shall provide an opportunity, within ten days, for such parent or guardian to inspect any clinical record maintained or possessed by such facility concerning care and treatment of the infant for which the consent of a parent or guardian was obtained or has been requested; provided, however, that such parent or guardian shall not be entitled to inspect or make copies of any clinical record concerning the care and treatment of an infant where the treating practitioner determines that access to the information requested by such parent or guardian would have a detrimental effect on the practitioner's professional relationship with the infant, or on the care and treatment of the infant or on the infant's relationship with his or her parents or guardians.

4. Subject to the provisions of subdivision (c) of this section and except as otherwise required by law, upon the written request of a parent of an adult patient or client, spouse, adult child, or adult sibling of a patient or client, a facility shall provide an opportunity, within ten days, for such parent, spouse, adult child or adult sibling to inspect any clinical record maintained or possessed by such facility concerning the care and treatment of such patient or client for which the parent, spouse, adult child or adult sibling is authorized pursuant

to law, rule or regulation to provide consent and has consented or is being requested to provide such consent; provided, however, that such parent, spouse, adult child or adult sibling shall not be entitled to inspect or make copies of any clinical record concerning the care and treatment of the patient or client where the treating practitioner determines that access to the information requested by such parent, spouse, adult child or adult sibling would have a detrimental effect on the practitioner's professional relationship with the patient or client, or on the care and treatment of the patient or client or on the relationship of the patient or client with his or her parents, spouse, adult child or adult sibling. Any inspection of a clinical record made pursuant to this paragraph shall be limited to that information which is relevant in light of the reason for such inspection.

5. Subject to the provisions of this subdivision and subdivision (c) of this section, upon the written request of any qualified person, a facility shall furnish to such person, within a reasonable time, a copy of any clinical record requested which the person is authorized to inspect pursuant to this subdivision.

6. The facility may impose a reasonable charge for all inspections and copies, not exceeding the costs incurred by such provider. However, the reasonable charge for paper copies shall not exceed seventy-five cents per page. A qualified person shall not be denied access to the clinical record solely because of inability to pay. No charge may be imposed under this section for providing, releasing, or delivering clinical records or copies of clinical records where requested for the purpose of supporting an application, claim or appeal for any government benefit or program, provided that, where a provider maintains clinical records in electronic form, it shall provide the copy in either electronic or paper form, as required by the government benefit or program, or at the patient's request.

7. A facility may place reasonable limitations on the time, place, and frequency of any inspection of clinical records.

8. A treating practitioner may request the opportunity to review the

patient information with the qualified person requesting such information, but such review shall not be a prerequisite for furnishing the record.

9. A facility may make available for inspection either the original or a copy of clinical records.

(c) Limitations on access. 1. Upon receipt of a written request by a qualified person to inspect or copy the clinical record maintained by a facility, the facility shall inform the treating practitioner of the request. The treating practitioner may review the information requested. Unless the treating practitioner determines pursuant to paragraph three of this subdivision that the requested review of the clinical record can reasonably be expected to cause substantial and identifiable harm to the patient or client or others which would outweigh the qualified person's right of access to the record, review of such record shall be permitted or copies provided.

2. A patient or client over the age of twelve may be notified of any request by a qualified person to review his/her record and if the patient or client objects to disclosure, the facility, in consultation with the treating practitioner may deny the request.

3. If, after consideration of all the attendant facts and circumstances, the practitioner or treating practitioner determines that the requested review of all or part of the clinical record can reasonably be expected to cause substantial and identifiable harm to the patient or client or others, or would have a detrimental effect as defined in subdivision (b) of this section, the facility may accordingly deny access to all or a part of the record and may grant access to a prepared summary of the record. In determining whether the review can reasonably be expected to cause substantial and identifiable harm to the patient or client or others which would outweigh the qualified person's right of access to the record or whether review of the record would have a detrimental effect as defined in subdivision (b) of this section, the practitioner or treating practitioner may consider, among other things, the following: (i) the need for, and the fact of, continuing care and treatment; (ii) the extent to which the knowledge of the information

contained in the clinical record may be harmful to the health or safety of the patient or client or others; (iii) the extent to which the clinical record contains sensitive information disclosed in confidence to the practitioner or treating practitioner by family members, friends and other persons; (iv) the extent to which the clinical record contains sensitive information disclosed to the practitioner or the treating practitioner by the patient or client which would be injurious to the patient's or client's relationships with other persons except where the patient or client is requesting information concerning himself or herself; and (v) in the case of a minor making a request for access pursuant to paragraph one of subdivision (b), the age of the patient or client.

4. In the event of a denial of access, the qualified person shall be informed by the facility of such denial, and of the qualified person's right to obtain, without cost, a review of the denial by the appropriate clinical record access review committee. If the qualified person requests such review, the facility shall, within ten days of receipt of such request, transmit the record to the chairman of the appropriate committee with a statement setting forth the specific reasons access was denied. After an in camera review of the materials provided and after providing all parties a reasonable opportunity to be heard, the committee shall promptly make a determination whether the requested reviews of the record can reasonably be expected to cause substantial and identifiable harm to the patient or client or others which outweighs the qualified person's right of access to the record pursuant to paragraph three of this subdivision or whether the requested review would have a detrimental effect as defined in subdivision (b) of this section, and shall accordingly determine whether access to all or part of such record shall be granted. In the event that the committee determines that the request for access shall be granted in whole or in part, the committee shall notify all parties and the facility shall grant access pursuant to such determination.

5. In the event that access is denied in whole or in part the committee shall notify the qualified person of his or her right to seek judicial review of the facility's determination pursuant to this

section. Within thirty days of receiving notification of the decision, the qualified person may commence, upon notice, a special proceeding in supreme court for a judgment requiring the provider to make available the record for inspection or copying. The court upon such application and after an in camera review of the materials provided, including the determination and record of the committee, and after providing all parties an opportunity to be heard, shall determine whether there exists a reasonable basis for the denial of access. The relief available pursuant to this section shall be limited to a judgment requiring the facility to make available to the qualified person the requested record for inspection or copying.

(d) Clinical records access review committees. The commissioner of mental health, the commissioner of developmental disabilities and the commissioner of alcoholism and substance abuse services shall appoint clinical record access review committees to hear appeals of the denial of access to patient or client records as provided in paragraph four of subdivision (c) of this section. Members of such committees shall be appointed by the respective commissioners. Such clinical record access review committees shall consist of no less than three nor more than five persons. The commissioners shall promulgate rules and regulations necessary to effectuate the provisions of this subdivision.

(f) Applicability of federal law. Whenever federal law or applicable federal regulations restrict, or as a condition for the receipt of federal aid require, that the release of clinical records or information be more restrictive than is provided under this section, the provisions of federal law or federal regulation shall be controlling.

(g) Challenges to accuracy. A qualified person may challenge the accuracy of information maintained in the clinical record and may require that a brief written statement prepared by him/her concerning the challenged information be inserted into the clinical record. This statement shall become a permanent part of the record and shall be released whenever the clinical record at issue is released. This subdivision shall apply only to factual statements and shall not include a provider's observations, inferences or conclusions. A facility may place reasonable restrictions on the time and frequency of any challenges to accuracy.

(h) Waivers void. Any agreement by an individual to waive any right to

inspect, copy or seek correction of the clinical record as provided for in this section shall be deemed to be void as against public policy and wholly unenforceable.

(i) Disclosure. Nothing contained in this section shall restrict, expand or in any way limit the disclosure of any information pursuant to articles twenty-three, thirty-one and forty-five of the civil practice law and rules or section six hundred seventy-seven of the county law.

(j) Proceedings. No proceeding shall be brought or penalty assessed, except as provided for in this section, against a facility, which in good faith, denies access to a clinical record.

(k) Immunity from liability. No facility, practitioner, treating practitioner, mental health practitioner or clinical records access review committee member shall be subjected to civil liability arising solely from granting or providing access to any clinical record in accordance with this section.

§ 33.17 Transportation of individuals.

Within staffing limitations and upon request, an individual who is being transported to or from a facility may be accompanied by same gender staff.

§ 33.21 Consent for mental health treatment of minors.

(a) For the purposes of this section:

(1) "minor" shall mean a person under eighteen years of age, but shall not include a person who is the parent of a child, emancipated, has married or is on voluntary status on their own application pursuant to section 9.13 of this chapter, or is a homeless youth, as defined in section five hundred thirty-two-a of the executive law, or receives services at an approved runaway and homeless youth crisis services program or a transitional independent living support program as defined in section five hundred thirty-two-a of the executive law;

(2) "mental health practitioner" shall mean a physician, a licensed psychologist, or persons providing services under the supervision of a physician in a facility operated or licensed by the office of mental

health;

(3) "outpatient mental health services" shall mean those services provided in an outpatient program licensed or operated pursuant to the regulations of the commissioner of mental health;

(4) "reasonably available" shall mean a parent or guardian can be contacted with diligent efforts by a mental health practitioner; and

(5) "capacity" shall mean the minor's ability to understand and appreciate the nature and consequences of the proposed treatment, including the benefits and risks of, and alternatives to, such proposed treatment, and to reach an informed decision.

(b) In providing outpatient mental health services to a minor, or psychotropic medications to a minor residing in a hospital, the important role of the parents or guardians shall be recognized. As clinically appropriate, steps shall be taken to actively involve the parents or guardians, and the consent of such persons shall be required for such treatment in non-emergency situations, except as provided in subdivisions (c), (d) and (e) of this section or section two thousand five hundred four of the public health law.

(c) A mental health practitioner may provide outpatient mental health services, other than those treatments and procedures for which consent is specifically required by section 33.03 of this article, to a minor voluntarily seeking such services without parental or guardian consent if the mental health practitioner determines that:

(1) the minor is knowingly and voluntarily seeking such services; and

(2) provision of such services is clinically indicated and necessary to the minor's well-being; and

(3) (i) a parent or guardian is not reasonably available; or

(ii) requiring parental or guardian consent or involvement would have a detrimental effect on the course of outpatient treatment; or

(iii) a parent or guardian has refused to give such consent and a physician determines that treatment is necessary and in the best interests of the minor.

The mental health practitioner shall fully document the reasons for his or her determinations. Such documentation shall be included in the minor's clinical record, along with a written statement signed by the minor indicating that he or she is voluntarily seeking services. As

clinically appropriate, notice of a determination made pursuant to subparagraph (iii) of paragraph three of this subdivision shall be provided to the parent or guardian.

(d) A mental health practitioner may provide a minor voluntarily seeking outpatient services an initial interview without parental or guardian consent or involvement to determine whether the criteria of subdivision (c) of this section are present.

(e) (1) Subject to the regulations of the commissioner of mental health governing the patient's right to object to treatment, subdivision (b) of this section and paragraph two of this subdivision, the consent of a parent or guardian or the authorization of a court shall be required for the non-emergency administration of psychotropic medications to a minor residing in a hospital.

(2) A minor sixteen years of age or older who consents may be administered psychotropic medications without the consent of a parent or guardian or the authorization of a court where:

(i) a parent or guardian is not reasonably available, provided the treating physician determines that (A) the minor has capacity; and (B) such medications are in the minor's best interests; or

(ii) requiring consent of a parent or guardian would have a detrimental effect on the minor, provided the treating physician and a second physician who specializes in psychiatry and is not an employee of the hospital determine that (A) such detrimental effect would occur; (B) the minor has capacity; and (C) such medications are in the minor's best interests; or

(iii) the parent or guardian has refused to give such consent, provided the treating physician and a second physician who specializes in psychiatry and is not an employee of the hospital determine that (A) the minor has capacity; and (B) such medications are in the minor's best interests. Notice of the decision to administer psychotropic medications pursuant to this subparagraph shall be provided to the parent or guardian.

(3) The reasons for an exception authorized pursuant to paragraph two of this subdivision shall be fully documented and such documentation shall be included in the minor's clinical record.

§ 33.23 Incident notifications and reports.

(a) The director of a facility, as defined in subdivision six of section 1.03 of this chapter, shall provide telephone notice of an incident involving a patient receiving care and treatment at such facility to a qualified person, as defined in paragraph six of subdivision (a) of section 33.16 of this article. Such notice shall be provided within twenty-four hours of the initial report of such incident. For the purposes of this section, "incident" shall mean an accident or injury that affects the health or safety of a patient. Upon the request of a qualified person, the director shall within ten days of such request, provide to the qualified person a copy of the written incident report, provided that the names and other personally identifying information of patients and employees shall not be included unless such patients and employees authorize disclosure, offer to hold a meeting with such qualified person to further discuss the incident, and provide such qualified person with a written report on the actions taken to address the incident. The director may offer to provide all reports to the qualified person electronically.

(b) Whenever federal law or applicable federal regulations restrict, or as a condition for the receipt of federal aid require, that the release of records or information pursuant to this section be more restrictive than is provided under this section, the provisions of federal law or regulations shall be controlling.

§ 33.25 Release of records pertaining to allegations and investigations of abuse and mistreatment.

(a) Records and documents pertaining to allegations and investigations into reportable incidents at a facility, as defined in subdivision six of section 1.03 of this chapter, including but not limited to all complaints and reports made pursuant to article eleven of the social services law, shall be released to a qualified person, as defined in paragraph six of subdivision (a) of section 33.16 of this article, upon a written request by such qualified person. Such records and documents shall be made available by the appropriate office within twenty-one days of the conclusion of its investigation, provided that the names and other personally identifying information of other patients and employees

shall not be included unless such patients and employees authorize disclosure.

(b) Records and reports released in accordance with this section shall be released pursuant to subdivision (b) of section 33.23 of this article and shall not be further disseminated by the recipient, provided that a recipient may share any records and reports with: (i) a health care provider; (ii) a behavioral health care provider; (iii) law enforcement if the recipient believes a crime has been committed; or (iv) the recipient's attorney.

(c) A cover letter shall accompany records and reports released in accordance with this section and shall state: PURSUANT TO SECTION 33.25 OF THE MENTAL HYGIENE LAW, THE ATTACHED RECORDS AND REPORTS SHALL NOT BE FURTHER DISSEMINATED, EXCEPT THAT YOU MAY SHARE THE REPORT WITH: (i) A HEALTH CARE PROVIDER; (ii) A BEHAVIORAL HEALTH CARE PROVIDER; (iii) LAW ENFORCEMENT, IF YOU BELIEVE A CRIME HAS BEEN COMMITTED; OR (iv) YOUR ATTORNEY.

(d) Nothing in this section shall prohibit the receipt, use or dissemination of any such records, reports, information or results of investigations or inquiry by any patient, former patient, or qualified person or person or official specified in paragraph (i), (ii), (iii) or (iv) of subdivision (b) of this section acting on behalf of any patient, former patient or patient's estate, in any legal action or proceeding brought by or on behalf of such patient, former patient or patient's estate.

§ 33.27 Independent substance use disorder and mental health ombudsman.

(a) There is hereby established the office of the independent substance use disorder and mental health ombudsman program that will be operated or selected by the office of addiction services and supports, in consultation with the office of mental health for the purpose of assisting individuals with a substance use disorder and/or mental illness to ensure that they receive appropriate health insurance coverage. The office of addiction services and supports in consultation with the office of mental health shall provide annual outreach services to other state and local entities, including but not limited to the division of veterans' services, the office for people with developmental

disabilities, the office of children and family services, the department of corrections, or providers contracted by such agencies to provide assistance to the impacted populations to make them aware of the independent substance use disorder and mental health ombudsman program and the assistance they provide.

(b) Such ombudsman will identify, investigate, refer and resolve complaints that are made by, or on behalf of, consumers relative to health insurance coverage and access to initial and continuing substance use disorder care and mental health care; accept, investigate, refer and help to resolve complaints that are made by treatment providers relative to health insurance coverage of and reimbursement for initial or continuing substance use disorder and mental health care; accept, investigate, refer and help to resolve complaints that are made by or on behalf of consumers or by providers relative to network adequacy for access to and continuing substance use disorder and mental health care. By October thirty-first annually, the ombudsman must submit an annual report summarizing the work of the program and make recommendations to address systemic issues identified during the previous year. Such annual report shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly and the relevant legislative committee chairs.

(c) Notwithstanding sections one hundred twelve and one hundred sixty-three of the state finance law and section one hundred forty-two of the economic development law, or any other inconsistent provision of law, funds available for expenditure pursuant to this section for the establishment of an ombudsman for substance use disorder and mental health insurance coverage, may be allocated and distributed by the commissioner of the office of addiction services and supports, subject to the approval of the director of the budget, without a competitive bid or request for proposal process for the establishment of an ombudsman for substance use disorder and mental health insurance coverage. Provided, however, that such allocation or distribution must be based on objective criteria and an allocation methodology that is approved by the director of the budget.

§ 33.28 Independent developmental disability ombudsman program.

(a) There is hereby established by the office for people with developmental disabilities the independent developmental disability ombudsman program for the purpose of assisting individuals with developmental disabilities to access services and preserve their rights.

(b) Such ombudsman program shall have the following duties, including, but not limited to identifying, investigating, referring and resolving complaints that are made by, or on behalf of individuals relative to access to services provided by the office for people with developmental disabilities or care coordination or other providers certified and/or authorized by the office to provide services to people with developmental disabilities, and access to initial and continuing intellectual and developmental disability services and supports.

(c) Notices and materials provided to individuals by the office for people with developmental disabilities, providers of services, and the health homes serving individuals with developmental disabilities shall include the name, phone number and website address of the independent developmental disability ombudsman program established by the office for people with developmental disabilities pursuant to this section. The phone number shall be available for forty hours every week.

(d) Funds available for expenditure pursuant to this section for the establishment of an independent developmental disability ombudsman program may be allocated and distributed by the commissioner of the office for people with developmental disabilities, subject to the approval of the director of the budget, but only after the commissioner of the office for people with developmental disabilities holds a request for proposal process for the establishment of an independent developmental disability ombudsman program. The commissioner of the office for people with developmental disabilities shall consider all competitive proposals submitted through such request for proposal process and shall determine which proposal submitted is appropriate for the establishment of an independent developmental disability ombudsman program. In making such determination, applicants who demonstrate experience providing advocacy or assistance to people with developmental disabilities, or experience tracking and reporting on case activities while protecting individual confidentiality shall receive deference for the award.

ARTICLE XXXVI

ADDICTION AND MENTAL HEALTH SERVICES AND SUPPORTS

Section 36.01 Crisis stabilization centers.

36.02 Referral to crisis stabilization centers.

36.03 9-8-8 suicide prevention and behavioral health crisis hotline system.

36.04 Certified community behavioral health clinics.

36.05 Certified community behavioral health clinics indigent care program.

36.06 Review of criminal history information.

36.07 Behavioral health crisis technical assistance center.

36.08 Integrated behavioral health services.

§ 36.01 Crisis stabilization centers.

(a) (1) The commissioners are authorized to jointly license crisis stabilization centers subject to the availability of state and federal funding.

(2) A crisis stabilization center shall serve as a voluntary and urgent service provider for persons at risk of a mental health or substance abuse crisis or who are experiencing a crisis related to a psychiatric and/or substance use disorder that are in need of crisis stabilization services. Each crisis stabilization center shall provide or contract to provide person centered and patient driven crisis stabilization services for mental health or substance use twenty-four hours per day, seven days per week, including but not limited to:

- (i) Engagement, triage and assessment;
- (ii) Continuous observation;
- (iii) Mild to moderate detoxification;
- (iv) Sobering services;
- (v) Therapeutic interventions;
- (vi) Discharge and after care planning;
- (vii) Telemedicine;
- (viii) Peer support services; and
- (ix) Medication assisted treatment.

(3) The commissioners shall require each crisis stabilization center

to submit a plan. The plan shall be approved by the commissioners prior to the issuance of a license pursuant to this article. Each plan shall include:

- (i) a description of the center's catchment area,
 - (ii) a description of the center's crisis stabilization services,
 - (iii) agreements or affiliations with hospitals as defined in section 1.03 of this chapter,
 - (iv) agreements or affiliations with general hospitals or law enforcement to receive persons,
 - (v) a description of local resources available to the center to prevent unnecessary hospitalizations of persons,
 - (vi) a description of the center's linkages with local police agencies, emergency medical services, ambulance services and other transportation agencies,
 - (vii) a description of local resources available to the center to provide appropriate community mental health and substance use disorder services upon release,
 - (viii) written criteria and guidelines for the development of appropriate planning for persons in need of post community treatment or services,
 - (ix) a statement indicating that the center has been included in an approved local services plan developed pursuant to article forty-one of this chapter for each local government located within the center's catchment area; and
 - (x) any other information or agreements required by the commissioners.
- (4) Crisis stabilization centers shall participate in county and community planning activities annually, and as additionally needed, in order to participate in local community service planning processes to ensure, maintain, improve or develop community services that demonstrate recovery outcomes. These outcomes include, but are not limited to, quality of life, socio-economic status, entitlement status, social networking, coping skills and reduction in use of crisis services.
- (b) Each crisis stabilization center shall be staffed with a multidisciplinary team capable of meeting the needs of individuals experiencing all levels of crisis in the community, which shall include, but not be limited to, at least one psychiatrist or psychiatric nurse practitioner, a credentialed alcoholism and substance abuse counselor

and one peer support specialist on duty and available at all times.

(c) The commissioners shall promulgate regulations necessary to the operation of such crisis stabilization centers.

(d) Where a crisis stabilization center has been established prior to the effective date of this article, the previously established center may be issued a license where the provider can demonstrate substantial compliance with minimum crisis service standards necessary for patient safety and program efficacy.

(e) For the purpose of addressing unique rural service delivery needs and conditions, the commissioners shall provide technical assistance for the establishment of crisis stabilization centers otherwise approved under the provisions of this section, including technical assistance to promote and facilitate the establishment of such centers in rural areas in the state or combinations of rural counties.

(f) The commissioners shall develop guidelines for educational materials to assist crisis stabilization centers in educating local practitioners, community mental health and substance abuse programs, hospitals, law enforcement and peers. Such materials shall include appropriate education relating to de-escalation techniques, cultural competency, the recovery process, mental health, substance use, and avoidance of aggressive confrontation.

(g) Within the amounts appropriated, the commissioners shall arrange for appropriate training to law enforcement entities, first responders, including but not limited to firefighters and emergency medical services personnel, and any other entities deemed appropriate by the commissioners, located within the catchment area of a crisis stabilization center. The training may include but not be limited to: (1) crisis intervention team training; (2) mental health first aid; (3) implicit bias training; and (4) naloxone training. Such training may be provided in an electronic format or other format as deemed appropriate by the commissioners. The commissioners may contract with an organization with the knowledge and expertise in providing the training required under this subdivision.

§ 36.02 Referral to crisis stabilization centers.

(a) A referral to crisis stabilization centers may include but not be

limited to: (1) walk-ins or self-referrals; (2) family members; (3) schools; (4) hospitals; (5) community-based providers; (6) mobile mental health crisis teams; (7) crisis call centers; (8) primary care doctors; (9) law enforcement; and (10) private practitioners.

(b) All services provided in crisis stabilization centers shall be voluntary. No crisis stabilization center shall accept involuntary referrals, and no person shall be forced or coerced to participate in services or treatment. A crisis stabilization center may at any time refer a person in their care to a higher level of treatment if deemed appropriate.

(c) For a person who is in need of emergency observation under section 9.41, 9.43, 9.45, or 9.58 of this chapter, the appropriate police officer, peace officer, court, community services director or mobile crisis team must inform the person of the crisis stabilization center services where available. A crisis stabilization center may conduct an assessment prior to accepting a referral. A crisis stabilization center may make a referral to a hospital or comprehensive psychiatric emergency program if an assessment determines that they are unable to meet the service needs of a person.

§ 36.03 9-8-8 suicide prevention and behavioral health crisis hotline system.

(a) Definitions. When used in this article, the following words and phrases shall have the following meanings unless the specific context clearly indicates otherwise:

(1) "9-8-8" means the three digit phone number designated by the federal communications commission for the purpose of connecting individuals experiencing a behavioral health crisis with suicide prevention and behavioral health crisis counselors, mobile crisis teams, and crisis stabilization services and other behavioral health crises services through the national suicide prevention lifeline.

(2) "9-8-8 crisis hotline center" means a state-identified and funded center participating in the National Suicide Prevention Lifeline Network to respond to statewide or regional 9-8-8 calls.

(3) "Crisis stabilization centers" means facilities providing short-term observation and crisis stabilization services jointly

licensed by the office of mental health and the office of addiction services and supports under section 36.01 of this article.

(4) "Crisis residential services" means a short-term residential program designed to provide residential and support services to persons with symptoms of mental illness who are at risk of or experiencing a psychiatric crisis.

(5) "Crisis intervention services" means the continuum to address crisis intervention, crisis stabilization, and crisis residential treatment needs that are wellness, resiliency, and recovery oriented. Crisis intervention services include but not limited to: crisis stabilization centers, mobile crisis teams, and crisis residential services.

(6) "Behavioral health professional" shall mean any of the following, but shall not be limited to:

(i) a licensed clinical social worker, licensed under article one hundred fifty-four of the education law;

(ii) a licensed psychologist, licensed under article one hundred fifty-three of the education law;

(iii) a registered professional nurse, licensed under article one hundred thirty-nine of the education law;

(iv) a licensed master social worker, licensed under article one hundred fifty-four of the education law, under the supervision of a physician, psychologist or licensed clinical social worker;

(v) a licensed mental health counselor, licensed under article one hundred sixty-three of the education law; or

(vi) a credentialed alcoholism and substance use counselor with a valid credential issued or approved by the office of addiction services and supports.

(7) "Certified peer specialist" means an individual who is certified as a peer in New York state from a certifying authority recognized by the commissioner of the office of mental health.

(8) "Certified recovery peer advocate" means an individual who holds a certification issued by an entity approved and recognized by the commissioner of the office of addiction services and supports.

(9) "Credentialed family peer advocate" means an individual who is credentialed as a peer in New York state from a certifying authority recognized by the commissioner of the office of mental health or the

commissioner of the office of addiction services and supports.

(10) "Credentialed youth peer advocate" means an individual who is credentialed as a peer in New York state from a certifying authority recognized by the commissioner of the office of mental health or the commissioner of the office of addiction services and supports.

(11) "Mobile crisis teams" means a team licensed, certified, or authorized by the office of mental health and the office of addiction services and supports to provide community-based mental health or substance use disorder interventions for individuals who are experiencing a mental health or substance use disorder crisis. Members of a mobile crisis team may include, but not be limited to: behavioral health professionals, certified peer specialists, certified recovery peer advocates, credentialed family peer advocates, and credentialed youth peer advocates.

(12) "National suicide prevention lifeline" or "NSPL" means the national network of local crisis centers that provide free and confidential emotional support to people in suicidal crisis or emotional distress twenty-four hours a day, seven days a week via a toll-free hotline number, which receives calls made through the 9-8-8 system. The toll-free number is maintained by the Assistant Secretary for Mental Health and Substance Use under Section 50-E-3 of the Public Health Service Act, Section 290bb-36c of Title 42 of the United States Code.

(b) The commissioner of the office of mental health, in conjunction with the commissioner of the office of addiction services and supports, shall have joint oversight of the 9-8-8 suicide prevention and behavioral health crisis hotline and shall work in concert with NSPL for the purposes of ensuring consistency of public messaging.

(c) The commissioner of the office of mental health, in conjunction with the commissioner of the office of addiction services and supports, shall, on or before July sixteenth, two thousand twenty-two, designate a crisis hotline center or centers to provide or arrange for crisis intervention services to individuals accessing the 9-8-8 suicide prevention and behavioral health crisis hotline from anywhere within the state twenty-four hours a day, seven days a week. Each 9-8-8 crisis hotline center shall do all of the following:

(1) A designated hotline center shall have an active agreement with the administrator of the National Suicide Prevention Lifeline for

participation within the network.

(2) A designated hotline center shall meet NSPL requirements and best practices guidelines for operation and clinical standards.

(3) A designated hotline center may utilize technology, including but not limited to, chat and text that is interoperable between and across the 9-8-8 suicide prevention and behavioral health crisis hotline system and the administrator of the National Suicide Prevention Lifeline.

(4) A designated hotline center shall accept transfers of any call from 9-1-1 pertaining to a behavioral health crisis.

(5) A designated hotline center shall ensure coordination between the 9-8-8 crisis hotline centers, 9-1-1, behavioral health crisis services, and, when appropriate, other specialty behavioral health warm lines and hotlines and other emergency services. If a law enforcement, medical, or fire response is also needed, 9-8-8 and 9-1-1 operators shall coordinate the simultaneous deployment of those services with mobile crisis services.

(6) A designated hotline center shall have the authority to deploy crisis intervention services, including but not limited to mobile crisis teams, and coordinate access to crisis stabilization centers, and other crisis intervention services, as appropriate, and according to guidelines and best practices established by New York State and the NSPL.

(7) A designated hotline center shall meet the requirements set forth by New York State and the NSPL for serving high risk and specialized populations including but not limited to: Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Alaskan Native; lesbian, gay, bisexual, transgender, nonbinary, queer, and questioning individuals; veterans; members of rural communities; individuals with intellectual and developmental disabilities; individuals experiencing homelessness or housing instability; immigrants and refugees; children and youth; older adults; and religious communities as identified by the federal Substance Abuse and Mental Health Services Administration, including training requirements and policies for providing linguistically and culturally competent care.

(8) A designated hotline center shall provide follow-up services as needed to individuals accessing the 9-8-8 suicide prevention and behavioral health crisis hotline consistent with guidance and policies

established by New York State and the NSPL.

(9) A designated hotline center shall provide data, and reports, and participate in evaluations and quality improvement activities as required by the office of mental health and the office of addiction services and supports.

(d) The commissioner of the office of mental health, in conjunction with the commissioner of the office of addiction services and supports, shall establish a comprehensive list of reporting metrics regarding the 9-8-8 suicide prevention and behavioral health crisis hotline's usage, services and impact which, to the maximum extent practicable, shall include, at a minimum:

(1) The volume of requests for assistance that the 9-8-8 suicide prevention and behavioral health crisis hotline received;

(2) The average length of time taken to respond to each request for assistance, and the aggregate rates of call abandonment;

(3) The types of requests for assistance that the 9-8-8 suicide prevention and behavioral health crisis hotline received;

(4) The number of mobile crisis teams dispatched;

(5) The number of individuals engaged by mobile crisis teams;

(6) The number of individuals transported by mobile crisis teams to crisis intervention services or other behavioral health crisis services;

(7) The number of individuals engaged by mobile crisis teams transported to an emergency room;

(8) The number of individuals transferred by mobile crisis teams to the custody of law enforcement;

(9) The number of times a mobile crisis team was the first responder to a behavioral health crisis and the mobile crisis team had to request deployment of law enforcement; and

(10) The age, gender, race, and ethnicity of the individual, if reasonably ascertainable, of individuals contacted, transported, or transferred by each mobile crisis team.

(e) The commissioner of the office of mental health, in conjunction with the commissioner of the office of addiction services and supports, shall submit an annual report on or by December thirty-first, two thousand twenty-three and annually thereafter, regarding the comprehensive list of reporting metrics to the governor, the temporary president of the senate, the speaker of the assembly, the minority

leader of the senate and the minority leader of the assembly.

(f) Moneys allocated for the payment of costs determined in consultation with the commissioners of mental health and the office of addiction services and supports associated with the administration, design, installation, construction, operation, or maintenance of a 9-8-8 suicide prevention and behavioral health crisis hotline system serving the state, including, but not limited to: staffing, hardware, software, consultants, financing and other administrative costs to operate crisis call-centers throughout the state and the provision of acute and crisis services for mental health and substance use disorder by directly responding to the 9-8-8 hotline established pursuant to the National Suicide Hotline Designation Act of 2020 (47 U.S.C. § 251a) and rules adopted by the Federal Communications Commission, including such costs incurred by the state, shall not supplant any separate existing, future appropriations, or future funding sources dedicated to the 9-8-8 crisis response system.

§ 36.04 Certified community behavioral health clinics.

(a) The commissioners are authorized to jointly certify community behavioral health clinics, subject to the availability of state and federal funding.

(b) Certified community behavioral health clinics shall provide coordinated, comprehensive behavioral health care, including mental health and addiction services, primary care screening, and case management services, in accordance with certified community behavioral health clinic standards established by the United States department of health and human services substance abuse and mental health services administration and the commissioners of the office of mental health and the office of addiction services and supports.

(c) The commissioners shall require each proposed certified community behavioral health clinic to submit a plan, which shall be approved by the commissioners prior to the issuance of an operating certificate pursuant to this article. Such plan shall include:

(1) a description of the clinic's character and competency to provide certified community behavioral health clinic services across the lifespan, including how the clinic will ensure access to crisis services

at all times and accept all patients regardless of ability to pay;

(2) a description of the clinic's catchment area;

(3) a statement indicating that the clinic has been included in an approved local services plan developed pursuant to article forty-one of this title for each local government located within the clinic's catchment area;

(4) where executed, agreements establishing formal relationships with designated collaborating organizations to provide certain certified community behavioral health clinic services, consistent with guidance issued by the United States department of health and human services substance abuse and mental health services administration and the office of mental health and the office of addiction services and supports;

(5) a staffing plan driven by local needs assessment, licensing, and training to support service delivery;

(6) a description of the clinic's data-driven approach to quality improvement;

(7) a description of how consumers are represented in governance of the clinic;

(8) all financial information in the form and format required by the office of mental health and the office of addiction services and supports; and

(9) any other information or agreements required by the commissioners.

(d) Where a certified community behavioral health clinic has been established and is participating on the effective date of this section in the federal certified community behavioral health clinic demonstration awarded to the state by the United States department of health and human services substance abuse and mental health services administration, the previously established clinic may be certified where the clinic demonstrates compliance with the certification standards established pursuant to this article.

(e) The commissioners shall promulgate any rule or regulation necessary to effectuate this section.

§ 36.05 Certified community behavioral health clinics indigent care program.

(a) (1) For periods on and after July first, two thousand

twenty-three, the commissioners are authorized to make payment to eligible certified community behavioral health clinics, to the extent of funds appropriated therefor to assist in meeting losses resulting from uncompensated care. In the event federal financial participation is not available for such payments to eligible certified community behavioral health clinics, payments shall be made solely on the basis of available state general fund appropriations for this purpose in amounts to be determined by the director of the division of the budget.

(2) For purposes of this section, "eligible certified community behavioral health clinics" shall mean voluntary non-profit certified community behavioral health clinics participating in the federal certified community behavioral health clinic demonstration awarded to the state by the United States department of health and human services substance abuse and mental health services administration and other certified community behavioral health clinics certified pursuant to section 36.04 of this article, which demonstrate that a minimum of three percent of total visits reported during the applicable base year period, as determined by the commissioners, were to uninsured individuals.

(3) For purposes of this section, "losses resulting from uncompensated care" shall mean losses from reported self-pay and free visits multiplied by the clinic's medical assistance payment rate for the applicable distribution year, offset by payments received from such patients during the reporting period.

(b) A certified community behavioral health clinic qualifying for a distribution pursuant to this section shall provide assurances satisfactory to the commissioners that it shall undertake reasonable efforts to maintain financial support from community and public funding sources and reasonable efforts to collect payments for services from third-party insurance payors, governmental payors and self-paying patients.

(c) (1) Funding pursuant to this section shall be allocated to eligible certified community behavioral health clinics based on actual, reported losses resulting from uncompensated care in a given base year period and shall not exceed one hundred percent of an eligible clinic's losses in the same period.

(2) If the sum of actual, reported losses resulting from uncompensated care for all certified community behavioral health clinics exceeds the

amount appropriated therefor in a given base year period, allocations of funds for each eligible certified community behavioral health clinic shall be assessed proportionately based upon the percentage of the total number of uncompensated care visits for all clinics that each clinic provided during the base year and shall not exceed amounts appropriated in the aggregate.

(d) Except as provided in subdivision (e) of this section, for periods on and after July first, two thousand twenty-three through June thirtieth, two thousand twenty-six, funds shall be made available for payments pursuant to this section for eligible certified community behavioral health clinics for the following periods in the following aggregate amounts:

(1) For the period of July first, two thousand twenty-three through June thirtieth, two thousand twenty-four, up to twenty-two million five hundred thousand dollars;

(2) For the period of July first, two thousand twenty-four through June thirtieth, two thousand twenty-five, up to forty-one million two hundred fifty thousand dollars; and

(3) For the period of July first, two thousand twenty-five through June thirtieth, two thousand twenty-six, up to forty-five million dollars.

(e) In the event that federal financial participation is not available for rate adjustments pursuant to this section, funds available for payments pursuant to this section for each eligible certified community behavioral health clinic shall be limited to the non-federal share equivalent of the amounts specified in subdivision (d) of this section.

(f) Eligible certified community behavioral health clinics receiving funding under this section shall not be eligible for comprehensive diagnostic and treatment centers indigent care program funding pursuant to section two thousand eight hundred seven-p of the public health law.

(g) The commissioners may require facilities receiving distributions pursuant to this section as a condition of participating in such distributions, to provide reports and data to the office of mental health and the office of addiction services and supports as the commissioners deem necessary to adequately implement the provisions of this section.

§ 36.06 Review of criminal history information.

(a) The justice center for the protection of people with special needs and the office of addiction services and supports shall be authorized to jointly receive from the division of criminal justice services criminal history information, as such term is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, pursuant to the authority provided under sections 19.20, 19.20-a, and 31.35 of this chapter to facilitate a single process to review such criminal history of and make a suitability determination for applicants to be providers of services and prospective employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of a provider licensed, certified, or otherwise authorized under this article, in accordance with policies and procedures developed jointly by the justice center for the protection of people with special needs and the office of addiction services and supports, in consultation with the office of mental health.

(b) The justice center for the protection of people with special needs and the office of addiction services and supports shall be authorized to jointly adopt a single process to review the criminal history of and make a suitability determination for applicants to be providers of services under both articles thirty-one and thirty-two of this title, and prospective employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider and shall be authorized to jointly receive criminal history information, as such term is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law from the division of criminal justice services.

* (c) Providers licensed pursuant to this article shall be considered contracted, licensed, approved or otherwise authorized by the office of addiction services and supports and the office of mental health for the purpose of sections 19.20, 19.20-a, and 31.35 of this chapter, as may be applicable. Providers shall be required to comply with the review of criminal history information, as required in such sections, for prospective employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider.

* NB Effective on the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

* (d) The office of addiction services and supports and the office of mental health, in consultation with the justice center for the protection of people with special needs, shall jointly promulgate regulations establishing the process by which a provider shall comply with this section.

* NB Effective on the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

§ 36.07 Behavioral health crisis technical assistance center.

(a) The commissioner, in conjunction with the commissioner of the office of addiction services and supports, shall establish a behavioral health crisis technical assistance center within the office of mental health. The commissioners shall jointly be responsible for the structure and operation of the behavioral health crisis technical assistance center.

(b) The behavioral health crisis technical assistance center, shall:

1. develop standardized protocols and procedures for a community-based public health-led response to behavioral health crises. The protocols and procedures shall be designed to:

(i) de-escalate situations involving individuals experiencing a mental health or substance use crisis, when possible;

(ii) utilize the most appropriate treatment for individuals experiencing a mental health or substance use crisis;

(iii) maximize the use of voluntary assessment and voluntary referral of individuals experiencing a mental health or substance use crisis;

(iv) minimize physical harm and trauma for individuals who experience a mental health or substance use crisis; and

(v) deliver culturally competent care;

2. assist local government units in the development of local service plans that address their local crisis service needs and implements a

community-based public health-led crisis response. Such assistance shall include tailoring such plans to meet the needs of urban, suburban, and rural communities;

3. support implementation of standardized procedures and protocols;

4. in collaboration with the division of homeland security and emergency services and the state emergency medical services council, pursue efforts to improve coordination between the 9-1-1, 9-8-8, local government units, and statewide emergency response systems;

5. provide consultation and training to local government units and local crisis response teams on best practices on the assessment and response to mental health and substance use crises; and

6. maintain a database of best practices for a community-based public health-led response to behavioral health crises.

(c) In execution of its duties under this section, the technical assistance center shall employ a peer or peers with lived experience and shall consult with, as appropriate: peers with lived experience of mental illness or substance use disorders, or family of such peers and/or peer-led organizations; licensed mental health or addiction clinicians; licensed mental health or addiction counselors; licensed physicians, nurses, or mental health or addiction providers; mental health or addiction counselors; representatives of not-for-profit disability justice organizations; emergency medical technicians; and crisis health care workers.

(d) 1. The center shall prepare an annual report which shall include, but not be limited to, the following information:

(i) data on the extent to which local governmental units have implemented community-based public health-led responses to behavioral health crises and the effectiveness of such efforts;

(ii) a summary of any assistance provided, action taken, or progress made in relation to the duties required under this section;

(iii) recommendations to improve the operation and financing of a behavioral health crisis response system; and

(iv) any other information deemed relevant by the center.

2. Such report shall be submitted to the governor, speaker of the assembly and temporary president of the senate no later than December thirty-first, two thousand twenty-seven and annually thereafter and shall be made available on the official agency website for the office of mental health and the office of addiction services and supports.

*** § 36.08 Integrated behavioral health services.**

(a) For the purpose of this section "integrated behavioral health services" means the systematic coordination of evidence-based health care services, to include the preventative, diagnostic, therapeutic and rehabilitative care and treatment of mental illness, addiction and the provision of physical health services, otherwise provided by a mental health program licensed pursuant to article thirty-one of this title, or addiction disorder services provided by a provider certified pursuant to article thirty-two of this title to any individual, including children and youth, seeking services regardless of their primary diagnosis; provided, however, that the scope of such services may be restricted pursuant to regulation.

(b) (i) The commissioners of the office of mental health and the office of addiction services and supports are authorized to jointly establish a single license and set of regulations, standards and requirements for the construction, operation, reporting and oversight of integrated behavioral health services. Such regulations, standards, and requirements shall include, but not be limited to:

(A) scope of integrated behavioral health services;

(B) a joint application review process for integrated behavioral health services;

(C) facilitation of integrated treatment records that comply with applicable federal and state confidentiality requirements;

(D) staffing standards and qualifications for integrated behavioral health services consistent with applicable scope of practice requirements under title eight of the education law;

(E) development of billing and reimbursement structures to enable the provision of integrated behavioral health services to individuals regardless of their primary diagnosis or healthcare complaint, provided

however, that reimbursement for integrated behavioral health services shall not be less than the applicable reimbursement pursuant to the ambulatory patient group methodology for the same or similar services when provided by a program licensed pursuant to article thirty-one or certified pursuant to article thirty-two of this title;

(F) physical plant standards;

(G) standards for incident reporting and remediation pursuant to article eleven of the social services law;

(H) patient protections and related safeguards including:

(1) patient rights;

(2) mandatory reporting of child abuse and maltreatment;

(3) reporting of crimes alleged to have occurred against patients;

(4) consent to treatment;

(5) confidentiality of, access to, and sealing of treatment records;

(6) incident notification to parents or guardians of patients; and

(7) any additional standards deemed necessary by the commissioners to ensure the rights and safety of patients are met;

(I) corporate structure and governance;

(J) the suspension, revocation, or limitation of a license issued pursuant to this section; and

(K) utilization review.

(ii) The regulations, standards and requirements for integrated behavioral health services shall, to the extent possible, be in accordance with standards required under article nineteen, twenty-two, thirty-one, thirty-two, and thirty-three of this chapter which would otherwise apply to patients in facilities operated, licensed, or certified as applicable. The commissioners shall be authorized to resolve inconsistencies or conflicts among such regulations, standards, or requirements by regulation.

(c) No provider shall be licensed to provide integrated behavioral health services unless they have sufficiently demonstrated, consistent with the standards and requirements set forth by the commissioners, experience in the delivery of mental health and addiction services.

* NB Effective on the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

ARTICLE 41
LOCAL SERVICES

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§ 41.01 Declaration of purpose.

This article is designed to enable and encourage local governments to develop in the community preventive, rehabilitative, and treatment services offering continuity of care; to improve and to expand existing community programs for persons with mental illness, developmental disabilities, and those suffering from the diseases of alcoholism and substance abuse; to plan for the integration of community and state services and facilities for individuals with mental disabilities; and to cooperate with other local governments and with the state in the provision of joint services and sharing of manpower resources.

Effective implementation of this article requires the direction and administration, by each local governmental unit, of a local comprehensive planning process for its geographic area in which all providers of services shall participate and cooperate in the provision of all necessary information. It also initiates a planning effort involving the state, local governments and other providers of service for the purpose of promoting continuity of care through the development of integrated systems of care and treatment for individuals with mental illness, developmental disabilities, and for those suffering from the diseases of alcoholism and substance abuse.

§ 41.03 Definitions.

When used in this article:

1. "local government" means a county, except a county within the city of New York, and the city of New York.

2. "charter government" means a local government which has its charter under article IX of the constitution and the municipal home rule law; and includes the city of New York.

3. "local services" includes services for individuals with mental illness or developmental disabilities whose conditions, including but not limited to cerebral palsy and epilepsy, are associated with mental disabilities, and those suffering from alcoholism, alcohol abuse, substance abuse or substance dependence, which are provided by a local government or by a voluntary agency pursuant to a contract with a local governmental unit or the office of mental health.

4. "local facility" means a facility offering local services and includes a community mental health and developmental disabilities facility as defined in section three of the facilities development corporation act and, for the purposes of this article, a mental hygiene facility, as defined in said section, to be made available for use in providing local services under lease, sublease, license or permit from

the facilities development corporation to one or more local governmental units or to a voluntary agency at the request of a commissioner of an office in the department.

5. "local governmental unit" means the unit of local government given authority in accordance with this chapter by local government to provide local services.

6. "board" means a community services board for services to individuals with mental illness and developmental disabilities, those suffering from alcoholism, alcohol abuse, substance abuse or substance dependence.

7. "director" means the director of community services, who is the chief executive officer of a local governmental unit, by whatever title known.

8. "capital costs" means the costs of a local government, a voluntary agency, or the facilities development corporation with respect to the acquisition of real property estates, interests, and cooperative interests in realty, their design, construction, reconstruction, rehabilitation and improvement, original furnishings and equipment, site development, and appurtenances of a local facility. Capital costs do not include any of the foregoing costs paid under provisions of law other than this chapter.

9. (a) "operating costs" means expenditures, excluding capital costs, incurred in the operation and maintenance of the community mental health, developmental disabilities, and alcoholism services board and of local facilities in accordance with this article and the regulations of the commissioner, by a local government or by a voluntary agency pursuant to a contract with a local governmental unit.

(b) Subject to the regulations of the commissioner, operating costs shall include that part of rental costs paid to those community mental health, developmental disabilities, alcoholism, or substance abuse services companies, which represents interest accrued after January first, nineteen hundred eighty-one and is paid on obligations incurred

by such companies, organized pursuant to article seventy-five of this chapter and which participated in mortgage financing in accordance with chapter one thousand thirty-four of the laws of nineteen hundred sixty-nine, (ii) rentals paid to the facilities development corporation, (iii) salaries of or per diem compensation to board members, (iv) costs for which state aid or reimbursement is claimed under provisions of law other than this article.

(c) Operating costs may include interest incurred on any obligation which is necessarily related to the efficient and economic delivery of approved services to persons with alcoholism, substance abuse addiction, mental illness or developmental disabilities, subject to the commissioner's certification of the reasonableness of the interest expense. Interest as authorized by this subdivision shall only include reasonable and competitive rates of interest incurred in accordance with regulations promulgated by the commissioner.

(d) Subject to the regulations of the commissioner, operating costs shall include rent incurred, or depreciation and interest expenditures incurred, in connection with the design, construction, acquisition, reconstruction, rehabilitation or improvement of a local facility; provided that where the rent, financing or refinancing of the design, construction, acquisition, reconstruction, rehabilitation or improvement of a local facility is through the facilities development corporation, operating costs shall include the debt service to be paid to amortize obligations, including principal and interest, issued by the New York state medical care facilities finance agency to finance or refinance the capital costs of such facilities.

10. "net operating costs" means operating costs from which have been deducted the following:

(a) revenues for operating costs received from other state agencies or another local government pursuant to an agreement to purchase local services.

(b) other income realized in the operation of a specified program, except for income realized by a voluntary not-for-profit agency from industrial contracts entered into pursuant to its operation of a sheltered workshop from which have been deducted the expenses of such workshop incurred in producing such income and which are claimed for

state aid.

(c) federal aid received for operating costs.

(d) fees received from patients or on their behalf from private and public health insurance and medical aid programs.

11. "voluntary agency" means a corporation organized or existing pursuant to the not-for-profit corporation law for the purpose of providing local services.

12. "local services plan" means the plan of local services which is submitted by a local governmental unit and approved by the commissioner pursuant to section 41.18 of this article.

13. "community support services" means clinical, social, rehabilitative and other mental health services, programs and related administrative activities designed to enhance the community living skills and prevent the unnecessary hospitalization of the seriously impaired, chronically mentally ill population, who are eligible to receive services pursuant to section 41.47 of this article.

§ 41.04 Responsibilities of commissioners of the offices.

(a) In order to prevent unnecessary fragmentation in the planning and financing of the care, treatment and rehabilitation of the mentally disabled, the commissioners of the offices in the department shall consult and cooperate with one another and shall meet from time to time with the New York state conference of local mental hygiene directors, to ensure that the procedural policies, forms, time frames for submission and approval of plans and rules and regulations governing the procedures for planning and financing of the care, treatment and rehabilitation of the mentally disabled adopted by each of the offices in the department are consistent with one another.

(b) Guidelines for the operation of local services plans and financing shall be adopted only by rule or regulation. Such rules and regulations shall be submitted at least twenty-one days prior to the effective date thereof to the New York state conference of local mental hygiene directors for comment thereon; provided, however, if a commissioner

finds that the public health, welfare or safety requires the prompt adoption of rules and regulations, he may dispense with such submission prior to the effective date thereof but, in such case, such commissioner shall submit such rules and regulations to the conference as soon as possible for their review within sixty days after the effective date thereof.

§ 41.05 Local governmental unit.

(a) To be eligible for state aid pursuant to this chapter, a local government shall establish a local governmental unit, which shall be an identifiable entity within the local government.

(b) Each local governmental unit shall have a community services board for services to individuals with mental illness, developmental disabilities and those suffering from alcoholism and substance abuse which shall have separate subcommittees for mental health, developmental disabilities, and alcoholism, except that, at the discretion of the local government, a subcommittee for alcoholism and substance abuse may be substituted for a subcommittee for alcoholism.

(c) Each local governmental unit shall have a director who shall be its chief executive officer. Charter governments may vest policy-making functions in the director or they may vest all or some of such functions in the board. In all other cases, the policy-making functions shall vest in the board.

(d) Applications to the state for aid pursuant to this chapter shall be made by the respective local governmental units, except that an application for capital costs may be made by a voluntary agency in accordance with the provisions of this article.

(e) Each local governmental unit shall direct and administer a local comprehensive planning process for its geographic area, consistent with established statewide goals and objectives. All providers of services and department facilities shall participate in and provide information for this planning process. The department shall provide technical assistance as may be requested by such local governmental units, within available resources.

§ 41.07 Provision of services by the local governmental unit.

(a) Local governmental units may provide local services and facilities directly or may contract for the provision of those services by other units of local or state government, by voluntary agencies, or by professionally qualified individuals.

(b) Subject to the approval of the commissioners of the offices having jurisdiction over the services, local governments may arrange for the provision of services eligible for state aid outside their territorial jurisdictions or the state.

(c) Local governments may provide joint local services and facilities through agreements, made pursuant to law, which may provide either that one local government provide and supervise these services for other local governments or that a joint board or a joint local department be established to administer these services for the populations of all contracting local governments.

§ 41.09 Director.

(a) Charter governments may provide for appointment and removal of directors in a manner authorized by such governments. In all other local governments, the board shall appoint and remove the director. Salaries and allowable expenses shall be set by the appointing authority.

(b) Each director shall be a psychiatrist or other professional person who meets standards set by the commissioner for the position. If the director is not a physician, he shall not have the power to conduct examinations authorized to be conducted by an examining physician or by a director of community services pursuant to this chapter but he shall designate an examining physician who shall be empowered to conduct such examinations on behalf of such director. A director need not reside in the area to be served. The director shall be a full-time employee except in cases where the commissioner has expressly waived the requirement.

§ 41.10 State conference of local mental hygiene directors.

(a) There is hereby created the New York state conference of local mental hygiene directors, hereinafter referred to as the conference.

(b) The conference shall be composed of all the directors of community

services as defined in this chapter.

(c) The conference shall meet twice a year, or when called by the chairman, provided ten days' notice is given.

(d) The conference shall elect bi-annually, from among its members, a chairman, vice-chairman, secretary and treasurer who shall serve for two-year terms. An executive committee composed of, but not limited to, the above named officials shall be responsible for the convening of meetings, recording and distribution of minutes, and other administrative functions.

(e) The conference shall have the power to adopt, amend or repeal by-laws relating to its business and the conduct of its affairs.

(f) The conference shall have the following powers:

1. To review and comment upon rules or regulations proposed by any of the offices of the department for the operation of local service plans and programs. Comments on rules or regulations approved by the conference shall be given to the appropriate commissioner or commissioners for review and consideration; and

2. To propose rules or regulations governing the operation of the local services programs, and to forward such proposed rules or regulations to the appropriate commissioner or commissioners for review and consideration.

(g) The chairman of the conference may appoint, for the purpose of advising the commissioners, such other committees of the conference as he may from time to time deem necessary.

§ 41.11 Composition of boards.

* (a) In all local governments with a population less than one hundred thousand, community services boards, at the option of the local government, shall have either nine or fifteen members appointed by the local government. In all other local governments, a community services board shall have fifteen members appointed by the local government.

Whenever practicable at least one member shall be a licensed physician and one member shall be a certified psychologist and otherwise at least

two members shall be licensed physicians, such members to have demonstrated an interest in the field of services for persons with mental disabilities. The other members shall represent the community interest in all the problems of persons with mental disabilities and shall include representatives from community agencies for persons with mental illness, developmental disabilities, and those suffering from alcoholism and substance abuse. The community services board shall have separate subcommittees for mental health, developmental disabilities, and alcoholism or, at the discretion of the local government, alcoholism and substance abuse. Each separate subcommittee shall have no more than nine members appointed by the local government, except that each subcommittee for mental health shall have no more than eleven members appointed by the local government. Three of each such subcommittee shall be members of the board. Each separate subcommittee shall be composed of persons who have demonstrated an interest in the field of services for the particular class of mentally disabled and shall include former patients, parents or relatives of such persons with mental disabilities and community agencies serving the particular class of mentally disabled, except that each subcommittee for mental health shall include at least two members who are or were consumers of mental health services, and at least two members who are parents or relatives of persons with mental illness. Each separate subcommittee shall advise the community services board and the director of community services regarding the exercise of all policy-making functions vested in such board or director, as such functions pertain to the field of services for the particular class of mentally disabled individuals represented by such subcommittee. In addition, each subcommittee for mental health shall be authorized to annually evaluate the local services plan, and shall be authorized to report on the consistency of such plan with the needs of persons with serious mental illness, including children and adolescents with serious emotional disturbances. Any such report shall be forwarded annually to the community services board and the director of community services and a copy shall also be sent to the commissioner prior to the submission of the local services plan, provided, however, that the provisions of this paragraph shall not apply to cities of over a million in population.

* NB Effective until March 31, 2027

* (a) In all local governments with a population less than one hundred thousand, community services board, at the option of the local government, shall have either nine or fifteen members appointed by the local government. In all other local governments, a community services board shall have fifteen members appointed by the local government.

Whenever practicable at least one member shall be a licensed physician and one member shall be a certified psychologist and otherwise at least two members shall be licensed physicians, such members to have demonstrated an interest in the field of services for the mentally disabled. The other members shall represent the community interest in all the problems of the mentally disabled and shall include representatives from community agencies for individuals with mental illness, developmental disabilities, and those suffering from alcoholism and substance abuse. The community services board shall have separate subcommittees for mental health, developmental disabilities, and alcoholism or, at the discretion of the local government, alcoholism and substance abuse. Each separate subcommittee shall have no more than nine members appointed by the local government. Three of each such subcommittee shall be members of the board. Each separate subcommittee shall be composed of persons who have demonstrated an interest in the field of services for the particular class of mentally disabled and shall include former patients, parents or relatives of such mentally disabled persons and community agencies serving the particular class of mentally disabled. Each separate subcommittee shall advise the community services board and the director of community services regarding the exercise of all policy-making functions vested in such board or director, as such functions pertain to the field of services for the particular class of individuals with mental disabilities represented by such subcommittee. Provided however that the provisions of this paragraph shall not apply to cities of over a million in population.

* NB Effective March 31, 2027

* (b) In cities of over a million a community services board shall consist of fifteen members to be appointed by the mayor. There shall be at least two residents of each county within such cities on the board. At least one shall be a licensed physician and at least one shall be a certified psychologist. The other members shall represent the community

interest in all of the problems of the mentally disabled and shall include representatives from community agencies for persons with mental illness and developmental disabilities, and those suffering from alcoholism and substance abuse. The community services board shall have separate subcommittees for mental health, developmental disabilities, and alcoholism or, at the discretion of the local government, alcoholism and substance abuse. Each separate subcommittee shall have no more than nine members appointed by the local government, except that each subcommittee for mental health shall have no more than eleven members appointed by the local government. Three members of each such subcommittee shall be members of the board. Each separate subcommittee shall be composed of persons who have demonstrated an interest in the field of services for the particular class of mentally disabled and shall include former patients, parents or relatives of such persons with mental disabilities and community agencies serving the particular class of mentally disabled, except that each subcommittee for mental health shall include at least two members who are or were consumers of mental health services, and two members who are parents or relatives of persons with mental illness. Each separate subcommittee shall advise the community services board and the director of community services regarding the exercise of all policy-making functions vested in such board or director, as such functions pertain to the field of services for the particular class of individuals with mental disabilities represented by such subcommittee. In addition, each subcommittee for mental health shall be authorized to annually evaluate the local services plan, and shall be authorized to report on the consistency of such plan with the needs of persons with serious mental illness, including children and adolescents with serious emotional disturbances. Any such report shall be forwarded annually to the community services board and the director of community services, and a copy shall also be sent to the commissioner prior to the submission of the local services plan.

* NB Effective until March 31, 2027

* (b) In cities of over a million a community services board shall consist of fifteen members to be appointed by the mayor. There shall be at least two residents of each county within such cities on the board. At least one shall be a licensed physician and at least one shall be a

certified psychologist. The other members shall represent the community interest in all of the problems of persons with mental disabilities and shall include representatives from community agencies for persons with mental illness, developmental disabilities, and those suffering from alcoholism and substance abuse. The community services board shall have separate subcommittees for mental health, developmental disabilities, and alcoholism or, at the discretion of the local government, alcoholism and substance abuse. Each separate subcommittee shall have no more than nine members appointed by the local government. Three members of each such subcommittee shall be members of the board. Each separate subcommittee shall be composed of persons who have demonstrated an interest in the field of services for the particular class of mentally disabled and shall include former patients, parents or relatives of such persons with mental disabilities and community agencies serving the particular class of mentally disabled. Each separate subcommittee shall advise the community services board and the director of community services regarding the exercise of all policy-making functions vested in such board or director, as such functions pertain to the field of services for the particular class of persons with mental disabilities represented by such subcommittee.

* NB Effective March 31, 2027

(c) A person's public office or employment shall not bar appointment as a member of a board or subcommittee, nor shall membership serve as a bar to other public office or employment; provided, however, that no more than three employees of the department or of a department facility may hereafter be appointed as a member of a board or subcommittee.

(d) On initially constituted boards, and insofar as practicable, on subcommittees, one-third of the members shall be appointed for a two-year term, one-third for a three-year term and the remainder for a four-year term. Thereafter, each member shall be appointed for a four-year term. All terms shall begin to run from the first day of the year of the appointment. Vacancies shall be filled for unexpired terms. No person may serve as a member of a board or subcommittee for more than two terms consecutively unless otherwise provided by local law.

(e) Local governments shall reimburse board members for the reasonable expenses incurred in the performance of their duties and may also offer them a per diem compensation, but only their reasonable expenses are

reimbursable as an operating cost pursuant to this article.

(f) Local governments may remove a board or subcommittee member for cause, after written notice of charges and an opportunity for the member to be heard.

§ 41.13 Powers and duties of local governmental units.

(a) Every local governmental unit shall:

1. review services and local facilities for the mentally disabled of the area which it serves and their relationship to local need; determine needs of the mentally disabled of such area; and encourage programs of prevention, diagnosis, care, treatment, social and vocational rehabilitation, special education and training, consultation, and public education on mental disabilities.

2. develop the program of local services for the area which it serves, establish long range goals of the local government in its programs for the mentally disabled, and develop intermediate range plans and forecasts, listing priorities and estimated costs. The office of mental health shall be responsible for such program development relating to community support services in areas where the responsible local governmental unit elects, pursuant to subdivision (c) of section 41.47 of this article, not to receive state aid for community support services. Local governmental units which elect not to receive such state aid for community support services shall integrate information relating to community support services into the comprehensive plan for services, as otherwise required by this article.

3. direct and administer the development of a local comprehensive plan for all services for mentally disabled residents of the area, which shall be submitted to the department and used in part to formulate a statewide comprehensive plan for services.

4. seek to assure that under the goals and plans required pursuant to this subdivision, all population groups are adequately covered, sufficient services are available for all the mentally disabled within

its purview, that there is coordination and cooperation among local providers of services, that the local program is integrated and coordinated with the provision of community support services, that the local program is also integrated and coordinated with the programs of the department, and that there is continuity of care among all providers of services.

5. submit annually to the department for its approval and subsequent state aid, a report of long range goals and specific intermediate range plans as modified since the preceding report, along with a local services plan for the next local fiscal year.

6. have the power, with the approval of local government, to enter into contracts for the provision of services, including the provision of community support services, and the construction of facilities.

7. establish procedures for execution of the local services plan as approved by the local government and the commissioner, including regulations to guide the provision of services by all organizations and individuals within its program.

8. make policy for and exercise general supervisory authority over or administer local services and facilities provided or supervised by it whether directly or through agreements, including responsibility for the proper performance of the services provided by other facilities of local government and by voluntary and private facilities which have been incorporated into its comprehensive program.

9. further programs for special education and training, including career incentive and manpower and development.

10. have the power to conduct or contract for such research as may be useful for the discharge of its administrative duties and for the promotion of scientific knowledge of the mental disabilities.

11. serve as a center for the promotion of community and public understanding of mental disabilities and of the services necessary for

their care and treatment.

12. seek the cooperation and cooperate with other aging, public health and social services agencies, public and private, in advancing the program of local services.

13. have the powers necessary and proper for the effective performance of its functions and duties.

14. require the development of a written treatment plan as provided in rules and regulations of the commissioner which shall include, but not be limited to, a statement of treatment goals; appropriate programs, treatment or therapies to be undertaken to meet such goals; and a specific timetable for assessment of client progress as well as for periodic mental and physical reexaminations. In causing such a plan to be prepared or when such a plan is to be revised, the client or an authorized representative, to include the parent or parents if the client is a minor, shall be interviewed and provided an opportunity to actively participate in such preparation or revision.

* 15. administer, supervise or operate any assisted outpatient treatment program of a local governmental unit pursuant to section 9.60 of this chapter and provide that all necessary services are planned for and made available for individuals committed under the program.

* NB Repealed June 30, 2027

* 16. identify and plan for the provision of care coordination, emergency services, and other needed services for persons who are identified as high-need patients, as such term is defined by the commissioner of mental health.

* NB Repealed June 30, 2027

(b) The powers of the local governmental unit listed in subdivision (a) of this section shall be exercised pursuant to regulations of the commissioner.

(c) The director shall submit an annual report on programs and services to the board and other reports as requested.

(d) The local governmental unit shall have full powers necessary for administration and the execution of its duties to appoint and employ, with power of removal, full and part time officers, employees, and

consultants, including employees of the department, in accordance with the standards, policies, and salary schedules provided by law or otherwise authorized.

(e) In the event that a local governmental unit shall refuse to enter into a contract with a voluntary agency applying for a contract for the rendition of services under this article, such agency shall have the right of appeal to the commissioner. If, after review, the commissioner upholds the appeal, the department may enter into a contract directly with the appealing agency for such services as this article permits.

§ 41.15 Approved plans and state aid.

(a) Net operating costs of programs incurred pursuant to an approved local services plan in accordance with the regulations of the commissioner or commissioners of the office or offices of the department having jurisdiction of the services and approved by the commissioner or commissioners of the office or offices of the department having jurisdiction of the services shall be eligible for state aid.

(b) Long range goals, intermediate range plans, and annual plans shall meet requirements for comprehensive services set for each local government by the commissioners of the offices of the department after taking into consideration local needs and available resources. These services shall be concerned with diagnosis, care, treatment, social and vocational rehabilitation, community residential services licensed by the department of mental hygiene, research, consultation and public education, education and training of personnel, control and prevention of mental disabilities, and the general furtherance of mental capability and health. As part of the local services plan required to establish eligibility for state aid in accordance with the provisions herein, each local governmental unit shall submit a five-year plan and annual implementation plans and budgets which shall reflect local needs and resources, including the needs and resources available for the provision of community support services, and the role of facilities in the department in the provision of required services.

(c) Subject to regulations for special circumstances as established by the commissioner or commissioners of the office or offices of the department having jurisdiction of the services, no annual plan or

intermediate range plan of the local governmental unit shall be approved unless it indicates that reasonable efforts are being made to extend or improve local services in each succeeding local fiscal year in accordance with the statewide long range goals and objectives of the department for the development and integration of state, regional, and local services for the mentally disabled.

(d) Beginning the first day of July, nineteen hundred seventy-eight, allocations of state aid for operating costs shall be made to eligible local governmental units in advance no more than ten days after the beginning of each quarter. Such quarterly payments shall be adjusted, when necessary, to reflect actual eligible net operating costs, projected eligible net operating costs and appropriations available and shall be subject to audit and readjustment to comply with all applicable provisions of this article.

(e) Capital costs incurred by a local government or by a voluntary agency, pursuant to an approved local services plan and in accordance with the regulations of the commissioner or commissioners of the office or offices of the department having jurisdiction of the services and with the approval of the commissioner or commissioners having jurisdiction of the services, shall be eligible for state aid pursuant to the provisions of this article. Capital costs incurred by a voluntary agency shall be eligible for state aid only if incurred pursuant to an agreement between the voluntary agency and the local governmental unit where the construction is located. Such agreement shall contain the approval by the local governmental unit of such construction and an agreement by such unit to include the program of the voluntary agency in its plans and proposals.

(f) Services made available to or provided for children attending public schools, for which aid is sought pursuant to this chapter, shall be made available to or provided to all school children upon request by the authorities of their schools.

§ 41.16 Local planning; state and local responsibilities.

(a) Each of the offices of the department shall guide and facilitate the process of local planning so that plans for the provision of all services, including state and local services, can be formulated on the

basis of approved local plans and federal guidelines related to services for the mentally disabled to reflect the distribution of needs and resources of areas of the state. All providers of services, including facilities of the offices of the department, directors of hospital based mental health services, directors of community mental health centers, and voluntary agencies shall participate in and provide information, including budget data, for local planning processes.

(b) In accordance with regulations established by the commissioner or commissioners of the offices of the department having jurisdiction of the services, which shall provide for prompt action on proposed local services plans, each local governmental unit shall:

1. establish long range goals and objectives consistent with statewide goals and objectives developed pursuant to section 5.07 of this chapter and develop or annually update the local services plan of the local governmental unit or units listing providers, estimated costs and proposed utilization of state resources, including facilities and manpower, which shall be used in part to formulate statewide comprehensive plans for services.

2. submit one local services plan to the single agent of the department jointly designated by the commissioners of the offices of the department annually for approval by the commissioner or commissioners of the office or offices of the department having jurisdiction of the services.

(c) A local services plan shall be developed, in accordance with the regulations of the commissioner or commissioners of the office or offices of the department having jurisdiction of the services by the local governmental unit or units which shall direct and administer a local comprehensive planning process for its geographic area, consistent with statewide goals and objectives established pursuant to section 5.07 of this chapter. The planning process shall involve the directors of any department facilities, directors of hospital based mental health services, directors of community mental health centers, consumers, consumer groups, voluntary agencies, other providers of services, and local correctional facilities and other local criminal justice agencies. The local governmental unit, or units, shall determine the proposed

local services plan to be submitted for approval. If any provider of services including facilities in the department, or any representative of the consumer or community interests within the local planning process, disputes any element of the proposed plan for the area which it serves, the objection shall be presented in writing to the director of the local governmental unit. If such dispute cannot be resolved to the satisfaction of all parties, the director shall determine the plan to be submitted. If requested and supplied by the objecting party, a written objection to the plan shall be appended thereto and transmitted to the single agent of the department jointly designated by the commissioners.

(d) Each commissioner of an office in the department shall review the portion of the local services plan submitted over which his office has jurisdiction and approve or disapprove such plan in accordance with the procedures of subdivision (e) of this section.

(e) 1. There shall be a single process for plan review and approval by the offices of the department which shall provide local governmental units with a comprehensive response to the plans submitted. All portions of the plan to which a commissioner of an office of the department does not object shall be promptly approved and such approvals shall not be delayed pending approval of other portions of the plan which are substantially independent of the non-objectionable portion. Those portions approved by each of the commissioners of the offices of the department having jurisdiction of the services shall be deemed in effect for the period covered by the proposed plan. A portion of the plan, once approved, shall not be amended without the written concurrence of both the director of the local governmental unit or directors of the local governmental units and each of the commissioners of the offices of the department having jurisdiction over such portion of the plan.

2. A commissioner of an office of the department shall not disapprove any portion of the local services plan without providing the local governmental unit an opportunity to be heard regarding the proposed disapproval and to propose any modification of the plan. Pending the resolution of any dispute over approval of a portion of the plan, by final determination of the commissioner having jurisdiction over the services, new programs proposed shall not be implemented and programs previously implemented shall continue to be funded at existing levels.

If a portion of the plan is disapproved, the commissioner of the office having jurisdiction over such portion shall notify the local governmental unit in writing stating reasons for such action.

§ 41.17 State and local coordination.

Each commissioner of an office in the department, consistent with the goals and objectives established by the advisory council of such office in cooperation with the New York state conference of local mental hygiene directors and providers of service including directors of hospital based mental health services, directors of community mental health centers, and voluntary agencies, shall:

(a) Within five years from the effective date of this chapter:

1. develop standards for admissions to all facilities for the care of the mentally ill, developmentally disabled, and those suffering from the disease of alcoholism, alcohol abuse, substance abuse or substance dependence consistent with the requirements of articles nine and fifteen of this chapter taking into account characteristics of clients and providers;

2. develop standards for discharges from all facilities for the care of the mentally ill, developmentally disabled, and those suffering from the disease of alcoholism, alcohol abuse, substance abuse or substance dependence taking into account the availability and adequacy of community residential and treatment services and the rights of the patient;

3. develop and recommend to the governor and legislature procedures giving local governmental units the opportunity to review all proposed admissions of residents of the local government to facilities in the department, consistent with the requirements of articles nine, fifteen and twenty-one of this chapter. The purpose of such review shall be to determine whether alternative community-based services are available or can be made available to such residents;

4. develop and recommend to the governor and legislature procedures giving local governmental units the opportunity to propose discharges and review proposed discharges and placements of residents of the local government from facilities of the department to programs in the community consistent with the requirements of articles nine, fifteen and twenty-one of this chapter;

5. develop and implement a uniform assessment, evaluation and reporting system as required by section 31.01 of this chapter;

6. develop allocable per patient rates for departmental facility programming and facility maintenance and support as required by section 43.01 of this chapter;

7. examine and develop in consultation with the recognized representative of employees of the offices of the department and recommend to the governor and legislature appropriate programs addressed to the labor and employment issues resulting from contraction of state operated services with such programs to be designed to provide opportunities for the retraining and continuation of employment of persons currently employed in the state mental hygiene department.

(b) Report to the governor and the legislature by March first of each year, on the progress made toward the implementation of the requirements specified by subdivision (a) of this section.

§ 41.18 Local services plan; state aid.

(a) A local services plan is a plan for the rendition of local services. Such a plan must have been developed by the local governmental unit with the involvement of consumers, consumer groups, voluntary agencies and other providers of services, in accordance with the regulations of the commissioner and must be approved by the commissioner in order to be eligible for state aid. A local services plan shall contain a comprehensive proposal for annual and intermediate range plans and expenditures by the local governmental unit and by voluntary agencies pursuant to contract with such local governmental unit. A local services plan shall contain provisions to assure that

there is planning and coordination with the delivery of community support services to mentally ill persons, in accordance with section 41.47 of this article. An annual plan must be supported by specific budgets.

(b) (i) Local governments shall be granted state aid, in accordance with the provisions of this subdivision, for approved net operating costs pursuant to an approved local services plan at the rate of fifty percent of the amount incurred during the local fiscal year by such local governments and by voluntary agencies pursuant to contract with such local governments; provided, however, that a local government having a population of less than two hundred thousand shall be granted state aid at the rate of seventy-five percent for the first one hundred thousand dollars of its approved net operating costs. Notwithstanding the foregoing, local governments shall be granted state aid of one hundred percent of the net operating costs expended by such local governments and by voluntary agencies pursuant to contract with such local governments for services to people with developmental disabilities who were patients in a state facility for a continuous period of five or more years following the first day of January, nineteen hundred sixty-nine, provided that such services are rendered in accordance with an approved local services plan. Such one hundred percent state aid for services to such persons shall be also provided to a voluntary agency pursuant to a direct contract between such agency and an office of the department whenever such services provided pursuant to such direct contract are rendered in accordance with an approved local services plan for servicing such clients. For purposes of determining whether a person has been a patient in such a facility for a continuous period of five years or more, if a person who has been discharged or released from such a facility is thereafter returned to such a facility within ninety days of the discharge or release, the period of time between such discharge or release and such return shall not constitute an interruption of, and shall be counted as part of, the continuous period.

(ii) Notwithstanding the foregoing, local governments shall be granted state aid of one hundred percent of the net operating costs expended by such localities and by voluntary agencies pursuant to contract with such local governments for approved demonstration projects, not to exceed three years, for the purpose of conducting alcoholism and alcohol abuse

preventive, rehabilitative and treatment services; provided, however, that the commissioner of alcoholism and substance abuse services may extend the demonstration project for one additional year if it is determined that such extension is necessary and would serve the public interest.

(iii) Notwithstanding the foregoing, local governments and voluntary agencies shall be granted state aid of one hundred percent of the net operating costs expended by such localities and by voluntary agencies pursuant to contracts with such local governments or with the office of alcoholism and substance abuse services for alcohol crisis centers, chemical dependency programs for youth, residential services for recovering alcoholics and substance abusers and for alcoholism AIDS coordinators. Such state aid may also be granted to programs transferred from the task force on integrated projects for youth and chemical dependency. Such state aid shall also be granted for non-residential services determined to be necessary to serve the public interest by the commissioner of alcoholism and substance abuse services provided by local governments having a population of one hundred twenty-five thousand or less as determined by the last preceding federal census, or by voluntary agencies pursuant to contracts with such local governments.

(iv) The commissioner shall file a written explanation for action taken pursuant to paragraphs (ii) and (iii) of this subdivision with the director of the division of the budget, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such one hundred percent state aid for approved demonstration projects, alcohol crisis centers, chemical dependency programs for youth, and non-residential rural alcoholism programs, shall also be provided to a voluntary agency pursuant to a direct contract between such agency and the office of alcoholism and substance abuse services whenever such services provided pursuant to such direct contract are rendered in accordance with an approved local services plan for alcoholism and alcohol abuse preventive, rehabilitative and treatment services. Upon completion of the approved demonstration project under paragraph (ii) of this subdivision such program shall be eligible for transitional funding so that the percentage of local contribution for such project does not exceed twenty percent of the cost of such project during the first year of transition, thirty-five percent of such costs

during the second year of transition, or fifty percent of such costs during the third year of transition.

For purposes of this section, "chemical dependency program for youth" shall mean a voluntary drug free setting for persons between the ages of twelve and eighteen certified by the office of alcoholism and substance abuse services.

(v) Notwithstanding the foregoing, local governments and voluntary agencies may be granted state aid of up to one hundred percent of the net operating costs expended by such localities and by voluntary agencies pursuant to contracts with the office of mental health for programs transferred from the task force on integrated projects for youth and chemical dependency established pursuant to chapter eight hundred twelve of the laws of nineteen hundred eighty-seven. Such aid may include funds transferred from such task force to the office of mental health.

(c) Local governments and voluntary agencies shall be granted state aid for capital costs pursuant to an approved local services plan at a rate not to exceed fifty percent of the amount eligible for state aid; provided, however, that state aid for capital costs for that portion of a general hospital which provides inpatient psychiatric services to the mentally ill pursuant to an approved local services plan shall be reimbursed at the rate of thirty-three and one-third percent.

(d) The liability of the state in any state fiscal year for state aid pursuant to this section shall exclude chemical dependence services, which are subject to article twenty-five of this chapter, and shall be limited to the amounts appropriated for such state aid by the legislature for such state fiscal year.

(e) In order to qualify for the state aid available as described in subdivisions (b) and (c) of this section, a local services plan must include provisions for the development of appropriate residential accommodations, consistent with the present and anticipated needs of the mentally disabled within the jurisdiction of the local governmental unit.

(f) No voluntary agency receiving state funds pursuant to this article shall expend any state moneys except for value received and shall not make any charitable contribution of state funds or use any state funds to pay above market value for any goods or services, except as

authorized by the offices of the department.

§ 41.24 Study on alternative to net deficit funding.

On or before April fifteenth, nineteen hundred ninety, the commissioner shall submit to the legislature a study and recommendations for a proposed alternative to net deficit funding established pursuant to article forty-one of this chapter that includes the following:

(a) A cost-related funding methodology which adequately pays for services necessary to provide appropriate care, which recognizes geographic distinctions as they relate to cost and which ensures that providers are reimbursed for the fixed or uncontrollable operational costs such as interest, depreciation, property, capitalized development costs, insurance and reasonable and necessary personnel costs.

(b) A guarantee of minimum maintenance of local government tax levy financial participation at current levels.

(c) A system of incentives to promote the maximization of alternative funding sources including but not limited to contract income and charitable contributions.

(d) An evaluation of the relationship between net deficit funded programs and other non-residential programs, excluding day treatment, and a determination whether or not to incorporate the funding of all such programs into a unified funding methodology.

(e) Information relating to a demonstration project undertaken by the office in certain developmental disabilities services offices to examine possible modifications in the use of medical assistance funding for programs and services pursuant to the provisions of a federal grant. Such information shall include specific recommendations for applying the results of such demonstration project to programs and services operated by voluntary providers.

(f) An examination of the implications of department of mental hygiene consolidated fiscal reporting process and an incorporation, as appropriate, of such implications into the formulation of recommendations.

Such study shall be prepared in conjunction with a council of not more

than ten persons which shall include not for profit provider organizations, parents of persons with developmental disabilities, representatives of local government and others to be appointed by the commissioner.

§ 41.25 Fees.

(a) As a prerequisite for state aid, local governmental units and voluntary agencies shall establish fee or payment schedules for clinical services and may establish fee or payment schedules for other services reflecting costs of services, pursuant to regulations of the commissioner.

(b) Fees charged or payments requested shall take into account costs and ability to pay, considering resources available from private and public health insurance and medical aid programs.

(c) No person shall be denied services for the mentally disabled because of inability to pay.

(d) Every effort shall be made to assure that the process of fee establishment and collection does not interfere with the therapeutic program.

§ 41.27 State aid procedures.

(a) State aid shall not be granted for capital costs unless:

1. appropriations authorizing them have been requested by the commissioner;

2. these appropriations have been recommended by the governor in a budget bill which specifies the facility to be acquired, constructed, or improved, the total estimated cost for each facility, and estimated date of completion; and

3. the budget bill has been approved by the legislature for the state fiscal year for which it was submitted.

(b) Claims for state aid shall be made in a manner and on forms prescribed by the regulations of the commissioner and shall be for

expenditures or costs incurred in accordance with previously approved state aid applications supported by specific budgets as required by this chapter.

(c) When certified by the commissioner, state aid shall be paid upon the audit and warrant of the comptroller.

§ 41.29 Liability of local government.

Any local government which has established a local governmental unit shall save harmless and protect the members of the board and officers and employees of such unit from financial loss arising out of any claim, demand, suit, or judgment by reason of alleged negligence or other act resulting in accidental bodily harm or injury to any person, provided such board member, officer, or employee at the time of the accident or injury was acting in the discharge of his duties within the scope of his employment under this article. No action shall be maintained under this section against such a local government, board member, officer, or employee unless a notice of claim shall have been made and served in compliance with section fifty-e of the general municipal law. Except in an action for wrongful death, an action against such a local government, board member, officer, or employee for damages for injuries to real or personal property, or for the destruction thereof, or for personal injuries, alleged to have been sustained, shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued.

§ 41.31 Publication of records.

Every local governmental unit shall make available in its office, as a public record, copies of its state-approved plans and proposals, and of its rules, regulations, and contracting procedures.

§ 41.32 Transitional provisions for local assistance funding of federally funded demonstration projects for treatment of

alcoholics.

Notwithstanding any inconsistent provision of law, whenever demonstration projects for treatment of alcoholics are converted to local assistance formula funding from federal funding such conversion shall be adjusted so that the percentage of local contribution for such project does not exceed twenty percent of the cost of such projects during the first year of transition, thirty-five percent of such costs during the second year of transition or fifty percent of such costs during the third year of transition.

§ 41.33 Community residences for the mentally disabled.

The commissioner shall have the power to operate or cause to be operated community residential facilities for the mentally disabled. Within amounts available therefor and subject to regulations established by him and notwithstanding any other provisions of this article, he may provide state aid to local governments and to voluntary agencies (i) in an amount not to exceed fifty percent for acquisition or construction of such community residences, and (ii) in an amount not to exceed fifty percent for the total operating costs of community residences except community residences for the mentally ill. Such state aid to voluntary agencies shall not be granted unless there has been prior approval of the proposed community residence by the local governmental unit.

§ 41.34 Site selection of community residential facilities.

(a) For the purposes of this section, the following definitions shall apply:

(1) "Community residential facility for the disabled" means a supportive living facility with four to fourteen residents or a supervised living facility subject to licensure by the office of mental health or the office for people with developmental disabilities which provides a residence for up to fourteen individuals with mental disabilities, including residential treatment facilities for children and youth.

(2) "Sponsoring agency" means an agency or unit of government, a voluntary agency or any other person or organization which intends to establish or operate a community residential facility for the disabled.

(3) "Municipality" means an incorporated village if a facility is to be located therein, a town if the facility is to be located therein and not simultaneously within an incorporated village, or a city, except that in the city of New York, the community board with jurisdiction over the area in which such a facility is to be located shall be considered the municipality.

(4) "Commissioner" means the commissioner of the office of the department responsible for issuance of license and operating certificate to the proposed community residential facility.

(b) If a sponsoring agency intends to establish a residential facility for the disabled within a municipality but does not have a specific site selected, it may notify the chief executive officer of the municipality in writing of its intentions and include in such notice a description of the nature, size and community support requirements of the program. Provided, however, nothing in this subdivision shall preclude the proposed establishment of a site pursuant to subdivision (c) of this section.

(c) (1) When a site has been selected by the sponsoring agency, it shall notify the chief executive officer of the municipality in writing and include in such notice the specific address of the site, the type of community residence, the number of residents and the community support requirements of the program. Such notice shall also contain the most recently published data compiled pursuant to section four hundred sixty-three of the social services law which can reasonably be expected to permit the municipality to evaluate all such facilities affecting the nature and character of the area wherein such proposed facility is to be located. The municipality shall have forty days after the receipt of such notice to:

(A) approve the site recommended by the sponsoring agency;

(B) suggest one or more suitable sites within its jurisdiction which could accommodate such a facility; or

(C) object to the establishment of a facility of the kind described by the sponsoring agency because to do so would result in such a concentration of community residential facilities for the mentally

disabled in the municipality or in the area in proximity to the site selected or a combination of such facilities with other community residences or similar facilities licensed by other agencies of state government, including all community residences, intermediate care facilities, residential care facilities for adults and residential treatment facilities for individuals with mental illness or developmental disabilities operated pursuant to article sixteen or article thirty-one of this chapter and all similar residential facilities of fourteen or less residents operated or licensed by another state agency, that the nature and character of the areas within the municipality would be substantially altered.

Such response shall be forwarded to the sponsoring agency and the commissioner. If the municipality does not respond within forty days, the sponsoring agency may establish a community residence at a site recommended in its notice.

(2) Prior to forwarding a response to the sponsoring agency and the commissioner, the municipality may hold a public hearing pursuant to local law.

(3) If the municipality approves the site recommended by the sponsoring agency, the sponsoring agency shall seek to establish the facility at the approved site.

(4) If the site or sites suggested by the municipality are satisfactory with regard to the nature, size and community support requirements of the program of the proposed facility and the area in which such site or sites are located does not already include an excessive number of community residential facilities for the mentally disabled or similar facilities licensed by other state agencies, the sponsoring agency shall seek to establish its facility at one of the sites designated by the municipality.

If the municipality suggests a site or sites which are not satisfactory to the sponsoring agency, the agency shall so notify the municipality which shall have fifteen days to suggest an alternative site or sites for the proposed community residential facility.

(5) In the event the municipality objects to establishment of a facility in the municipality because to do so would result in such a

concentration of community residential facilities for persons with mental disabilities or combination of such facilities and other facilities licensed by other state agencies that the nature and character of areas within the municipality would be substantially altered; or the sponsoring agency objects to the establishment of a facility in the area or areas suggested by the municipality; or in the event that the municipality and sponsoring agency cannot agree upon a site, either the sponsoring agency or the municipality may request an immediate hearing before the commissioner to resolve the issue. The commissioner shall personally or by a hearing officer conduct such a hearing within fifteen days of such a request.

In reviewing any such objections, the need for such facilities in the municipality shall be considered as shall the existing concentration of such facilities and other similar facilities licensed by other state agencies in the municipality or in the area in proximity to the site selected and any other facilities in the municipality or in the area in proximity to the site selected providing residential services to a significant number of persons who have formerly received in-patient mental health services in facilities of the office of mental health or the office for people with developmental disabilities. The commissioner shall sustain the objection if he determines that the nature and character of the area in which the facility is to be based would be substantially altered as a result of establishment of the facility. The commissioner shall make a determination within thirty days of the hearing.

(d) Review of a decision rendered by a commissioner pursuant to this section may be had in a proceeding pursuant to article seventy-eight of the civil practice law and rules commenced within thirty days of the determination of the commissioner.

(e) (1) A licensing authority shall not issue an operating certificate to a sponsoring agency for operation of a facility if the sponsoring agency does not notify the municipality of its intention to establish a program as required by subdivision (c) of this section. Any operating certificate issued without compliance with the provisions of this section shall be considered null and void and continued operation of the facility may be enjoined.

(2) The office of mental health and the office for people with developmental disabilities shall not issue an operating certificate for the operation of a supportive living facility or a supervised living facility of more than fourteen residents if the agency or unit of government, voluntary agency or any other person or organization which intends to establish or operate such a facility does not notify the chief executive officer of the municipality in which that facility is to be established in writing of the intention to establish such facility and include in such notice the specific address of the site, the type of residence, the number of residents and the community support requirements of the program; provided, however, that nothing contained in this paragraph shall either be construed to require facilities of more than fourteen beds to meet any other requirement of this section, or to deem such facilities family units for the purposes of local laws and ordinances.

(f) A community residence established pursuant to this section and family care homes shall be deemed a family unit, for the purposes of local laws and ordinances.

§ 41.35 Demonstration programs.

* (a) The commissioners of the offices in the department shall cause to be developed plans for three or more time-limited demonstration programs, the purpose of which shall be to test and evaluate new methods or arrangements for organizing, financing, staffing and providing services for the mentally disabled in order to determine the desirability of such methods or arrangements. Subject to regulations established by the commissioners and notwithstanding section one hundred sixty-three of the state finance law and section one hundred forty-two of the economic development law, or any other provision of law, such programs may include but shall not be limited to comprehensive organizational structures to serve all mentally disabled persons within the purview of a local governmental unit, innovative financing and staffing arrangements and specific programs to serve the mentally disabled. Such demonstration programs shall be consistent with established statewide goals and objectives and local comprehensive plans, shall be developed in conjunction with the local comprehensive

planning process, and shall be submitted to the single agent jointly designated by the commissioners of the department for review and approval by the commissioner or commissioners having jurisdiction of the services.

* NB Effective until March 31, 2028

* (a) The commissioners of the offices in the department shall cause to be developed plans for three or more time-limited demonstration programs, the purpose of which shall be to test and evaluate new methods or arrangements for organizing, financing, staffing and providing services for the mentally disabled in order to determine the desirability of such methods or arrangements. Subject to regulations established by the commissioners and notwithstanding any other provision of law, such programs may include but shall not be limited to comprehensive organizational structures to serve all mentally disabled persons within the purview of a local governmental unit, innovative financing and staffing arrangements and specific programs to serve the mentally disabled. Such demonstration programs shall be consistent with established statewide goals and objectives and local comprehensive plans, shall be developed in conjunction with the local comprehensive planning process, and shall be submitted to the single agent jointly designated by the commissioners of the department for review and approval by the commissioner or commissioners having jurisdiction of the services.

* NB Effective March 31, 2028

(b) The demonstration programs required to be developed pursuant to this section shall include at least one single system program for comprehensive services for all mentally disabled persons or all services to one or more of the following classes of mentally disabled: persons with mental illness, a developmental disability; those suffering from alcohol abuse or alcoholism; or alcoholics, alcohol abusers and substance abusers. Such comprehensive services provided pursuant to a single system program shall be provided by a local governmental unit or group of local government units or an approved non-governmental agent or a combination of providers of service and a local governmental unit or units.

(1) A local governmental unit or group of local governmental units may propose that such unit or units, or a non-governmental agent designated

by such unit or units, or a combination of providers of service and a local governmental unit assume responsibility for provision of comprehensive services. A plan embodying such a proposal shall be submitted to the single agent jointly designated by the commissioners of the offices of the department in accordance with regulations of the commissioners. Such a plan shall provide that the local governmental unit or units or a designated non-governmental agent, or a combination of providers of service and local governmental unit or units shall be responsible for the provision of and shall direct the operation of all facilities and programs or portions thereof serving the class or classes of mentally disabled in the area for whom the unit or non-governmental agent proposes to provide comprehensive services.

(2) A proposed plan submitted in accordance with the provisions of this subdivision shall contain at least the following with respect to the class or classes of mentally disabled covered by the plan:

A. a commitment to provide necessary comprehensive services for all residents, regardless of diagnostic category or severity of disability or ability to pay, subject to availability of funds, of the local government or local governments submitting such plan throughout the course of their mental disability.

B. a commitment to provide comprehensive services which shall include, but not be limited to, preventive services, emergency services, acute, intermediate and long-term services, including both hospital and non-hospital based inpatient and outpatient services, day care, night care and weekend care services, diagnostic and referral services, residential and non-residential services, vocational, educational and training programs, staff training, consultive services, necessary manpower and support services.

C. an assurance that comprehensive services will be provided to all mentally disabled residents regardless of age, income or area of residence in all age and population groups, including all such residents receiving service irrespective of the location and auspices under which such services are provided at the time of the plan's submission.

D. a statement describing the proposed administrative organization of the system under which comprehensive services to mentally disabled residents of the locality or localities are to be provided, including a description of the respective roles and relationships of all providers, governmental and non-governmental.

E. an inventory of all public and private resources available to the class or classes of mentally disabled residents of the local area and a statement of their responsibilities.

F. a proposed fiscal plan for comprehensive services during the next local and state fiscal years, which proposed fiscal plan shall include, but not be limited to, all projected needs; a breakdown of services to be provided by disability and service category; estimated expenditures by purpose; estimated revenues by source and amounts, including estimated local, state and federal government funds; and a comparison of proposed expenditures and revenues with those of the existing year.

G. a projected utilization rate of services and programs of facilities of the offices of the department including any planned expansion or contraction of such services and programs.

H. a plan, developed in consultation with the recognized representative of employees of the offices of the department, for the retraining and continuation of employment of persons whose employment in a program of a facility of an office may be terminated because of planned contraction of such program, and for the continuation of all employment-related benefits vested by contract, by state or local law, or by rule or regulation in the persons employed by the offices in the department in facilities to be transferred to the control of the local governmental unit or units or the non-governmental agent of such unit or units, as long as those persons shall continue to be employed pursuant to the single system plan or until such employment-related benefits are modified or superseded pursuant to law or successor agreements.

I. a commitment that all facilities will comply with all applicable state and federal standards, including accreditation standards and

standards required to be met as a condition for eligibility for federal funds.

J. a statement of the mechanisms to be utilized in evaluating the effectiveness of comprehensive services to the mentally disabled and describing the conditions and procedures under which responsibility for programs and services of facilities in the offices of the department at the time of submission of the plan shall revert to the state.

(3) Each commissioner of an office in the department shall review the portion of the single system plan for comprehensive services to the mentally disabled over which his office has jurisdiction and approve or disapprove such portion of the plan. In acting upon such portion of the plan, each commissioner shall consider whether it offers a reasonable expectation of improved services to the particular class of the mentally disabled over which his office has jurisdiction; whether the plan as a whole assures comprehensive services to mentally disabled persons who suffer from more than one disability; whether the plan provides for the efficient use of available funds and existing services; and whether such plan adequately meets the conditions set forth in paragraph two of this subdivision.

(4) Each commissioner of an office in the department who has approved a single system plan is authorized to take such actions as may be necessary, in accordance with applicable state law, including, but not limited to, the delegation of administrative responsibility to a director of community services in order to facilitate the implementation of the approved single system plan. If a commissioner of an office in the department and one or more local governmental units mutually agree, state facilities of such office may, in whole or in part, be used by, leased, or rented, to such local governmental unit or units, to an approved non-governmental agent, or to a combination of providers of service and the local governmental unit or units in accordance with applicable state law, for operation by or through it pursuant to the single system plan approved in accordance with the provisions of this article. Such local governmental unit or units or an approved non-governmental agent or combination of providers of service and the local governmental unit or units may lease a facility or facilities from an office in the department, if the program to be housed in such

facility is part of the single system plan for comprehensive services to the mentally disabled approved in accordance with the provisions of this article.

(5) Each commissioner of an office in the department shall conduct evaluation studies of approved single system plans, or portions thereof, over which his office has jurisdiction to determine the relative costs and effectiveness of different types and patterns of services being provided under such plans. The results of such studies shall be used to determine standards for statewide program requirements and priorities.

(c) Upon approval of a plan for a demonstration program by a commissioner or commissioners of the office having jurisdiction over the services, said commissioner or commissioners shall, in cooperation with the appropriate representative or representatives of the local governmental unit or units, prepare for submission to the director of the budget for inclusion in the executive budget, a request for the appropriations of funds and authorization for implementation of the demonstration program.

(d) Quarterly reviews and evaluations of the program shall be undertaken and a final report shall be developed by representatives of the commissioner or commissioners having jurisdiction over the services and the local governmental unit assessing the program, indicating its potential for continuation or use elsewhere, and making any further recommendations related to the program. Copies of such quarterly evaluations and final reports shall be sent no later than November fifteenth to the director of the division of the budget, and the chairmen of the senate finance committee and the assembly committee on ways and means and such final reports shall be included in the relevant commissioner or commissioners statewide comprehensive plan pursuant to section 5.07 of this chapter.

(e) A local governmental unit may file a notice of intent to submit a single system plan with the single agent jointly designated by the commissioners of the offices. The commissioner or commissioners having jurisdiction of the services are authorized to make grants of funds, from appropriations specifically made for such purpose, to any such local governmental unit in an amount not to exceed seventy-five percentum of the local government costs approved by the commissioner and the director of the budget, of preparing a single system plan; provided,

however, that in the case of a local government receiving state aid at the rate of seventy-five percent of its approved net operating costs, such grant of funds may not exceed ninety percent of the approved local government's costs of preparing the single system plan.

§ 41.36 Community residential facilities.

The commissioner of developmental disabilities shall establish a procedure, subject to the approval of the state comptroller, whereby payments in addition to the personal allowance of an individual living in a community residential facility may be made to providers of services for one or more of the following needs of individuals residing in such facilities, limited to two hundred fifty dollars per individual per year and paid semi-annually in the manner specified by such procedures:

(a) Replacement of necessary clothing;

(b) Personal requirements and incidental needs of individuals residing in the facility;

(c) Recreational and cultural activities of individuals residing in the facility. Such payments may be made from monies appropriated to the office for this purpose. Such payments shall be audited by the office pursuant to an audit plan approved by the comptroller.

§ 41.37 Community residence and residential treatment facility for children and youth development grants.

(a) The commissioner of the office of mental health or the commissioner of the office for people with developmental disabilities is authorized, within appropriations made therefor, to make grants to local governmental units and voluntary nonprofit agencies developing a community residence as defined in subdivision twenty-eight of section 1.03 of this chapter. The commissioner of the office of mental health is authorized, within appropriations made therefor, to make grants to voluntary nonprofit agencies developing a residential treatment facility for children and youth. Such grants shall be limited to the development costs incurred prior to the operation of a community residence or a residential treatment facility for children and youth, or for

development costs incurred to expand the capacity to provide services at such residences and facilities.

Development costs which may be eligible for up to one hundred percent reimbursement under this grant include:

1. reasonable professional fees and other fees for services which are necessary for project development;

2. initial staffing;

3. up to six months rent, construction loan or permanent mortgage payments, together with other necessary costs associated with rental or ownership of property;

4. reasonable and necessary fees paid to secure financing;

5. furniture; and

6. reasonable rehabilitation costs.

(b) Application for grants shall be made in the manner and on forms prescribed by the appropriate commissioner. Each commissioner shall establish schedules, subject to the approval of the director of the division of the budget, indicating the maximum development cost per bed for such community residences and residential treatment facilities for children and youth. Such schedules may include varying rates for distinct geographic areas of the state, if in the determination of the commissioner the location of an eligible community residence or residential treatment facility for children and youth has direct bearing on the level of development costs. The commissioner may also establish varying rates based on the size of an eligible community residence or residential treatment facility for children and youth.

(c) No grant will be awarded by the commissioner if the projected per bed development cost for the community residence or residential treatment facility for children and youth exceeds the schedule established in subdivision (b) of this section.

(d) No such grant will be awarded unless there is prior approval by

the local governmental unit of the area in which such community residence or residential treatment facility for children and youth is to be located.

(e) The state comptroller, or his legally authorized representative, is authorized and empowered to examine the books and accounts of the offices relating to program development grants and from time to time to examine the books and accounts of each local governmental unit or voluntary nonprofit agency receiving such grants, including its receipts, disbursements, contracts, leases, loans and any other moneys relating to its financial operation.

§ 41.38 Rental and mortgage payments of community residential facilities for the mentally ill.

(a) "Supportive housing" shall mean, for the purpose of this section only, the method by which the commissioner contracts to provide rental support and funding for non-clinical support services in order to maintain recipient stability.

(b) Notwithstanding any inconsistent provision of this article, the commissioner may reimburse voluntary agencies for the reasonable cost of rental of or the reasonable mortgage payment or the reasonable principal and interest payment on a loan for the purpose of financing an ownership interest in, and proprietary lease from, an organization formed for the purpose of the cooperative ownership of real estate, together with other necessary costs associated with rental or ownership of property, for a community residence, a residential care center for adults, or supportive housing, under their jurisdiction less any income received from a state or federal agency or third party insurer which is specifically intended to offset the cost of rental of the facility or housing a client at the facility, subject to the availability of appropriations therefor and such commissioner's certification of the reasonableness of the rental cost, mortgage payment, principal and interest payment on a loan as provided in this section or other necessary costs associated with rental or ownership of property, with the approval of the director of the budget.

§ 41.39 Vocational programs; sheltered workshop industrial contract income.

(a) The commissioner of mental health and the commissioner of developmental disabilities shall, consistent with the state integrated employment implementation plan developed pursuant to subdivision two of section one thousand four-b of the education law, and subject to appropriations made therefor, to develop and support services that provide individuals with mental disabilities the opportunity to learn and develop employment related skills and work experience, including but not limited to sheltered workshops and integrated employment opportunities, including supported employment, as provided pursuant to sections one thousand four-a and one thousand four-b of the education law. Such programs shall, to the extent possible:

1. be integrated with and not duplicate employment programs provided through the state education department and shall ensure that funding provided pursuant to this subdivision is not used for the provision of services that are the responsibility of other state agencies pursuant to the plan developed pursuant to subdivision two of section one thousand four-b of the education law;

2. provide an array of rehabilitation and support services necessary to meet the individual's vocational and career developmental needs;

3. integrate the office's vocational programs and other needed support services including but not limited to: clinical, social, case management, residential and transportation services to ensure flexibility in meeting the needs of individuals in transition between program models; and

4. provide each individual with the appropriate supports to achieve and maintain employment in the most integrated setting appropriate, while maximizing each individuals personal strengths and preferences.

(b) Notwithstanding any other provisions of this article, income realized by a voluntary not-for-profit agency from industrial contracts entered into pursuant to its operation of a sheltered workshop shall be matched dollar for dollar by an office of the department of mental

hygiene through direct contract with the agency provided that no part of the expenses of such sheltered workshop are claimed through a contract with the local governmental unit which is receiving funding for reimbursement of such expenses from the same office of the department provided that such sheltered workshop is operating in accordance with an approved local services plan. In no event shall any combination of income including state aid exceed the total cost of operation of such sheltered workshop.

*** § 41.40 Small community residential facilities.**

The commissioner of the office for people with developmental disabilities is directed to submit to the governor and the legislature no later than January first, nineteen hundred ninety-one, a report and recommendations of actions necessary to encourage the development of small community residential programs including programs of ten beds or less. Such report and recommendations shall consider:

1. adequate operating costs associated with such facilities for each geographic region of the state;

2. a capital reimbursement methodology to promote and facilitate the development of small community residential facilities;

3. the need for individuals who are severely disabled to live in small community residential facilities; and

4. the need of local providers of service to make determinations regarding the size, structure and character of new community residential facilities in order to make such facilities compatible with the character of local neighborhoods.

* NB There are 2 § 41.40

*** § 41.40 Respite services.**

(a) Definitions. When read in this article:

1. "Respite" shall mean the provision of intermittent temporary substitute care of mentally retarded or developmentally disabled persons on behalf of and in the absence of the parent or legal guardian of the mentally retarded or developmentally disabled person, for the purpose of providing relief from the stresses of responsibilities concomitant with providing continued care. Respite shall not exceed forty-two days in any calendar year for any individual except where authorized by the commissioner, subject to the approval of the director of the budget.

2. "Provider" shall mean any person, firm, corporation, governmental subdivision or state agency which renders respite services including, but not limited to: individuals, family care providers and volunteers. Individuals who are a parent or legal guardian of a disabled person receiving the respite service may be providers only where respite service is rendered as part of a voluntary in-kind program approved hereunder.

3. "Sponsor" shall mean any person, firm, corporation, governmental subdivision or state agency approved by the commissioner which contracts with the office for purposes of a demonstration project pursuant to this chapter and which is responsible for the recruitment, coordination and arrangement of provider services in a manner which meets client needs, the general supervision of the demonstration project, and the submission of such information or reports as may be required by the commissioner.

(b) Respite demonstration programs. 1. The commissioner is hereby authorized to establish respite demonstration projects for the purposes of establishing eligibility criteria for respite services; evaluating the demand for respite services and the means of effectively, efficiently and economically meeting such demand; ascertaining the respite services available and necessary to meet the demand; evaluating the effectiveness of utilizing paid providers which are not state agencies for the provision of respite services; evaluating the viability of financing the provision of respite services through user fees and by local government units; evaluating the effectiveness and efficiency of utilizing a program of voluntary in-kind services for the provision of respite; evaluating the relationship between respite and the need for

institutionalization; identifying the costs of providing such services; and the effectiveness of continuing such projects. The commissioner shall establish regulations as may be necessary for the implementation of such demonstration projects.

2. The commissioner is authorized to demonstrate, where appropriate, the viability of the provision of insurance coverage necessary to protect and defend providers from liability for claims arising out of the provision of voluntary in-kind respite services.

3. The commissioner, within four months after the effective date of this section, shall publicize the existence of, and make available, application forms for such demonstration projects.

4. Such application forms shall contain notification of the purposes of respite projects as set forth in paragraph one of this subdivision and shall require the submission of such information as the commissioner deems necessary for the evaluation of such proposed demonstration projects. This information shall include, but not be limited to:

i. the identity and qualifications of the sponsor and provider or providers and a plan for the coordination of their services;

ii. the assessment of the demand and availability for respite services within the community to be served;

iii. evidence of the level of community support and participation;

iv. a fiscal plan, including specific provisions for the utilization of existing reimbursement and funding sources, and availability of potential funding sources; and

v. plans for publicizing the purpose of the project and the services to be provided, including the identities, services and charges of each participating provider.

5. All applications shall be received by the commissioner no later

than January first, nineteen hundred eighty-three at which time the commissioner shall have four weeks to review and certify projects and, subject to the approval of the director of the budget award grants, within amounts available therefor, for the operation of demonstration projects from funds appropriated therefor.

Award of such grant shall be contingent upon receipt of evidence by the commissioner that the combination of projects to be selected for such awards shall be capable of achieving those purposes set forth in paragraph one of this subdivision. Notification and description of all such awards shall be forwarded to the chairman of the senate finance committee and to the chairman of the assembly ways and means committee.

6. The commissioner shall contract with a sponsor for the provision of respite services pursuant to this section.

(c) On or before the first day of January, nineteen hundred eighty-four the commissioner shall issue a report to the governor, the director of the budget, the chairman of the senate finance committee, and the chairman of the assembly ways and means committee evaluating the appropriateness of continuing respite projects which shall include, but not be limited to:

1. An analysis of the effectiveness of respite in promoting the continuance of quality care for such mentally retarded and developmentally disabled persons.

2. A qualitative and quantitative analysis of respite services rendered by providers herein, together with demographic analysis of the families and mentally retarded or developmentally disabled persons participating in the project and the degree of disability of participants.

3. An assessment of the nature and extent of the demands for respite services and an analysis of accessibility and availability of services to meet this demand.

4. Specific identification of any factors which significantly enhance

or inhibit the successful provision of respite.

5. A comparative assessment of the costs, efficiency and effectiveness of each type of service or combination of services provided either pursuant to this section or otherwise existing.

6. Methods for funding respite services, including:

i. state financial support;

ii. federal funds;

iii. local funds;

iv. available third party reimbursement for qualified services;

v. user fees; and

vi. in-kind services for users of respite services.

7. A financial report for each project.

8. A qualitative and quantitative description of respite services provided through developmental centers and the home care program and any other respite services provided through the office or any other provider as well as an analysis of the effectiveness and efficiency of such respite services.

9. Recommendations for client eligibility criteria for all respite services described by the report issued pursuant to this paragraph.

(d) No funds shall be paid to any parent or guardian for the provision of respite services to his or her own child or dependent.

* NB Expired March 31, 1984

* NB There are 2 § 41.40

§ 41.41 Rights of persons with developmental disabilities.

1. Each person who resides in a community residence has the same basic and legal rights as all other persons of the same age. Such rights are in no way diminished by the fact that such persons who have a developmental disability live in a community residence.

2. In order to ensure that such residents are able to lead a life of dignity, the commissioner shall include in rules and regulations promulgated for community residence a statement of the rights of persons living in such community residences which shall include, but not be limited to:

(a) The right to request an alternative residential setting, either a new residence or change in roommates, and to be involved in decisions regarding such changes.

(b) The right to privacy, and sufficient space for personal belongings.

(c) The right to receive visits by families, friends and guardians and to make such visits; such right includes the right to privacy during such visits.

(d) The right to receive and send communications freely.

(e) The right to be free from physical or psychological restraints or pressure, subject to the provisions of section 33.04 of this chapter.

(f) The right to engage in appropriate activities although some risk may be involved.

(g) The right to a balanced and nutritious diet.

(h) The right to appropriate medical and dental care and the right, either personally or through parents or guardians, in the choice of physician and dentist.

(i) The right to appropriate clothing for age and season, and the right to be involved in the selection.

(j) The right to meaningful and productive activities within his or her capacity.

(k) The right to be informed regularly of their financial status and to be provided assistance in the use of their resources, as appropriate.

(l) The right to the use of their personal money and property.

(m) The right of access to meaningful recreation and community programs, and the right to participate in the planning of such

activities.

(n) The right to participate in the religion of their choice, on an individual as well as a group basis.

(o) The right to receive assistance and guidance from staff.

(p) The right to vote; and the right to participate in activities that educate persons with developmental disabilities in their civic responsibilities.

(q) The right to participate with staff in the establishment of house rules.

(r) The right of the resident, their parents or guardians, to be informed of the resident's rights under law and regulation, and the guaranty that such rights shall not be abridged.

(s) The right of the residents, their parents or guardians to express grievances, concerns and suggestions, without fear of reprisal.

§ 41.42 Family support programs.

The commissioner of mental health, directly or through contract, and within amounts made available therefor, shall establish a family support program. The purpose of the program shall be to examine the impact of the provision of educational and support services on the incidence of hospitalization. Such services shall be provided to family members caring for chronically, mentally ill relatives at home and shall include but not be limited to ongoing psychoeducational training which will enhance the family's ability to care for disabled relatives at home by assisting them in understanding the nature and cause of the mental illness and providing them with the knowledge of strategies for handling the symptoms and behavior of disabled family members. The commissioner may authorize the development of a training curriculum, and a staff training program to implement this program and to design and carry out an evaluation of this program.

§ 41.43 Family support services.

(a) The commissioner of the office for people with developmental disabilities, directly or through contract, and within amounts made

available therefor, shall establish a family-directed, statewide system of comprehensive family support services. The purpose of family support services will be to enhance a family's ability to provide in-home care to their family members with a developmental disability.

(b) In administering family support services, the commissioner may, to the extent practicable, establish standards for outcome assessment and performance reviews of the goods and services obtained whether such goods and services are purchased pursuant to contract with the state, through reimbursement of families, through the issuance of vouchers to families for the purchase of goods and services, or through other means.

(c) For purposes of this section, family supports are goods, services, and subsidies, determined by the family and the commissioner of the office for people with developmental disabilities, which are provided to meet the goals of: (i) providing a quality of life comparable, to the extent practicable, to that of similarly situated families without a family member having a developmental disability; (ii) maintaining family unity; (iii) preventing premature or inappropriate out-of-home placement; (iv) reuniting families; (v) enhancing parenting skills; and (vi) maximizing the potential of the family member with a developmental disability.

(d) The developmental disabilities advisory council created by section 13.05 of this chapter shall establish a committee pursuant to the provisions of paragraph one of subdivision (c) of section 13.05 of this chapter, comprised of members selected by the commissioner, to be called the committee on family support services. The committee shall (i) provide information to the commissioner on the needs of families caring at home for a family member with a developmental disability; (ii) advise the commissioner on policies related to family supports and services; and (iii) offer advice to the commissioner on the design, implementation and monitoring of family support services. Members of the committee shall include persons with a developmental disability, family members of persons with a developmental disability, and professionals and others with an interest in the care of persons with developmental disabilities. A majority of the committee shall be family members of persons with developmental disabilities. Members shall only receive reimbursement for expenses incurred in connection with their duties on the committee.

(e) The commissioner, in consultation with the committee on family

support services, shall submit by January first, nineteen hundred ninety-three, and annually thereafter for four years, reports to the governor and the legislature concerning family support services. Such reports shall include, but not be limited to, the following: an analysis of family support services provided by contract agencies and those provided by the state, the amounts and sources of funds expended annually for family support services by region and by type of service, the number of families receiving services, the number of families estimated to be in need of family support services, the results of consumer and family member assessments of family support services, and a description of any new initiatives and recommendations for future action.

§ 41.44 Community residential services for the mentally ill.

(a) The commissioner of mental health is authorized, within appropriations made therefor, to establish a continuum of community residential services for the mentally ill.

(b) The commissioner shall establish standards for the operation and funding of community residential services, including but not limited to:

1. criteria for admission to and continued residence in each type of community residence;
2. periodic evaluation of services provided by community residences;
3. staffing patterns for each type of community residence; and
4. guidelines for determining state aid to community residences, as described in subdivision (c) of this section.

(c) Within amounts available therefor and subject to regulations established by him and notwithstanding any other provisions of this article, the commissioner may provide state aid to local governments and to voluntary agencies in an amount not to exceed one hundred percent of net operating costs of community residences for the mentally ill. The commissioner shall establish guidelines for determining the amount of state aid provided pursuant to this section. The guidelines shall be

designed to enable the effective and efficient operation of such residences and shall include, but need not be limited to standards for determining anticipated revenue, for retention and use of income exceeding the anticipated amount and for determining reasonable levels of uncollectible income. Such state aid to voluntary agencies shall not be granted unless there has been prior approval of the proposed community residence by the local governmental unit.

(d) The commissioner shall establish standards for the operation and funding of residential care centers for adults, including but not limited to:

1. criteria for admission to and continued residence in residential care centers for adults, including curfews, restrictions against on-site use of alcohol and controlled substances and criminal involvement. For residential care centers for adults licensed or established after April first, nineteen hundred eighty-eight criteria for admission shall also include but not be limited to, in the case of centers on the grounds of existing state operated psychiatric hospitals, the availability of at least twenty-five percent of the placements for community clients. In the case of community based residential care centers for adults, a minimum of fifty percent of the placements within a region shall be reserved for community clients. For the purposes of this section a community client is any person who, immediately prior to admission to the residential care center for adults, was not a resident of a state operated psychiatric hospital for more than thirty consecutive days, or if such person was residing in the community immediately prior to admission to the residential care center for adults, was not a resident of a state operated psychiatric hospital within the previous thirty days;

2. provision of on-site services by residential care centers for adults which shall include but not be limited to, case management, medication management, and development of a recommended service plan for each resident for necessary social, vocational and clinical services;

3. periodic review of services provided by residential care centers for adults;

4. staffing patterns for residential care centers for adults which shall be sufficient to provide on-site supervision twenty-four hours per day at each facility; and

5. guidelines for determining state aid to residential care centers for adults as described in subdivisions (e) and (f) of this section.

(e) Within amounts available therefor and notwithstanding any other provisions of this article, the commissioner may provide state aid to local governments and to voluntary agencies for the operation of residential care centers for adults in accordance with paragraph one of this subdivision, and may provide state aid to local governments, voluntary agencies, and other individuals or organizations certified to operate residential care centers for adults, in accordance with paragraph two of this subdivision.

1. The commissioner may provide state aid in an amount not to exceed one hundred percent of net operating costs of residential care centers for adults. The commissioner shall establish guidelines for determining the amount of state aid provided pursuant to this paragraph.

2. The commissioner may provide state aid through the payment of fees for reimbursable services. For purposes of this paragraph, reimbursable services include, but are not limited to, room and board. The commissioner shall establish standards for programs funded under this section and shall by rule or regulation annually establish fees for each reimbursable service, subject to the approval of the director of the budget. Fees may be varied for geographic reasons or for other good cause shown.

(f) Within amounts available therefor, the commissioner may provide state aid to local governments and voluntary agencies for capital costs for residential care centers for adults at the rate of up to fifty percent of such capital costs; provided, however, that no such state aid shall be granted unless the recipient enters into an agreement in a form acceptable to the commissioner guaranteeing that the residential care center for adults will be operated by the recipient or made available at no cost to another provider of services or the office of mental health

for no less than twenty years, and grants the state such security and real property interests as the commissioner may require.

(g) No psychiatric center shall have more than one residential care center for adults on its grounds unless the commissioner of mental health submits a report to the legislature and the governor demonstrating the appropriateness of such additional residential care center for adults. After October first, nineteen hundred eighty-seven, the commissioner shall not convert inpatient buildings on the grounds of a psychiatric center to a residential care center for adults unless such buildings are vacant, nor cause such buildings to be vacated solely for the purposes of establishing a residential care center for adults.

§ 41.45 Development grants for residential care centers for adults.

The commissioner of mental health is authorized, within appropriations made therefor, to make grants to local governmental units and voluntary agencies for up to one hundred percent of the reasonable pre-operational costs associated with efforts to establish residential care centers for adults, including legal fees and initial management staffing.

§ 41.46 Disclosure by members, officers and employees.

In the event that an agency licensed by the office for people with developmental disabilities, the office of mental health or the office of alcoholism and substance abuse services enters into an agreement or has entered into an agreement for the purchase, lease, rehabilitation or improvement of real property or a cooperative share in real property, any employee who receives an annual salary in excess of thirty thousand dollars, or any board member, or officer of such agency who has a direct or indirect interest either financial or beneficial in such property including the interest of any person for whom he or she is related by consanguinity or affinity, shall disclose such interest prior to the making of such agreement or at the time of acquisition of such interest. Disclosure pursuant to this section shall be made in writing to the board of directors of such agency and shall indicate the material facts

as to the member's, officer's, employee's or relative's interest in such property or cooperative share. Such disclosure shall be filed with the secretary of the corporation and entered on the minutes of a meeting of the board. Such disclosure shall also be forwarded in writing to the appropriate commissioner and to the director of community services of the local governmental unit within which the property or cooperative share is located prior to the approval of public funding related to the property or cooperative share which is the subject of disclosure made pursuant to this section or at the time of the acquisition of such interest, whichever occurs later.

§ 41.47 Community support services program.

(a) As used in this section:

(1) "Approved reimbursable rate" means the maximum rate of payment per unit of service established by the commissioner of mental health pursuant to subdivision (e) of this section, or the actual unit cost of providing community support services, whichever is less, minus revenue.

(2) "Core services" means the daily managing and monitoring of the implementation of the community support services program within a defined geographical area.

(3) "Designated adult home" means an adult care facility which is licensed by the commissioner of social services pursuant to article seven of the social services law, and which has been designated by the commissioner of mental health as containing a significant number of mentally ill persons who are in need of community support services.

(4) "Designated shelter for the homeless" means a shelter for the homeless which is licensed by the commissioner of social services pursuant to article seven of the social services law, and which has been designated by the commissioner of mental health as containing a significant number of mentally ill persons who are in need of community support services.

(5) "Designated single room occupancy residence" means a single room occupancy, as such term is defined in the multiple dwelling law or multiple residence law, whichever is applicable, which has been designated by the commissioner of mental health as containing a significant number of mentally ill persons who are in need of community

support services.

(6) "Functionally disabled as a result of mental illness" means a person who has a severe, chronic disability which:

(i) is caused by a medically determined mental illness, as evidenced by a primary psychiatric diagnosis;

(ii) is likely to continue for a prolonged period; and

(iii) results in substantial functional limitations in three or more of the following areas: (A) self-care, (B) social functioning, (C) activities of daily living, (D) economic self-sufficiency, (E) self-direction, and (F) ability to concentrate.

(7) "Provider of services" means the local governmental unit, voluntary agency, proprietary agency, association, or corporation which provides the community support services.

(8) "Qualified residence" means a community residence, residential care center for adults, family care home, or residential treatment facility for children and youth which is licensed or operated by the office of mental health.

(9) "Revenue" shall include:

(i) reimbursement for operating costs for community support services received from other local governmental units or from state agencies other than the office of mental health, provided that revenue shall not include money received from any source, in the form of grants, awards or contracts, for purposes other than the support of such operating costs;

(ii) federal aid received for such operating costs;

(iii) fees received from patients, or on their behalf, from public and private health insurance and medical aid programs;

(iv) other income received from the operation of the community support services program; and

(v) interest and dividends accruing from funds received pursuant to this section.

(b) The community support services program shall include services and programs such as: case management services, advocacy services, clinic services, day treatment, day training, continuing treatment, homemaker services, housekeeping services, on-site rehabilitation services, sheltered workshop and other vocational programs, psychosocial clubs, neighborhood drop-in centers, transportation services, non-residential crisis services, outreach services, and other services approved by the

commissioner.

(c) (1) The commissioner may, upon the application of a local governmental unit, and within the limits of appropriation therefore, grant state aid to such local governmental unit for one hundred percent of the approved costs of providing community support services to eligible persons, which shall not exceed the approved reimbursable rate, and the approved costs of providing core services. Local governmental units which receive state aid pursuant to this subdivision either shall directly provide community support services or shall enter into contracts with providers of services for the provision of such services. Such local governmental units may also provide core services or contract with voluntary agencies for the provision of such core services.

(2) Persons who are otherwise ineligible to receive community support services pursuant to subdivision (d) of this section, shall be considered to be eligible to receive such services for purposes of paragraph one of this subdivision, if they are certified pursuant to subdivision (d) of this section to be eighteen years of age or older, to be functionally disabled as a result of mental illness and to have an ability to remain in the community which would be seriously jeopardized without the provision of community support services, but who do not meet the eligibility criteria of paragraph two or three of subdivision (d) of this section, provided however, that the provider of services shall make a reasonable effort to determine such persons' eligibility and, provided further, that no more than ten percent of the persons served by a local governmental unit or a provider of services which directly contracts with the office of mental health shall be otherwise ineligible persons.

(d) (1) Persons who shall be eligible for community support services shall include individuals who are eighteen years of age and older, who are functionally disabled as a result of mental illness, whose ability to remain in the community would be seriously jeopardized without the provision of community support services, and who satisfy the criteria in either paragraph two or three of this subdivision. Such eligibility shall be certified by a licensed psychiatrist, nurse, psychologist, licensed clinical social worker or a licensed master social worker under the supervision of a physician, psychologist or licensed clinical social worker who is approved by a local governmental unit, a core service agency, or the commissioner to certify individuals as being eligible for

community support services.

(2) Persons who may be certified as permanently eligible to receive community support services pursuant to paragraph one of this subdivision shall include individuals who are determined to be eligible pursuant to regulations promulgated by the commissioner of mental health and shall include but not be limited to: (i) persons who have received inpatient psychiatric services in a hospital, or who have resided in a qualified residence or a designated adult home for a period or periods of time as established in such regulations of the commissioner; (ii) persons who are in receipt of supplemental security income benefits or social security disability insurance benefits pursuant to the federal social security act, provided that individuals who are in receipt of supplemental security income benefits must have been determined to be eligible for such benefits prior to reaching sixty-five years of age; (iii) persons who are receiving community support services on the effective date of this act pursuant to the regulations of the commissioner in effect on such date, who were determined to be eligible for such services based upon a prior history of inpatient hospitalization; and (iv) other persons who have received specified psychiatric services, as established pursuant to the regulations of the commissioner.

(3) Persons who may be certified as eligible to receive community support services pursuant to paragraph one of this subdivision shall include individuals who are residing in a designated adult home, a designated shelter for the homeless, a designated single room occupancy residence, a qualified residence, or who are homeless mentally ill persons. Such persons shall be considered eligible for community support services for the duration of their participation in such community support services, and such persons who need such services shall continue to be eligible to receive such services for a period of one year after receiving any such services.

(4) Notwithstanding the provisions of paragraph three of this subdivision, persons who are residing in designated adult homes or in designated shelters for the homeless, or who are homeless persons, may receive on-site rehabilitation services or outreach services provided under this section without a determination of eligibility as otherwise required under this subdivision.

(e) (1) The commissioner shall annually establish a schedule of maximum rates of payment per unit of service for reimbursable community support services. In establishing such maximum rates of payment per unit of service the commissioner may consider geographical variations and other relevant considerations. Such rates shall equal the medical assistance rates established pursuant to section 43.02 of this chapter, when applicable. Upon the application of the local governmental unit or a provider of services which directly contracts with the office of mental health to provide community support services, the commissioner may authorize additional reimbursement for a period of three local fiscal years after the effective date of this act, upon a showing of extraordinarily high costs of providing community support services and extraordinarily high revenue receipts, which have been demonstrated to be appropriate.

(2) The commissioner shall establish revenue goals for services, provided, however, the commissioner may approve local services plans or may enter into direct contracts with providers of services which substitute alternative revenue goals for individual providers of services based upon appropriate documentation and justification, as required by the commissioner.

(f) Prior to entering into contracts for the provision of community support services, the office of mental health and local governmental units shall consider the following:

(1) the service needs of mentally ill persons in the geographical area in which the community support services program operates;

(2) the capacity of the program to meet identified service needs;

(3) the current availability of services for mentally ill persons in the area, including the special needs of ethnic minorities and non-English speaking mentally ill persons;

(4) the extent to which community support services authorized by the contract will be integrated with other available services in the area to more effectively maintain mentally ill persons in the community;

(5) the availability of resources for such services;

(6) the extent to which the community support services authorized by the contract are consistent and integrated with the applicable local services plan of the area to be served; and

(7) the extent to which such contracts conform with the minimum

contractual requirements as established by the commissioner.

(g) The commissioner may enter into a direct contract for the provision of community support services when the commissioner determines, after the approval of the local services plan and the allocation of state aid therefore, that such direct contract is necessary to assure that additional community support services are available to persons who are functionally disabled as a result of mental illness and are eligible for community support services. Before entering into a direct contract with a provider located within the geographic area of a local governmental unit which receives state aid for community support services pursuant to this section, the commissioner shall notify the local governmental unit and give the director of the local governmental unit an opportunity to appeal the need for such direct contract. Such appeals shall be informal in nature and the rules of evidence shall not apply.

(h) In order to qualify for one hundred percent state aid pursuant to this section in any local fiscal year local governmental units shall assure that the local tax levy share of expenditures for net operating costs pursuant to an approved local services plan for services provided to mentally ill persons pursuant to section 41.18 of this article shall be equal to or greater than the local tax levy share of such expenditures under an approved local services plan in the last complete local fiscal year preceding the effective date of this section, provided, however, any such required maintenance of expenditures under this subdivision for local governmental units may be reduced to reflect the local governmental share of revenue applicable to increased payments made by governmental agencies pursuant to title eleven of article five of the social services law, which are a result of increased efficiencies in the collection of such revenue and which represent an increased proportion of the total local services operating costs from the prior local fiscal year. The commissioner shall be authorized to reduce payments made to local governmental units pursuant to this article, in the following local fiscal year, for failure to maintain expenditures in accordance with this subdivision.

(i) The provisions of subdivision (h) of this section shall not apply to a local governmental unit in any local fiscal year in which the total amount of state aid granted to the local governmental unit for net

operating costs under section 41.18 of the article is less than such amount of state aid granted in the local fiscal year preceding the effective date of this section, or in any local fiscal year in which the total amount of state aid granted to the local governmental unit under this section, plus the total amount of direct contracts entered into between the commissioner and providers of services for the provision of community support services to eligible residents of such local governmental unit, shall be less than the total amount of such aid and direct contracts in the first local fiscal year following the effective date of this section.

(j) The commissioner is authorized and empowered to make inspections and examine records of a local governmental unit receiving state aid under this section or a provider of services which directly contracts with the office of mental health for the provision of community support services. Such examination shall include all medical service and financial records, receipts, disbursements, contracts, loans and any other moneys relating to the financial operation of the community support services program.

(k) A local governmental unit in receipt of a grant for the provision of community support services pursuant to subdivision (c) of this section, which is a unit of a local government with a population of less than one hundred thousand or which has total program expenditures for mentally ill persons under this article equal to five hundred thousand dollars or less in a local fiscal year, shall be permitted to commingle such funds and the clients receiving community support services with other local mental health program funds or clients, including local mental health program funds and clients of other local governmental units. Such local governmental unit shall be required to submit a plan to the commissioner which shall describe how the goals and objectives of the community support services program shall be maintained under such an arrangement, and such plan must be approved by the commissioner prior to its implementation.

(l) No provision of this section shall be interpreted to create an entitlement for any individual to receive community support services.

(m) The commissioner is authorized to promulgate regulations to implement the provisions of this section.

§ 41.48 Real property acquisition options.

(a) Notwithstanding any inconsistent provision of this article and within appropriations made therefor, the commissioners of the office of mental health and the office for people with developmental disabilities are authorized upon the application of voluntary agencies, to make payments for the reasonable price of options to acquire an interest in real property, for the purpose of establishing a community mental hygiene facility. Such applications shall be made in the manner and on forms prescribed by the appropriate commissioner. Sellers of real property who are required to disclose financial or other beneficial interests in such property under section 41.46 of this article shall not be eligible to receive payments under this section.

(b) The comptroller is authorized, pursuant to section one hundred fifteen of the state finance law, to establish a cash advance account for the purpose of payment of options under this section. Such payments may only be made by a bonded employee, designated by the appropriate commissioner, from the cash advance account established for such purpose.

(c) As used in this section the term "reasonable price" shall mean an amount that is not in excess of guidelines developed by the commissioner of the office of mental health or the commissioner of the office for people with developmental disabilities and approved by the director of the budget and the state comptroller.

*** § 41.49 Adolescent suicide prevention program.**

1. Within amounts appropriated, the office of mental health is hereby authorized and directed to establish and conduct, in consultation with and upon the approval of the council on children and families, a special program, the purpose of which shall be to provide grants to public or private not-for-profit organizations, or public or private schools, acting alone or in concert with others, in order to educate the general population, and in particular parents, teachers, clergy, health and mental health professionals and adolescents themselves of the positive actions that can be taken to identify and treat adolescents who are at

high risk for suicide. For purposes of this section, the term "adolescent" shall mean any person under the age of twenty-one.

2. The commissioner shall in consultation with and upon the approval of the council on children and families promulgate standards to determine the eligibility of applicants for the grants herein authorized and be entitled to receive on appropriate forms such information as he deems necessary and relevant in making such determination. Such application to the extent possible shall include:

- a. the projected impact and effectiveness of the program in meeting the community's need for adolescent suicide prevention programs;
- b. coordination with other community and/or school services;
- c. other sources of revenue available;
- d. the start up and continuing operating costs of such program;
- e. the number and age of youth expected to be reached by such program;
- f. the range and type of services to be offered and the number and types of personnel to be employed;
- g. a description of an outreach component of the program;
- h. methods to be used to increase the sensitivity of professionals and the public toward identifying youth at risk of suicide; and
- i. such other information as deemed pertinent by the commissioner.

3. The commissioner in consultation with the council on children and families shall specify methods to evaluate the effectiveness of proposed projects. The commissioner in consultation with and upon the approval of the council on children and families shall review and where necessary, require modifications and upon such modifications, approve or disapprove applications within thirty days of the receipt of the initial or

modified application, whichever is appropriate. All applications approved by the commissioner in consultation with the council on children and families shall include a commitment to use appropriate accounting and fiscal control procedures which shall include the filing of an annual financial statement by each provider so as to ensure:

- a. the proper disbursement and accounting for funds received;
- b. appropriate written records regarding the population served and type and extent of services rendered by the provider;
- c. confidentiality standards so as to ensure the confidentiality of records of persons receiving services; and
- d. other funds, public or private, whenever resources are available.

4. Upon approval of each grant the commissioner shall contract with each grantee for a period of time not to exceed one year, but can extend such contract for one year periods when the commissioner after consulting the council on children and families determines it is appropriate.

5. Each grantee receiving payments hereunder shall submit to the commissioner within thirty days prior to the expiration of the contract a report following guidelines prepared by the commissioner which shall include:

- a. the information specified in subdivision two of this section;
- b. an assessment of the impact of the program on adolescents who are at high risk for suicide attempts;
- c. the extent to which the program coordinated services with other community programs; and
- d. any other information deemed relevant by the commissioner.

6. The commissioner shall prepare a summary of the reports required by subdivision five of this section, and forward this summary to the council on children and families for inclusion in its annual report and shall include such information in the annual report of the office of mental health.

7. The commissioner in consultation with the council on children and families shall promulgate such rules and regulations necessary and proper to implement the provision of this section.

* NB There are 2 § 41.49's

*** § 41.49 Community based mental health services for seriously emotionally disturbed children.**

1. As used in this section:

"Seriously emotionally disturbed children" shall mean persons under the age of eighteen who have a serious, persistent disability which:

(i) is caused by a medically determined mental illness as evidenced by a primary psychiatric diagnosis by a physician, or is caused by other serious emotional disturbance as defined by regulations of the commissioner of mental health;

(ii) has continued or is likely to continue for a period of at least one year;

(iii) would cause substantial risk of psychiatric hospitalization in the absence of community based mental health services; and

(iv) results in substantial functional limitations in two or more of the following areas: (A) self-care at an appropriate developmental level, (B) receptive and expressive language, (C) learning, (D) self-direction, and (E) capacity for living in a family environment.

2. The commissioner of mental health is authorized, within appropriations made therefor, to make grants to local governmental units for one hundred percent of the net operating costs of community based programs approved by his office to serve seriously emotionally disturbed children. Grants provided under this section shall only be used to expand existing services or to create new services for seriously

emotionally disturbed children and shall not supplant existing services for such individuals. The commissioner shall promulgate rules and regulations for the operation and funding of such programs. Such rules and regulations shall include but not be limited to, eligibility and program requirements, and standards for reimbursement. Such programs shall be designed to provide mental health services to seriously emotionally disturbed children in the community who, absent such services, would experience substantial risk of new or additional psychiatric hospitalization, or would experience substantial risk of serious functional disability as a result of their mental illness.

3. Nothing in this section shall be deemed to diminish the education department's responsibility for the education of children with handicapping conditions.

4. Notwithstanding any other provision of this article, in order to qualify for one hundred percent state aid pursuant to this section, local governmental units shall assure that local contributions for expenditures in any local fiscal year for local services provided to mentally ill persons made pursuant to this article, as applicable, shall be equal to or greater than the amount expended by such local governmental unit in the last complete local fiscal year preceding the effective date of this section. The commissioner shall be authorized to reduce payments made to local governmental units which have received grants pursuant to this section, in the following local fiscal year, for failure to maintain expenditures in accordance with this subdivision.

5. The commissioner of mental health shall, no later than October first, nineteen hundred eighty-nine and every year thereafter, issue a report to the governor and the legislature regarding the implementation of the section.

* NB There are 2 § 41.49's

*** § 41.50 Development grants for comprehensive psychiatric emergency programs.**

The commissioner of mental health may, subject to the approval of the director of the budget, make grants to local governmental units, voluntary agencies, and general hospitals licensed pursuant to article twenty-eight of the public health law, for up to one hundred percent of the reasonable preoperational costs associated with efforts to establish comprehensive psychiatric emergency programs, including reasonable professional fees, reasonable and necessary fees paid to secure financing, other fees for services which are necessary for project development, initial staffing, furniture, equipment, reasonable rehabilitation costs, and other reasonable development costs approved by the commissioner of mental health.

* NB Repealed July 1, 2027

*** § 41.51 State aid for costs of comprehensive psychiatric emergency programs.**

(a) Notwithstanding any inconsistent provision of this article, local governments may be granted state aid, subject to appropriations made therefor, for up to one hundred percent of the net operating costs incurred during the local fiscal year by such local governments, or by voluntary agencies pursuant to contract with such local governments, for the operation of comprehensive psychiatric emergency programs licensed by the commissioner of mental health.

(b) The commissioner of mental health may, subject to the approval of the director of the budget, directly contract with general hospitals licensed pursuant to article twenty-eight of the public health law, to reimburse approved operating and capital costs of comprehensive psychiatric emergency programs operated by such general hospitals. Before entering into a direct contract with a general hospital, the commissioner shall notify each local governmental unit located within the program's catchment area and give the director of the local governmental unit an opportunity to appeal the need for such direct contract. Such appeals shall be informal in nature and the rules of evidence shall not apply.

* NB Repealed July 1, 2027

§ 41.52 Community residential services for alcoholism.

(a) The commissioner of alcoholism and substance abuse services is authorized, within appropriations made therefor, to establish a continuum of community residential services for alcoholism.

(b) The commissioner shall establish standards for the operation and funding of community residential services, including but not limited to:

(1) criteria for admission to and continued residence in each type of community residence;

(2) periodic evaluation of services provided by community residences;

(3) staffing patterns for each type of community residence; and

(4) guidelines for determining state aid to community residences, as described in subdivision (c) of this section.

(c) Within amounts available therefor and subject to regulations established by the commissioner and notwithstanding any other provisions of this article, the commissioner may provide state aid to local governments and to voluntary agencies in an amount up to one hundred percent of net operating costs of community residences for alcoholism services. The commissioner shall establish guidelines for determining the amount of state aid provided pursuant to this section. The guidelines shall be designed to enable the effective and efficient operation of such residences and shall include, but need not be limited to, standards for determining anticipated revenue, for retention and use of income exceeding the anticipated amount and for determining reasonable levels of uncollectible income. Such state aid to voluntary agencies shall not be granted unless the proposed community residence is consistent with the relevant local services plan adopted pursuant to section 41.18 of this article.

§ 41.53 Community residence development grants for alcoholism services.

(a) The commissioner of alcoholism and substance abuse services is authorized, within appropriations made therefor, to make grants to local governmental units and voluntary nonprofit agencies developing an alcoholism community residence as defined in subdivision thirty-eight of section 1.03 of this chapter. Such grants shall be limited to the development costs incurred prior to the operation of a community residence. Development costs which may be eligible for up to one hundred

percent reimbursement under this grant include:

- (1) reasonable legal and other professional fees;
- (2) initial staffing;
- (3) up to six months rent;
- (4) furniture; and

(5) reasonable rehabilitation costs within guidelines established by the division of the budget.

(b) Application for grants shall be made in the manner and on forms prescribed by the commissioner. The commissioner shall establish a schedule, subject to the approval of the director of the division of the budget, indicating the maximum development cost per bed for such community residences. Such schedule may include varying rates for distinct geographic areas of the state, if in the determination of the commissioner the location of an eligible community residence has direct bearing on the level of development costs. The commissioner may also establish varying rates based on the size of an eligible community residence.

(c) No grant will be awarded by the commissioner if the projected per bed development cost for the community residence exceeds the schedule established in subdivision (b) of this section.

(d) No such grant will be awarded unless the community residence is consistent with the local services plan, pursuant to this article.

(e) The state comptroller, or his legally authorized representative, is authorized and empowered to examine the books and accounts of the offices relating to program development grants and from time to time to examine the books and accounts of each local governmental unit or voluntary nonprofit agency receiving such grants, including its receipts, disbursements, contracts, leases, loans and any other moneys relating to its financial operation.

(f) Payments pursuant to this section shall be made in lieu of state aid for operating costs payable pursuant to any other provision of this article.

*** § 41.54 Roles and responsibilities of certain board members.**

Within appropriations made therefor, the commissioner of the

appropriate office within the department of mental hygiene shall provide appropriate information to members of boards of directors of organizations licensed to provide services to mentally disabled persons relevant to their appropriate roles and responsibilities as members of such boards as defined in applicable laws, rules and regulations. This information may be in the form of a training manual made available to such boards of directors.

* NB There are 2 § 41.54's

*** § 41.54 Employee assistance programs.**

(a) The director of the division of alcoholism and alcohol abuse may, within appropriations made therefor, provide assistance in establishing and maintaining employee assistance programs.

(b) Such assistance may be provided to a consortium, a not-for-profit corporation that provides employee assistance program services to two or more of the following:

- (1) an employer of less than seven hundred fifty employees;
- (2) a labor organization;
- (3) a professional organization;
- (4) a community organization; or

(5) an employer of an economically distressed industry or located in an economically distressed region, or a business owned by or employing a high proportion of women or minorities.

(c) The division of alcoholism and alcohol abuse shall adopt rules and regulations to effectuate the provisions of this section, in consultation with other appropriate state agencies. Such rules and regulations shall include, but not be limited to, provisions relating to:

(1) the establishment of an advisory board, which shall work in consultation with the advisory council on alcoholism and substance abuse services, and whose membership shall include, but not be limited to, individuals from the occupational programs, professions and representatives of small businesses and labor organizations, and whose duties shall include, but not be limited to, recommendation of criteria for funding, and methods of determining program accountability;

(2) procedures for approval of funding for a program, including, but

not limited to, elements necessary for the development and implementation of, and qualifications necessary for the staffing of, employee assistance program services;

(3) criteria for the confidentiality and maintenance of records; and

(4) minimum program standards for the operation of effective and appropriate employee assistance programs.

(d) Within amounts available therefor and subject to regulations established by the commissioner and notwithstanding any other provisions of this article, financial assistance to an employee assistance program shall not exceed eighty-five percent of the non-capital expenditures of the program's first year of operation for such year, seventy percent of such expenditures for the program's second year of operation, fifty percent for the program's third year of operation, and thirty percent of such expenditures for the fourth year of operation. No program shall receive financial aid under this section after completion of the fourth year.

(e) Applications for assistance shall be made in the manner prescribed by the director.

* NB There are 2 § 41.54's

*** § 41.55 Community mental health support and workforce reinvestment program.**

(a) Community mental health support and workforce reinvestment funds shall be annually allocated by the commissioner based upon the following criteria:

(1) the efficiency and effectiveness of the use of funding within the local governmental unit for the delivery of services to persons with serious mental illness in order to assure that resources are made available to fund mental health services to persons discharged into the community; and

(2) other relevant factors that require the maintenance of existing mental health services and the development of new mental health services.

(b) Amounts provided pursuant to this section shall only be used to fund mental health workforce related activities, including recruitment and retention initiatives and training programs, and other general

programmatic activities to help ensure a stable mental health system. Such grants and other funds shall not be used for capital costs associated with the development of community mental health support and workforce reinvestment services.

(c) Prior to entering into contracts for the provision of services funded pursuant to subdivision (b) of this section, the office of mental health and any local governmental unit receiving such funds shall consider the following:

(1) the service needs of persons with serious mental illness, including children and adolescents with serious emotional disturbances, in the geographical area in which the community mental health support and workforce reinvestment program operates;

(2) the capacity of the program to meet identified service needs and specified performance standards related to access, admission, referral, and service coordination and delivery;

(3) the extent to which community mental health support and workforce reinvestment services authorized by the contract are consistent and integrated with the plan prepared and approved pursuant to section 41.16 of this article and other applicable provisions of this article; and

(4) the reliability and capability of the provider, including its expertise, prior experience, financial responsibility, record of adherence to law, record of providing quality care and services, and ability to deliver appropriate services in a cost-effective and efficient manner to persons with serious mental illness. The commissioner is authorized to promulgate regulations to establish minimum contractual obligations in accordance with the provisions of this subdivision.

(d) The commissioner is authorized and empowered to make inspections and examine records of a local governmental unit receiving state aid under this section or a provider of services funded pursuant to subdivision (b) of this section. Such examination shall include all medical, service and financial records, receipts, disbursements, contracts, loans and other moneys relating to the financial operation of the provider.

(e) The amount of community mental health support and workforce reinvestment funds for the office of mental health shall be determined in the annual budget and shall include the amount of actual state

operations general fund appropriation reductions, including personal service savings and other than personal service savings directly attributed to each child and adult non-geriatric inpatient bed closure. For the purposes of this section a bed shall be considered to be closed upon the elimination of funding for such beds in the executive budget. The appropriation reductions as a result of inpatient bed closures shall be no less than one hundred ten thousand dollars per bed on a full annual basis, as annually recommended by the commissioner, subject to the approval of the director of the budget, in the executive budget request prior to the fiscal year for which the executive budget is being submitted. The methodologies used to calculate the per bed closure savings shall be developed by the commissioner and the director of the budget. In no event shall the full annual value of community mental health support and workforce reinvestment programs attributable to beds closed as a result of net inpatient census decline exceed the twelve month value of the office of mental health state operations general fund reductions resulting from such census decline. Such reinvestment amount shall be made available in the same proportion by which the office of mental health's state operations general fund appropriations are reduced each year as a result of child and adult non-geriatric inpatient bed closures due to census decline.

(f) Additional reinvestment amounts shall be made available for appropriation in the executive budget based upon state operation general fund appropriations directly attributed to the co-location or closure of psychiatric centers made pursuant to law. Such amount shall be made available at the same proportion by which the office of mental health state operations general fund appropriations are reduced each year as a result of facility co-locations and closures.

(g) The annual community mental health support and workforce reinvestment appropriation shall reflect the amount of state operations general fund appropriation reductions resulting from subdivisions (e) and (f) of this section. Within any fiscal year where appropriation increases are recommended for the community mental health support and workforce reinvestment program, insofar as projected inpatient census decline or facility co-locations or closures do not occur as estimated, and state operations general fund savings do not result, then the reinvestment appropriations shall be made available, as needed, for

transfer from the office of mental health general fund-aid to localities account to the office of mental health general fund-state purposes account to pay for any necessary inpatient expenses. The total community mental health support and workforce reinvestment appropriation also may include such additional appropriations, as shall be determined to be needed and approved by the legislature, to fund all the provisions of this section.

(h) Amounts made available to the community mental health support and workforce reinvestment program of the office of mental health shall be subject to annual appropriations therefor. Up to fifteen percent of the amounts so appropriated shall be made available for staffing at state mental health facilities and at least seven percent of the remaining funds may be allocated for state operated community services pursuant to this section.

(i) For purposes of this section, the term "state operations general fund" shall mean the office of mental health state operations general fund appropriations before any offset from the special revenue funds-other miscellaneous special revenue fund or mental hygiene patient income account.

(j) No provision in this section shall create or be deemed to create any right, interest or entitlement to services or funds that are the subject of this act, or to any other services or funds, whether to individuals, localities, providers or others, individually or collectively.

(k) All appropriations for community mental health support and workforce reinvestment services shall be adjusted in the following fiscal year to reflect the variance between the initial and revised estimates of census decline.

* NB Repealed March 31, 2027

§ 41.57 Compulsive gambling education and treatment program.

Notwithstanding any inconsistent provisions of this article and within amounts made available therefor by appropriation, the commissioner is authorized to develop, expand, operate or cause to be operated compulsive gambling education and treatment programs. The commissioner

may employ any consultants deemed necessary to effectuate the purpose of this section and enter into contract with any not-for-profit corporation for provision of appropriate services. On the thirtieth day of January after the effective date of this section and each January thirtieth thereafter, the commissioner shall submit to the governor and the legislature a report detailing the implementation of this section and making recommendations for future development of compulsive gambling education and treatment programs.

ARTICLE 43

FEES FOR SERVICES

Section 43.01 Fees and rates for department services.

43.02 Rates or methods of payment for services at facilities subject to licensure or certification by the office of mental health, the office for people with developmental disabilities or the office of alcoholism and substance abuse services.

43.03 Liability for fees.

43.04 Provider of services assessments.

43.05 Securing financial information.

43.06 Assessments.

43.07 Bill collection procedures.

43.09 Certain transactions void.

43.11 Refunds.

43.12 Electronic submission of periodic cost reports to the office for people with developmental disabilities.

§ 43.01 Fees and rates for department services.

(a) The department shall charge fees for its services to patients and residents, provided, however, that no person shall be denied services because of inability or failure to pay a fee.

(b) The commissioner may establish, at least annually, schedules of rates for inpatient services that reflect the costs of services, care, treatment, maintenance, overhead, and administration which assure maximum recovery of such costs.

In addition, the commissioner may establish, at least annually, schedules of fees for noninpatient services which need not reflect the costs of services, care, treatment, maintenance, overhead, and administration.

(c) The executive budget, as recommended, shall reflect, by individual facility, the costs of services, care, treatment, maintenance, overhead, and administration.

(d) All schedules of fees and rates which are established by the commissioner, shall be subject to the approval of the director of the division of the budget. Immediately upon their approval, copies of all schedules of fees and rates established pursuant to this section shall be forwarded to the chairman of the assembly ways and means committee and the chairman of the senate finance committee.

§ 43.02 Rates or methods of payment for services at facilities subject to licensure or certification by the office of mental health, the office for people with developmental disabilities or the office of alcoholism and substance abuse services.

* (a) Notwithstanding any inconsistent provision of law, payment made by government agencies pursuant to title eleven of article five of the social services law for services provided by any facility licensed by the office of mental health pursuant to article thirty-one of this chapter or certified by the office of alcoholism and substance abuse services pursuant to this chapter to provide inpatient chemical dependence services, as defined in section 1.03 of this chapter, shall be at rates or fees certified by the commissioner of the respective office and approved by the director of the division of the budget, provided, however, the commissioner of mental health shall annually certify such rates or fees which may vary for distinct geographical areas of the state and, provided, further, that rates or fees for service for inpatient psychiatric services or inpatient chemical dependence services, at hospitals otherwise licensed pursuant to article twenty-eight of the public health law shall be established in accordance with section two thousand eight hundred seven of the public health law and, provided, further, that rates or fees for services provided by any

facility or program licensed, operated or approved by the office for people with developmental disabilities, shall be certified by the commissioner of health; provided, however, that such methodologies shall be subject to approval by the office for people with developmental disabilities and shall take into account the policies and goals of such office.

* NB Effective until the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

* (a) Notwithstanding any inconsistent provision of law, payment made by government agencies pursuant to title eleven of article five of the social services law for services provided by any facility licensed by the office of mental health pursuant to article thirty-one of this chapter, certified by the office of addiction services and supports pursuant to this chapter to provide inpatient chemical dependence services, as defined in section 1.03 of this chapter, or facilities jointly licensed by the office of mental health and the office of addiction services and supports pursuant to article thirty-six of this title, shall be at rates or fees certified by the commissioner of the respective office or offices and approved by the director of the division of the budget, provided, however, the commissioner of mental health shall annually certify such rates or fees which may vary for distinct geographical areas of the state and, provided, further, that rates or fees for service for inpatient psychiatric services or inpatient chemical dependence services, at hospitals otherwise licensed pursuant to article twenty-eight of the public health law shall be established in accordance with section twenty-eight hundred seven of the public health law and, provided, further, that rates or fees for services provided by any facility or program licensed, operated or approved by the office for people with developmental disabilities, shall be certified by the commissioner of health; provided, however, that such methodologies shall be subject to approval by the office for people with developmental disabilities and shall take into account the policies and goals of such office.

* NB Effective on the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

* (b) Operators of facilities licensed by the office of mental health pursuant to article thirty-one of this chapter, licensed by the office for people with developmental disabilities pursuant to article sixteen of this chapter or certified by the office of alcoholism and substance abuse services pursuant to this chapter to provide inpatient chemical dependence services shall provide to the commissioner of the respective office such financial, statistical and program information as the commissioner may determine to be necessary. The commissioner of the appropriate office shall have the power to conduct on-site audits of books and records of such facilities.

* NB Effective until the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

* (b) Operators of facilities licensed by the office of mental health pursuant to article thirty-one of this chapter, licensed by the office for people with developmental disabilities pursuant to article sixteen of this chapter, certified by the office of addiction services and supports pursuant to this chapter to provide inpatient chemical dependence services, or facilities jointly licensed by the office of mental health and the office of addiction services and supports pursuant to article thirty-six of this title, shall provide to the commissioner of the respective office such financial, statistical and program information as the commissioner may determine to be necessary. The commissioner of the appropriate office or offices shall have the power to conduct on-site audits of books and records of such facilities.

* NB Effective on the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

(c) The commissioner of the office of mental health, the commissioner of the office for people with developmental disabilities and the commissioner of the office of alcoholism and substance abuse services shall adopt rules and regulations to effectuate the provisions of this section. Such rules and regulations shall include, but not be limited to, provisions relating to:

(i) the establishment of a uniform statewide system of reports and audits relating to the quality of care provided, facility utilization and costs of providing services; such a uniform statewide system may

provide for appropriate variation in the application of the system to different classes or subclasses of facilities licensed by the office of mental health pursuant to article thirty-one of this chapter or licensed or operated by the office for people with developmental disabilities pursuant to article sixteen of this chapter, or certified by the office of alcoholism and substance abuse services pursuant to this chapter to provide inpatient chemical dependence services; and

(ii) methodologies used in the establishment of the schedules of rates or fees pursuant to this section provided, however, that the commissioner of health shall adopt rules and regulations including methodologies developed by him or her for services provided by any facility or program licensed, operated or approved by the office for people with developmental disabilities; provided, however, that such rules and regulations shall be subject to the approval of the office for people with developmental disabilities and shall take into account the policies and goals of such office.

§ 43.03 Liability for fees.

(a) The patient, his estate, his spouse, his parents or his legal guardian if he is under twenty-one years of age, and his committee and any fiduciary or representative payee holding assets for him or on his behalf are jointly and severally liable for the fees for services rendered to the patient. Parents or spouses of parents are not liable for the fees for services rendered to a disabled child under twenty-one years of age, who does not share the common household even if the child returns to the common household for periodic visits. For purposes of this section a child is considered disabled if she/he meets the definition of a blind or disabled child under regulations prescribed by the social security act for medical assistance.

(b) The commissioner may reduce or waive fees in cases of inability to pay or other reason. If the commissioner discovers that assets existing at the time of determination were not disclosed because of fraud or negligence, the department may collect the difference between the amount paid and the actual cost of services. The acceptance of less than the full fee or the waiver of a fee or any part thereof shall not be construed to release a patient, his estate, committee or guardian, the

trustee of a fund established for his support, or any fiduciary or payee of funds for or on behalf of a patient from liability for payment of the full fee.

(c) Patients receiving services while being held pursuant to order of a criminal court, other than patients committed to the department pursuant to section 330.20 of the criminal procedure law, or for examination pursuant to an order of the family court shall not be liable to the department for such services. Fees due the department for such services shall be paid by the county in which such court is located except that counties shall not be responsible for the cost of services rendered patients committed to the department pursuant to section 330.20 of the criminal procedure law or patients committed to the department pursuant to article ten of this chapter.

(d) The trustee of a supplemental needs trust for the benefit of a patient, which trust conforms to the provisions of section 7-1.12 of the estates, powers and trusts law, shall not be deemed to be holding assets for the patient or on his or her behalf, as described in such section 7-1.12. As such, neither the trust nor the trustee shall be liable for the fees for services rendered to the patient.

(e) Notwithstanding any other provision of this section, the commissioner shall not collect any fees for services from any monies paid to or to be paid to or on behalf of a patient, his estate or a representative of a patient or his estate, as a result of or in return for a release of liability or a court ordered settlement or judgment against the state arising from an act or omission of the state, the office or any employee or agent thereof, if such act or omission occurred during the course of confinement of or during the provision of care to such patient. Such monies shall not be offset or otherwise encumbered for the purpose of paying such fees.

§ 43.04 Provider of services assessments.

1. For purposes of this section, provider of services shall refer to (i) those providers as defined by subdivision five of section 1.03 of this chapter which are licensed by the office for people with developmental disabilities pursuant to article sixteen of this chapter

as intermediate care facilities for individuals with developmental disabilities, providers of day treatment services or specialty hospitals, except that on and after December first, nineteen hundred ninety-seven, provider of services shall not include specialty hospitals, and (ii), for purposes of paragraph (c) of subdivision two of this section only, the term provider of services, shall mean, and for purposes of this subdivision shall include, the office for people with developmental disabilities as the operator of intermediate care facilities for individuals with developmental disabilities. Providers of services are charged assessments on their gross receipts received from services and care related to intermediate care facilities, day treatment services, or specialty hospitals until November thirtieth, nineteen hundred ninety-seven, for individuals with developmental disabilities and other operating income, less personal needs allowances and refunds, on a cash basis in the percentage amounts and for the periods specified in subdivision two of this section. Such assessments shall be submitted by or on behalf of such providers of services to the commissioner of the office for people with developmental disabilities or his or her designee.

2. (a) (i) For each provider of services in the categories of services set forth in subdivision one of this section located in Regions II and III, as defined in the methodology established pursuant to paragraph (ii) of subdivision (c) of section 43.02 of this article, the assessment shall be six-tenths of one percent of each such provider of services' gross receipts received for all services rendered within such service categories on a cash basis beginning January first, nineteen hundred ninety-one.

(ii) For each provider of services in the categories of services set forth in subdivision one of this section, excluding, on and after April first, nineteen hundred ninety-four, providers of day treatment services, located in Regions II and III, as defined in the methodology established pursuant to paragraph (ii) of subdivision (c) of section 43.02 of this article, an additional assessment shall be two and four-tenths percent of each such provider of services' gross receipts received for all services rendered within such service categories on a cash basis beginning April first, nineteen hundred ninety-two; provided,

however, such additional assessment shall be five and four-tenths percent of each such provider of services' gross receipts received for all services rendered within such service categories on a cash basis beginning April first, nineteen hundred ninety-six and ending March thirty-first, nineteen hundred ninety-seven.

(iii) For each provider of services in the categories of services set forth in subdivision one of this section, excluding, on and after April first, nineteen hundred ninety-four, providers of day treatment services, located in Regions II and III, as defined in the methodology established pursuant to paragraph (ii) of subdivision (c) of section 43.02 of this article, notwithstanding any other provision of this paragraph, the total assessment shall be six percent of each such provider's gross receipts received on a cash basis for all services rendered, beginning April first, nineteen hundred ninety-seven, and five and five-tenths percent of each such provider's gross receipts received on a cash basis for all services rendered, beginning January first, two thousand eight.

(b) (i) For each provider of services in the categories of services set forth in subdivision one of this section located in Region I, as defined in the methodology established pursuant to paragraph (ii) of subdivision (c) of section 43.02 of this article, the assessment shall be six-tenths of one percent of each such provider of services' gross receipts received for all services rendered within such service categories on a cash basis beginning July first, nineteen hundred ninety-one.

(ii) For each provider of services in the categories of services set forth in subdivision one of this section, excluding, on and after April first, nineteen hundred ninety-four, providers of day treatment services, located in Region I, as defined in the methodology established pursuant to paragraph (ii) of subdivision (c) of section 43.02 of this article, an additional assessment shall be two and four-tenths percent of each such provider of services' gross receipts received for all services rendered within such service categories on a cash basis beginning April first, nineteen hundred ninety-two; provided, however, such additional assessment shall be five and four-tenths percent of each such provider of services' gross receipts received for all services rendered within such service categories on a cash basis beginning April

first, nineteen hundred ninety-six and ending March thirty-first, nineteen hundred ninety-seven.

(iii) For each provider of services in the categories of services set forth in subdivision one of this section, excluding, on and after April first, nineteen hundred ninety-four, providers of day treatment services, located in Region I, as defined in the methodology established pursuant to paragraph (ii) of subdivision (c) of section 43.02 of this article, notwithstanding any other provision of this paragraph, the total assessment shall be six percent of each such provider's gross receipts received on a cash basis for all services rendered, beginning April first, nineteen hundred ninety-seven, and five and five-tenths percent of each such provider's gross receipts received on a cash basis for all services rendered, beginning January first, two thousand eight.

(c) (i) For the provider of services as set forth in clause (ii) of subdivision one of this section in the category of intermediate care facilities for individuals with developmental disabilities operated by the office for people with developmental disabilities, the assessment shall be six-tenths of one percent of the gross receipts received for all services rendered within such service category on a cash basis beginning April first, nineteen hundred ninety-five and ending March thirty-first, two thousand one.

(ii) For the provider of services as set forth in clause (ii) of subdivision one of this section in the category of intermediate care facilities for individuals with developmental disabilities operated by the office for people with developmental disabilities, an additional assessment shall be two and four-tenths percent of the gross receipts for all services rendered within such service category on a cash basis beginning April first, nineteen hundred ninety-five; provided, however, such additional assessment shall be five and four-tenths percent of the gross receipts received for all services rendered within such service category on a cash basis beginning April first, nineteen hundred ninety-six and ending March thirty-first, two thousand one.

(iii) For each provider of services as set forth in clause (ii) of subdivision one of this section in the category of intermediate care facilities for individuals with developmental disabilities operated by the office for people with developmental disabilities, notwithstanding any other provision of this paragraph, the total assessment shall be six

percent of the provider's gross receipts received on a cash basis for all services rendered, beginning April first, two thousand one, and five and five-tenths percent of the provider's gross receipts received on a cash basis for all services rendered, beginning January first, two thousand eight.

(d) Notwithstanding any other provisions of law to the contrary, for each provider of day treatment services, the assessment on each such provider's gross receipts for all services rendered on a cash basis shall be as follows: (i) for all such gross receipts received on or after April first, nineteen hundred ninety-nine, such assessment shall be two-tenths of one percent; (ii) for all gross receipts received on or after April first, two thousand, such assessment shall expire and be of no further effect.

3. The commissioner is authorized to contract with the article forty-three insurance law plans, or such other administrators as the commissioner shall designate, to receive and distribute provider of services assessment funds. In the event contracts with the article forty-three insurance law plans or other commissioner's designees are effectuated, the commissioner shall conduct annual audits of the receipt and distribution of the assessment funds. The reasonable cost and expenses of such administrators as approved by the commissioner, not to exceed for personnel services on an annual basis one hundred thousand dollars for all assessments established pursuant to this section, shall be paid from the assessment funds.

4. Gross receipts received from all services rendered within the service categories set forth in subdivision one of this section shall include, without limitation, all monies received on account of such services pursuant to rates of reimbursement established by the office for people with developmental disabilities and paid by the state, and shall not include, subject to the provisions of subdivision twelve of this section, charitable contributions, grants, donations, bequests and income from non-service related fund raising activities and governmental deficit financing.

5. Estimated payments by or on behalf of providers of services to the

commissioner of the office for people with developmental disabilities of funds due from the assessments pursuant to subdivision two of this section shall be made on a monthly basis. Estimated payments shall be due on or before the fifteenth day following the end of a calendar month to which an assessment applies.

6. (a) If an estimated payment made for a month to which an assessment applies is less than seventy percent of an amount the commissioner of the office for people with developmental disabilities determines is due, based on evidence of prior period moneys received by a provider of services or evidence of moneys received by such provider of services for that month, such commissioner may estimate the amount due from such provider of services and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(b) If an estimated payment made for a month to which an assessment applies is less than ninety percent of an amount the commissioner of the office for people with developmental disabilities determines is due, based on evidence of prior period moneys received by a provider of service or evidence of monies received by such provider of services for that month, and at least two previous estimated payments within the preceding six months were less than ninety percent of the amount due, based on similar evidence, such commissioner may estimate the amount due from such provider of services and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(c) Upon receipt of notification from the commissioner of the office for people with developmental disabilities of a provider of service's delinquency under this section, the comptroller or a fiscal intermediary designated by the director of the budget, or the commissioner of social services, shall withhold from the amount of any payment to be made by the state to a provider of services the amount of the deficiency determined under paragraph (a) or (b) of this subdivision or paragraph (d) of subdivision seven of this section. Upon withholding such amount, the comptroller or a designated fiscal intermediary, or the commissioner of social services, shall pay the commissioner of the office for people with developmental disabilities, or his designee, such amount withheld on behalf of the provider of services.

(d) The commissioner of the office for people with developmental

disabilities shall provide a provider of services with notice of any estimate of an amount due for an assessment pursuant to paragraph (a) or (b) of this subdivision or paragraph (d) of subdivision seven of this section at least three days prior to collection of such amount by such commissioner. Such notice shall contain the financial basis for such commissioner's estimate.

(e) In the event a provider of services objects to an estimate by the commissioner of the office for people with developmental disabilities pursuant to paragraph (a) or (b) of this subdivision or paragraph (d) of subdivision seven of this section of the amount due for an assessment, the provider of services, within sixty days of notice of an amount due, may request a hearing. If a hearing is requested, such commissioner shall provide the provider of services an opportunity to be heard and to present evidence bearing on the amount due for an assessment within thirty days after collection of an amount due or receipt of a request for a hearing, whichever is later. An administrative hearing is not a prerequisite to seeking judicial relief.

(f) The commissioner of the office for people with developmental disabilities may direct that a hearing be held without any request by a provider of services.

7. (a) Every provider of services shall submit reports on a cash basis of actual gross receipts received from all services rendered within the services categories set forth in subdivision one of this section to persons with developmental disabilities and operating income for each month as follows:

(i) for the period January first, nineteen hundred ninety-one through January thirtieth, nineteen hundred ninety-one, the report shall be filed on or before March fifteenth, nineteen hundred ninety-one.

(ii) for the period January first, nineteen hundred ninety-one through March thirty-first, nineteen hundred ninety-one and each quarter thereafter, the report shall be filed on or before the forty-fifth day after the end of the quarter.

(b) Every provider of services shall submit a certified annual report on a cash basis of gross receipts received in such calendar year from all services to persons with developmental disabilities and operating income. The reports shall be in such form as may be prescribed by the

commissioner of the office for people with developmental disabilities to accurately disclose information required to implement this section.

(c) Final payments shall be due for all providers of services for the assessments pursuant to subdivision two of this section upon the due date for submission of the applicable quarterly report.

(d) The commissioner of the office for people with developmental disabilities may recoup deficiencies in final payments pursuant to paragraph (c) of subdivision six of this section.

8. (a) If an estimated payment made for a month to which an assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner of the office for people with developmental disabilities on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus four percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's estimated payment, may be collected by the commissioner of the office for people with developmental disabilities pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

(b) If an estimated payment made for a month to which an assessment applies is less than seventy percent of the actual amount due for such month, a penalty shall be due and payable to the commissioner of the office for people with developmental disabilities of five percent of the difference between the amount paid and the amount due for such month when the failure to pay is for a duration of not more than one month after the due date of the payment with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. A penalty may be collected by such commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

(c) Overpayment by a provider of services of an estimated payment shall be applied to any other payment due from the provider of services pursuant to this section, or, if no payment is due, at the election of the provider of services shall be applied to future estimated payments or refunded to the provider of services. Interest shall be paid on overpayments from the date of overpayment to the date of crediting or refund at the rate determined in accordance with paragraph (a) of this subdivision if the overpayment was made at the direction of the commissioner. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar.

9. Funds accumulated, including income from invested funds, from the assessments specified in this section, including interest and penalties, shall be deposited by the commissioner of the office for people with developmental disabilities and credited to the general fund.

10. Notwithstanding any inconsistent provision of law or regulation to the contrary:

(a) the assessments pursuant to this section shall not be an allowable cost in the determination of reimbursement rates pursuant to this article:

(b) provided, however, that for purposes of determining rates of payment pursuant to this article for providers, the additional assessment imposed pursuant to the provisions of subparagraph (ii) of paragraph (a), subparagraph (ii) of paragraph (b) and subparagraph (ii) of paragraph (c) of subdivision two of this section shall be a reimbursable cost to be reflected as timely as practicable in rates of payment applicable within the assessment period, contingent, for payments by governmental agencies, on all federal approvals necessary by federal law and regulation for federal financial participation in payments made for beneficiaries eligible for medical assistance under title XIX of the federal social security act.

(c) provided, however, that for purposes of determining rates of payment pursuant to this article for providers, three-tenths of one percent of the assessment imposed pursuant to this section on the gross receipts of intermediate care facilities received on or after April first, nineteen hundred ninety-nine shall be a reimbursable cost to be

reflected as timely as practicable in rates of payment applicable within the assessment period, contingent, for payments by governmental agencies, on all federal approvals necessary by federal law and regulation for federal financial participation in payments made for beneficiaries eligible for medical assistance under title XIX of the federal social security act.

(d) provided, however, that for purposes of determining rates of payment pursuant to this article for providers, the assessment imposed pursuant to this section on the gross receipts of intermediate care facilities received on or after April first, two thousand shall be a reimbursable cost to be reflected as timely as practicable in rates of payment applicable within the assessment period, contingent, for payments by governmental agencies, on all federal approvals necessary by federal law and regulation for federal financial participation in payments made for beneficiaries eligible for medical assistance under title XIX of the federal social security act.

11. (a) The assessment shall not be collected in excess of six million two hundred thousand dollars from providers of services specified in subdivision two of this section for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the assessment collected pursuant to subdivision two of this section in excess of six million two hundred thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to providers of services by the commissioner of the office for people with developmental disabilities based on the ratio which a provider of services' assessment for such period bears to the total of the assessments for such period paid by such providers of services.

(b) The additional assessment shall not be collected in excess of thirty-six million one hundred thousand dollars from providers of services specified in subdivision two of this section for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the additional assessment collected pursuant to subdivision two of this section in excess of thirty-six million one hundred thousand dollars for the period of April

first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to providers of services by the commissioner of the office for people with developmental disabilities based on the ratio which a provider of services' additional assessment for such period bears to the total of the additional assessments for such period paid by such providers of services.

12. Each exclusion of sources of gross receipts received from the assessments effective on or after April first, nineteen hundred ninety-two established pursuant to this section shall be contingent upon either: (a) qualification of the assessments for waiver pursuant to federal law and regulation; or (b) consistent with federal law and regulation, not requiring a waiver by the secretary of the department of health and human services related to such exclusion; in order for the assessments under this section to be qualified as a broad-based health care related tax for purposes of the revenues received by the state pursuant to the assessments not reducing the amount expended by the state as medical assistance for purposes of federal financial participation. The commissioner of the office for people with developmental disabilities shall collect the assessments relying on such exclusions, pending any contrary action by the secretary of the department of health and human services. In the event the secretary of the department of health and human services determines that the assessments do not so qualify based on any such exclusion, then the exclusion shall be deemed to have been null and void as of April first, nineteen hundred ninety-two, and the commissioner of the office for people with developmental disabilities shall collect any retroactive amount due as a result, without interest or penalty provided the provider of services pays the retroactive amount due within ninety days of notice from the commissioner of the office for people with developmental disabilities to the provider of services that an exclusion is null and void. Interest and penalties shall be measured from the due date of ninety days following notice from the commissioner of the office for people with developmental disabilities to the provider of services.

§ 43.05 Securing financial information.

(a) A person who applies for the reduction or waiver of fees on the ground of inability to pay shall disclose all assets and shall file a release to permit the department to investigate resources and assets and to verify statements made in the application.

(b) The commissioner or his authorized representatives may develop sufficient financial information through investigations and shall have the power to initiate proceedings in a court of competent jurisdiction to discover property, including the examination and inventory of safe deposit boxes leased by a patient, and to otherwise secure payment from all patients or persons liable for them.

(c) Banking organizations, insurance companies, brokers, fiduciaries, business managers, guardians, trustees, representative payees of resources and assets of a patient, or any relative or person having knowledge of any resources and assets of a patient, upon request of the commissioner or his authorized representative, shall furnish full information on the resources and assets of a patient or of any person legally responsible for the support of a patient.

§ 43.06 Assessments.

1. Providers of services, as defined in this section, are charged assessments on their gross receipts received from all patient care services and other operating income less personal needs allowances and refunds on a cash basis in the percentage amounts and for the periods specified in subdivision two of this section. Such assessments shall be submitted by or on behalf of providers of services to the commissioner of mental health or his or her designee.

2. (a) Providers of services, for the purposes of this section, shall be hospitals licensed pursuant to article thirty-one of this chapter (which shall not include wards, wings, units or other parts of a hospital, as defined in article twenty-eight of the public health law,) and residential treatment facilities for children and youth, as defined in section 1.03 of this chapter.

(b)(i) For such hospitals which are providers of services, the assessment shall be six-tenths of one percent of each provider's gross

receipts received from all patient care services and other operating income on a cash basis beginning January first, nineteen hundred ninety-one for hospital or mental health-related services including but not limited to inpatient service, outpatient service and emergency service; provided, however, that for all such gross receipts received on or after December first, nineteen hundred ninety-eight, such assessment shall be two-tenths of one percent, and further provided that for all such gross receipts received on or after April first, nineteen hundred ninety-nine, such assessment shall be one-tenth of one percent, and further provided that such assessment shall expire and be of no further effect for all such gross receipts received on or after January first, two thousand.

(ii) If required pursuant to the provisions of subdivision thirteen of this section, for such hospitals which are providers of services, an additional assessment shall be one-tenth of one percent of each provider's gross receipts received from all patient care services and other operating income on a cash basis beginning April first, nineteen hundred ninety-two for hospital or mental health-related services including but not limited to inpatient service, outpatient service and emergency service; provided, however, that such additional assessment shall expire and be of no further effect for all such gross receipts received on or after December first, nineteen hundred ninety-seven.

(c)(i) For residential treatment facilities for children and youth, the assessment shall be six-tenths of one percent of each provider's gross receipts received from all patient care services and other operating income on a cash basis beginning July first, nineteen hundred ninety-one for hospital or mental health-related service including but not limited to inpatient service, outpatient service and emergency service; provided, however, that for all such gross receipts received on or after December first, nineteen hundred ninety-eight, such assessment shall be two-tenths of one percent, and further provided that for all such gross receipts received on or after April first, nineteen hundred ninety-nine, such assessment shall be one-tenth of one percent, and further provided that such assessment shall expire and be of no further effect for all such gross receipts received on or after January first, two thousand.

(ii) If required pursuant to the provisions of subdivision thirteen of

this section, for residential treatment facilities for children and youth, an additional assessment, shall be one-tenth of one percent of each provider's gross receipts received from all patient care services and other operating income on a cash basis beginning April first, nineteen hundred ninety-two for hospital or mental health-related service including but not limited to inpatient service, outpatient service and emergency service; provided, however, that such additional assessment shall expire and be of no further effect for all such gross receipts received on or after December first, nineteen hundred ninety-seven.

3. For all providers of services, gross receipts from patient care services and other operating income shall include, but not be limited to: (a) all moneys received for or on account of inpatient service, outpatient service, emergency service, or other hospital, mental health or mental health related service; and (b) all moneys received for or on account of such revenue sources as investment income, parking lots, cafeterias, gift shops, and rental income, provided, however, that subject to the provisions of subdivision twelve of this section income received from grants, charitable contributions, donations and bequests and governmental deficit financing shall not be included.

4. The commissioner is authorized to contract with the article forty-three insurance law plans, or such other administrators as the commissioner shall designate, to receive and distribute provider of services assessment funds. In the event contracts with the article forty-three insurance law plans or other commissioner's designees are effectuated, the commissioner shall conduct annual audits of the receipt and distribution of the assessment funds. The reasonable cost and expenses of such administrators as approved by the commissioner, not to exceed for personnel services on an annual basis one hundred thousand dollars for all assessments established pursuant to this section, shall be paid from the assessment funds.

5. Estimated payments by or on behalf of providers of services to the commissioner or his or her designee of funds due from the assessments pursuant to subdivision two of this section shall be made on a monthly

basis. Estimated payments shall be due on or before the fifteenth day following the end of a calendar month to which an assessment applies.

6. (a) If an estimated payment made for a month to which an assessment applies is less than seventy percent of an amount the commissioner determines is due, based on evidence of prior period moneys received by a provider of services or evidence of moneys received by such provider of services for that month, the commissioner may estimate the amount due from such provider of services and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(b) If an estimated payment made for a month to which an assessment applies is less than ninety percent of an amount the commissioner determines is due, based on evidence of prior period moneys received by a provider of service or evidence of moneys received by such provider of services for that month, and at least two previous estimated payments within the preceding six months were less than ninety percent of the amount due, based on similar evidence, the commissioner may estimate the amount due from such provider of services and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(c) Upon receipt of notification from the commissioner of a provider of services' deficiency under this section, the comptroller or a fiscal intermediary designated by the director of the budget, or the commissioner of social services, or a corporation organized and operating in accordance with article forty-three of the insurance law, or an organization operating in accordance with article forty-four of the public health law shall withhold from the amount of any payment to be made by the state or by such article forty-three corporation or article forty-four organization to the provider of services the amount of the deficiency determined under paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision seven of this section. Upon withholding such amount, the comptroller or a designated fiscal intermediary, or the commissioner of social services, or corporation organized and operating in accordance with article forty-three of the insurance law or organization operating in accordance with article forty-four of the public health law shall pay the commissioner, or his designee, such amount withheld on behalf of the provider of services.

(d) The commissioner shall provide a provider of services with notice

of any estimate of an amount due for an assessment pursuant to paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision seven of this section at least three days prior to collection of such amount by the commissioner. Such notice shall contain the financial basis for the commissioner's estimate.

(e) In the event a provider of services objects to an estimate by the commissioner pursuant to paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision seven of this section of the amount due for an assessment, the provider of services, within sixty days of notice of an amount due, may request a public hearing. If a hearing is requested, the commissioner shall provide the provider of services an opportunity to be heard and to present evidence bearing on the amount due for an assessment within thirty days after collection of an amount due or receipt of a request for a hearing, whichever is later. An administrative hearing is not a prerequisite to seeking judicial relief.

(f) The commissioner may direct that a hearing be held without any request by a provider of services.

7. (a) Every provider of services shall submit reports on a cash basis of actual gross receipts received from all patient care services and operating income for each month as follows:

(i) for hospitals which are providers of services, for the period January first, nineteen hundred ninety-one through January thirty-first, nineteen hundred ninety-one, the report shall be filed on or before March fifteenth, nineteen hundred ninety-one; and

(ii) for the quarter year ending March thirty-first, nineteen hundred ninety-one and for each quarter thereafter, the report shall be filed on or before the forty-fifth day after the end of such quarter; and

(iii) for residential treatment facilities for children and youth, for the period July first, nineteen hundred ninety-one through September thirtieth, nineteen hundred ninety-one and each quarter thereafter, the report shall be filed on or before the forty-fifth day after the end of the quarter.

(b) Every provider of services shall submit a certified annual report on a cash basis of gross receipts received in such calendar year from all patient care services and operating income.

(c) The reports shall be in such form as may be prescribed by the

commissioner to accurately disclose information required to implement this section.

(d) Final payments shall be due for all providers of services for the assessments pursuant to subdivision two of this section upon the due date for submission of the applicable quarterly report.

(e) The commissioner may recoup deficiencies in final payments pursuant to paragraph (c) of subdivision six of this section.

8. (a) If an estimated payment made for a month to which an assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus four percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's estimated payment, may be collected by the commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

(b) If an estimated payment made for a month to which an assessment applies is less than seventy percent of the actual amount due for such month, a penalty shall be due and payable to the commissioner of five percent of the difference between the amount paid and the amount due for such month when the failure to pay is for a duration of not more than one month after the due date of the payment with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. A penalty may be collected by the commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

(c) Overpayment by a provider of services of an estimated payment shall be applied to any other payment due from the provider of services pursuant to this section, or, if no payment is due, at the election of the provider of services shall be applied to future estimated payments

or refunded to the provider of services. Interest shall be paid on overpayments from the date of overpayment to the date of crediting or refund at the rate determined in accordance with paragraph (a) of this subdivision if the overpayment was made at the direction of the commissioner. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar.

9. Funds accumulated, including income from invested funds, from the assessments specified in this section, including interest and penalties, shall be deposited by the commissioner and credited to the general fund.

10. Notwithstanding any inconsistent provision of law or regulation to the contrary, the assessments pursuant to this section shall not be an allowable cost in the determination of reimbursement rates pursuant to this article.

11. (a) (ii) The assessment shall not be collected in excess of one million three hundred thousand dollars from providers of services pursuant to paragraph (b) of subdivision two of this section for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the assessment collected pursuant to paragraph (b) of subdivision two of this section in excess of one million three hundred thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to providers of services by the commissioner of mental health based on the ratio which a hospital's assessment for such period bears to the total of the assessments for such period paid by such hospitals.

(iii) The additional assessment shall not be collected in excess of three hundred thousand dollars from providers of services pursuant to paragraph (b) of subdivision two of this section for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the additional assessment collected pursuant to paragraph (b) of subdivision two of this section in excess of three hundred thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to providers of services

by the commissioner of mental health based on the ratio which a hospital's additional assessment for such period bears to the total of the additional assessments for such period paid by such hospitals.

(b) (ii) The assessment shall not be collected in excess of two hundred thousand dollars from residential treatment facilities for children and youth pursuant to paragraph (c) of subdivision two of this section for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the assessment collected pursuant to paragraph (c) of subdivision two of this section in excess of two hundred thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to providers of services by the commissioner of mental health based on the ratio which a residential treatment facility for children and youth's assessment for such period bears to the total of the assessments for such period paid by such residential treatment facilities for children and youth.

(iii) The additional assessment shall not be collected in excess of fifty thousand dollars from residential treatment facilities for children and youth pursuant to paragraph (c) of subdivision two of this section for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the additional assessment collected pursuant to paragraph (c) of subdivision two of this section in excess of fifty thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to providers of services by the commissioner of mental health based on the ratio which a residential treatment facility for children and youth's additional assessment for such period bears to the total of the additional assessments for such period paid by such residential treatment facilities for children and youth.

12. Each exclusion of sources of gross receipts received from the assessments effective on or after April first, nineteen hundred ninety-two established pursuant to this section shall be contingent upon either: (a) qualification of the assessments for waiver pursuant to federal law and regulation; or (b) consistent with federal law and regulation, not requiring a waiver by the secretary of the department of

health and human services related to such exclusion; in order for the assessments under this section to be qualified as a broad-based health care related tax for purposes of revenues received by the state pursuant to the assessments not reducing the amount expended by the state as medical assistance for purposes of federal financial participation. The commissioner of mental health shall collect the assessments relying on such exclusions, pending any contrary action by the secretary of the department of health and human services. In the event the secretary of the department of health and human services determines that the assessments do not so qualify based on any such exclusion, then the exclusion shall be deemed to have been null and void as of April first, nineteen hundred ninety-two, and the commissioner of mental health shall collect any retroactive amount due as a result, without interest or penalty provided the provider of services pays the retroactive amount due within ninety days of notice from the commissioner of mental health to the provider of services that an exclusion is null and void. Interest and penalties shall be measured from the due date of ninety days following notice from the commissioner of mental health to the provider of services.

13. Subparagraph (ii) of paragraph (b) of subdivision two and subparagraph (ii) of paragraph (c) of subdivision two of this section shall be of no force and effect upon either: (a) a waiver is granted pursuant to federal law and regulation; or (b) consistent with federal law and regulation, a waiver is not required by the secretary of the department of health and human services for a difference between the rate of assessment on hospitals and residential treatment facilities for children and youth assessed pursuant to this section and the rate of assessment including the additional assessment on general hospitals assessed pursuant to section twenty-eight hundred seven-d of the public health law; in order for the assessments pursuant to this section and the assessments including the additional assessment on general hospitals pursuant to section twenty-eight hundred seven-d of the public health law to be qualified as broad-based health care related taxes for purposes of the revenues received by the state pursuant to this section and section twenty-eight hundred seven-d of the public health law not reducing the amount expended by the state as medical assistance for

purposes of federal financial participation. The commissioner of mental health shall not collect the additional assessments under this section, pending any contrary action by the secretary of the department of health and human services. In the event the secretary of the department of health and human services determines that the assessments pursuant to this section or the assessments including the additional assessment on general hospitals pursuant to section twenty-eight hundred seven-d of the public health law do not so qualify based on the difference between the rate of assessment on hospitals or residential treatment facilities for children and youth assessed pursuant to this section and the rate of assessment including the additional assessment on general hospitals pursuant to section twenty-eight hundred seven-d of the public health law then the provisions of subparagraph (ii) of paragraph (b) of subdivision two and subparagraph (ii) of paragraph (c) of subdivision two of this section shall be deemed to have been in full force and effect as of April first, nineteen hundred ninety-two, and the commissioner of mental health shall collect any retroactive amount due as a result, without interest or penalty provided the provider of services pays the retroactive amount due within ninety days of notice from the commissioner of mental health to the provider of services that the exclusion is null and void. Interest and penalties shall be measured from the due date of ninety days following notice from the commissioner of mental health to the provider of services.

§ 43.07 Bill collection procedures.

(a) The commissioner may enter into agreements with the patient or a person liable for him pursuant to this chapter to assure the regular payment of fees.

(b) The commissioner may collect bills not paid within sixty days of presentment or pursuant to agreement by the enforcement of liens, the initiation of suit against liable parties to recover amounts due, or the initiation of suit to enforce an agreement.

(c) An action to collect fees due pursuant to this chapter shall commence within six years from the accrual of the cause of action. This cause of action accrues when the fees become due.

§ 43.09 Certain transactions void.

A transaction between a patient or person liable for him and another which is intended to avoid liability under this article is void and any person benefiting from such a transaction shall be liable for fees to the extent of the value of the resources involved.

§ 43.11 Refunds.

Payments received by the commissioner pursuant to this chapter may be refunded if they were:

1. in excess of the actual fee charged; or
2. charges for services which were not rendered; or
3. received from the funds of a patient or another person which are not available for payment of fees or received for services for which the patient or other person paying the fees is not legally liable.

§ 43.12 Electronic submission of periodic cost reports to the office for people with developmental disabilities.

Notwithstanding any provision of law, rule or regulation to the contrary, every operator of a facility which is licensed by the office for people with developmental disabilities (hereinafter "office") and every provider of services which is subject to the regulation or control of the office shall submit electronically, via the internet, any annual cost report which is required to be submitted to the office pursuant to the provisions of section 43.02 of this article and any rules and regulations promulgated thereunder and any other required periodic cost report or accounting which may be prescribed by the commissioner of developmental disabilities as subject to such electronic submission. The office shall publish and make available at all times on its website

instructions for the submission of such reports or accountings via the internet, including instructions relating to the use of an electronic signature as may be required by the commissioner of developmental disabilities which signature shall be subject to, and submitted in accordance with, the provisions of the state technology law and any rules and regulations promulgated thereunder. Any operator or provider of services that is unable to submit such cost report or accounting in accordance with this section may apply for a waiver of such required submission from the commissioner of developmental disabilities. The commissioner of developmental disabilities may grant a waiver for any given submission to such operator or provider of services for good cause shown and may grant a general waiver to all operators or providers of services with respect to any required submission. On and after the effective date of this section, any contract entered into between the office and a provider of services which involves the provision of services to persons with developmental disabilities and which contains provisions that require the submission of any periodic report or accounting may also contain provisions that require the submission of any periodic cost report or accounting required under such contract to be submitted electronically as set forth in this section.

ARTICLE 47

MENTAL HYGIENE LEGAL SERVICE

Section 47.01 Mental hygiene legal service.

47.03 Functions, powers and duties of the service.

§ 47.01 Mental hygiene legal service.

(a) There shall be a mental hygiene legal service of the state in each judicial department. The service shall provide legal assistance to patients or residents of a facility as defined in section 1.03 of this chapter, patients or residents of residential healthcare facilities licensed and operating pursuant to article twenty-eight of the public health law who have been admitted directly from a facility as defined in section 1.03 of this chapter and who have a serious mental illness as defined in section 1.03 of this chapter and are receiving services

related to such illness, or any other place or facility which is required to have an operating certificate pursuant to article sixteen or thirty-one of this chapter, and to persons alleged to be in need of care and treatment in such facilities or places, and to persons entitled to such legal assistance as provided by article ten of this chapter. The head of such service in each judicial department and such assistants and such staff as may be necessary shall be appointed and may be removed by the presiding justice of the appellate division of the judicial department. Appointments and transfers to the service shall comply with the provisions of the civil service law. Standards for qualifications of the personnel in the service shall be established by the presiding justice of the appellate division of the judicial department. The presiding justice of the appellate division of the judicial department shall promulgate such rules or regulations as may be necessary to effectuate the purposes of this article.

(b) No court, judge or justice exercising responsibility for the administration of the courts pursuant to section twenty-eight of article six of the constitution shall be disqualified in any judicial proceeding brought pursuant to this article solely by reason of the fact that administrative responsibilities with respect to the service are imposed herein.

§ 47.03 Functions, powers and duties of the service.

The mental hygiene legal service in each judicial department of the state shall perform the following duties:

(a) To study and review the admission and retention of all patients or residents which shall include a review of the willingness of the patient or resident to remain in his or her status and the determination of the facility director as to suitability of such status, as provided for by this chapter;

(b) To inform patients or residents and, in proper cases, others interested in such persons' welfare of procedures for admission and retention and of the patients' or residents' right to have judicial hearing and review, to be represented by legal counsel, and to seek independent medical opinion;

* (c) To provide legal services and assistance to patients or residents and their families related to the admission, retention, and care and treatment of such persons, to provide legal services and assistance to subjects of a petition or patients subject to section 9.60 of this chapter, and to inform patients or residents, their families and, in proper cases, others interested in the patients' or residents' welfare of the availability of other legal resources which may be of assistance in matters not directly related to the admission, retention, and care and treatment of such patients or residents;

* NB Effective until June 30, 2027

* (c) To provide legal services and assistance to patients or residents and their families related to the admission, retention, and care and treatment of such persons, and to inform patients or residents, their families and, in proper cases, others interested in the patients' or residents' welfare of the availability of other legal resources which may be of assistance in matters not directly related to the admission, retention, and care and treatment of such patients or residents;

* NB Effective June 30, 2027

(d) To be granted access at any and all times to any facility or place or part thereof described in subdivision (a) of section 47.01 of this article, and to all books, records and data pertaining to any such facility or place deemed necessary for carrying out its functions, powers and duties. The mental hygiene legal service may require from the officers or employees of such facility or place any information deemed necessary for the purpose of carrying out the service's functions, powers and duties. Information, books, records or data which are confidential and any limitations on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to the service. Provided, however, whenever federal regulations restrict, or as a condition of federal aid require that a facility restrict the release of information contained in the clinical record of a patient or client, or restrict disclosure of the identity of a patient or access to that patient, to a greater extent than is allowed under this section, the provisions of such federal law or federal regulation shall be controlling;

(e) To initiate and take any legal action deemed necessary to safeguard the right of any patient or resident to protection from abuse

or mistreatment, which may include investigation into any such allegations of abuse or mistreatment of any such patient or resident; and

(f) To provide legal services and assistance in accordance with article ten of this chapter.

ARTICLE 61

FEDERAL AID

Section 61.01 Receipt and disbursement of federal funds.

61.03 Department is authorized state agency.

61.05 Advancement of state mental health and developmental disabilities programs through intergovernmental cooperation.

§ 61.01 Receipt and disbursement of federal funds.

(a) The commissioner or his authorized representative may receive, use, or distribute federal financial or technical assistance to support construction, research, staffing, or other programs or activities in mental health, developmental disabilities, alcoholism, or drug addiction appropriated under federal health, mental health, or developmental disabilities legislation or regulations or under other federal legislation or regulations which provide assistance to the mentally disabled, including but not limited to vocational rehabilitation programs, alcoholism programs, drug addiction programs, poverty programs, or special programs for children or the aged.

(b) The commissioner may promulgate rules and regulations to implement any provision of state or federal law involving the receipt, use, or disbursement of federal financial or technical assistance.

(c) The department of taxation and finance shall be the custodian of federal financial assistance granted or allocated to the department by the United States. Funds shall be paid out on the audit and warrant of the comptroller on the certificate of the commissioner or his authorized representative.

(d) Subject to the rules and regulations of the commissioner, any funds made available to the department by the United States or by

another state agency as a federal allotment to be administered by the department may be disbursed by it to a local government, voluntary non-profit agency, educational agency, or person properly authorized to receive funds in fulfillment of the purposes of appropriate federal or state legislation for the provision of services, construction of facilities, research, staffing, training, or related programs or activities.

§ 61.03 Department is authorized state agency.

The department shall be the authority, when designated by the governor, to supervise and administer financial or technical assistance as the designee under a state plan or as may be required by federal legislation making such assistance available for programs or activities in mental health, developmental disabilities, alcoholism, drug addiction, and other areas under the department's jurisdiction and control.

§ 61.05 Advancement of state mental health and developmental disabilities programs through intergovernmental cooperation.

The commissioner may promote state programs or activities in mental health, developmental disabilities, alcoholism, drug addiction, and other areas within the scope of the department's activities and may cooperate with the federal government, local governments, other state governments, other state agencies, and nongovernmental organizations to fulfill the objectives and purposes of this chapter.

ARTICLE 67

INTERSTATE RELATIONS

Section 67.01 Report of noncitizens.

67.03 Residents.

67.05 Nonresidents.

67.07 Interstate compact.

67.08 Patient transfer to foreign nation.

67.09 Medicaid home and community based services eligibility for dependents of certain military service members.

§ 67.01 Report of noncitizens.

The commissioner shall report to appropriate federal authorities all noncitizen mentally disabled persons in department facilities.

§ 67.03 Residents.

(a) For the purposes of this article any person who resides in the state continuously for one year, and any person under the age of sixteen or any person with a developmental disability whose parents or persons having legal custody of him have resided in the state continuously for one year, shall be considered a state resident. Residence so acquired continues until the resident has remained away from the state for one year.

(b) No person shall lose state residence through absence from the state while serving in or attached to the armed forces of the United States or the United States Merchant Marine and no member of the family of any such person shall lose state residence through absence from the state while living with or near such person during the period of service.

(c) The continuous residence required to become a resident does not include any period during which a person was residing on a military reservation, but periods of residence immediately before and after the period of residence on a military reservation, if equaling one year, shall satisfy the required period of continuous residence.

§ 67.05 Nonresidents.

(a) The commissioner may enter into reciprocal agreements or establish compacts with other states, commonwealths, territories or possessions of the United States, or their political subdivisions, for the care and treatment of nonresidents in this state or for their prompt and humane

return under proper supervision to their place of residence.

(b) A mentally disabled nonresident in a department facility may be returned to his place of residence unless:

1. the applicable provisions of a compact or reciprocal agreement provide otherwise; or,

2. the action would cause him and his family undue hardship.

(c) Upon the request of any mentally disabled patient or of a person acting in his behalf and with the patient's consent, the patient may be transferred or released to any country, state, or place.

(d) When necessary for the well-being of the patient or the public, the commissioner shall employ nurses or attendants to accompany a mentally disabled patient who is being transferred or released to another jurisdiction pursuant to this section. Mentally disabled females shall be accompanied by female nurses or attendants.

§ 67.07 Interstate compact.

(a) The interstate compact on mental health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

The contracting states solemnly agree that:

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for

the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "Aftercare" shall mean care, treatment, and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an

institution in that state irrespective of his residence, settlement, or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient

and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

Article VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

Article VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the

court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who will receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV

(a) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all

severable matters.

(b) Pursuant to the compact, the governor may designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, may promulgate rules and regulations to carry out more effectively the terms of this compact. The compact administrator shall serve subject to the pleasure of the governor. The compact administrator shall cooperate with all departments, agencies, and officers of and in the government of the state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

(c) The compact administrator may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that supplementary agreements require or contemplate the use of any facility of this state or require or contemplate the provision of any service by this state, they shall not have force or effect until approved by the head of the department or agency under whose jurisdiction said facility is operated or whose department or agency will be charged with the rendering of service.

(d) The compact administrator, subject to the approval of the comptroller, may make or arrange for payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement.

(e) Duly authenticated copies of this act shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general, and the secretary of state of the United States, and the council of state governments.

§ 67.08 Patient transfer to foreign nation.

(a) The commissioner, or his or her designee, shall have the sole and absolute authority to approve or disapprove a patient application for transfer to a foreign nation pursuant to the Council of Europe Convention on the Transfer of Sentenced Persons (COE) or other applicable international treaty, where:

(1) Such applicant has been committed to and placed in the custody of the department upon a verdict of not responsible by reason of mental

disease or defect pursuant to section 330.20 of the criminal procedure law;

(2) Such applicant has indicated a willingness and desire for transfer to a foreign nation in writing on a form prescribed by the commissioner or, the commissioner at the request of a patient's legal guardian or attorney can indicate a desire for transfer if the patient is unable to indicate their willingness and desire on their own; and

(3) The transfer nation is either a "treaty nation" under the COE or any other nation with which the United States has a prisoner transfer treaty that permits the transfer of persons committed to psychiatric institutions after a verdict of not responsible by reason of mental disease or defect.

(b) If a request for transfer is approved by the commissioner, or his or her designee, facility staff shall assist in the preparation and submission of all materials and forms necessary to effectuate the person's request for transfer to the United States department of justice for purposes of finalization of the transfer process, including a verification proceeding before a United States district court judge, United States magistrate or other appointed United States official to assure and document the applicant's voluntary request for transfer.

(c) The commissioner shall promulgate rules and regulations setting forth the procedures to notify patients and where applicable, their legal guardian or attorney, of their rights under this section and the procedure by which a patient may apply to be considered for transfer to a foreign nation. Nothing herein shall be construed to confer upon a patient a right to be transferred to a foreign nation.

§ 67.09 Medicaid home and community based services eligibility for dependents of certain military service members.

(a) A dependent of a member of the armed forces of the United States or the organized militia of the state, who is a legal resident of this state, having previously been determined to be eligible for developmental disability services provided by the office for people with developmental disabilities (OPWDD), including waiver services provided under the home and community based services programs authorized under Section 1915(c) of the Social Security Act, shall retain eligibility for

those developmental disability services as long as he or she remains a legal resident of the state, regardless of having left the state due to the service member's military assignment outside the state, and as long as he or she is otherwise eligible for such services.

(b) For dependents who received developmental disability services and who left the state due to the military service member's military assignment outside the state, upon the dependent's return to the state and when a request for services is made OPWDD shall:

(1) determine the dependent's eligibility for services, which may include a request for waiver services provided under the home and community based services programs authorized under Section 1915(c) of the Social Security Act;

(2) provide to the dependent notification of the determination of eligibility for services, which includes notification of a denial of services if applicable;

(3) provide the dependent an opportunity to contest OPWDD's determination through the appeals process established by OPWDD; and

(4) resume services if the individual remains eligible.

(c) As a condition of continued eligibility for services under subdivision (a) of this section, a dependent must inform OPWDD of their current address and provide updates as requested by OPWDD.

(d) No payment pursuant to this section shall be made for home and community based services provided outside the State of New York.

(e) For purposes of this section, "dependent" shall be defined consistent with the federal tax code.

ARTICLE 71

ACQUISITION OF REAL PROPERTY

Section 71.01 Acquisition of real property.

§ 71.01 Acquisition of real property.

(a) The head of each office of the department, as defined in section 5.03 of this chapter, when an appropriation therefor has been made by the legislature, may acquire, for and on behalf of the health and mental hygiene facilities improvement corporation, any real property which he

may deem necessary for the purpose of a state institution, or for that office or division of the department of which he is the head, by purchase or pursuant to the eminent domain procedure law, the title to which shall be taken in the name of and be vested in the people of the state of New York; provided, however, that no real property shall be so acquired by purchase unless the title thereto shall be approved by the attorney general.

(b) Whenever real property is to be acquired pursuant to the eminent domain procedure law, the commissioner of mental hygiene shall cause to be made by the office of general services an accurate acquisition map. With respect to any real property or any easement to be so acquired for mental hygiene purposes, the commissioner of mental hygiene may cause the map, contemplated by this subdivision, and any changes, alterations or modifications in such map and description contemplated by subdivision (e) of this section, to be made by the office of general services or, with the approval of the director of the budget, by a licensed professional engineer or a licensed land surveyor, and the commissioner of general services and the commissioner of mental hygiene may each authorize the health and mental hygiene facilities improvement corporation to act as agent in making such map.

(c) Whenever real property is to be acquired pursuant to the eminent domain procedure law, the commissioner of mental hygiene shall cause an accurate map to be made by the state department of transportation. With respect to any real property or any easement to be so acquired for mental hygiene purposes, the commissioner of mental hygiene may cause the map, contemplated by this subdivision, and any changes, alterations or modifications in such map and description contemplated by subdivision (e) of this section, to be made by the state department of transportation or, with the approval of the director of the budget, by a licensed professional engineer or a licensed land surveyor, and the state commissioner of transportation and the commissioner of mental hygiene may each authorize the mental hygiene facilities improvement fund to act as agent in making such map.

(d) On the approval of such map by the commissioner, the original tracing of such map shall be filed in the main office of the department pursuant to the provisions of the eminent domain procedure law.

(e) If the commissioner shall determine, prior to the filing of such

map, in the office of the clerk or register of the county, that changes, alterations or modifications of such map as filed in the main office of the department should be made, he or she shall, subject to the provisions of article two of the eminent domain procedure law, if applicable, direct the preparation by the department of transportation of an amended map. On the approval of such amended map by the commissioner, it shall be filed in the main office of the department and the amended map shall thereupon in all respects and for all purposes supersede the map previously filed.

(f) If the commissioner shall determine prior to the filing of a copy of such acquisition map in the office of the county clerk or register as provided in section four hundred two of the eminent domain procedure law, that such map should be withdrawn, he or she may file a certificate of withdrawal in the offices of the department and of the department of law. Upon the filing of such certificate of withdrawal, the map to which it refers shall be cancelled and all rights thereunder shall cease and determine.

(g) The commissioner of mental hygiene shall deliver to the attorney general a copy of such acquisition map, whereupon it shall be the duty of the attorney general to advise and certify to the commissioner of mental hygiene the names of the owners of the property, easements, interests or rights described in the said acquisition map, including the owners of any right, title or interest therein, pursuant to the requirements of section four hundred three of the eminent domain procedure law.

(h) If, at or after the vesting of title to such property in the people of the state of New York as provided for in the eminent domain procedure law, the commissioner of mental hygiene shall deem it necessary to cause the removal of an owner or occupant from any real property so acquired, he may cause such owner or occupant to be removed therefrom by proceeding in accordance with section four hundred five of the eminent domain procedure law. The proceeding shall be brought in the name of the commissioner of mental hygiene as agent of the state and the attorney general shall represent the petitioner in the proceedings. No execution shall issue for costs, if any, awarded against the state or the commissioner of mental hygiene, but they shall be part of the costs of the acquisition of the real property and be paid in like manner.

Proceedings may be brought separately against one or more of the owners or occupants of any such property, or one proceeding may be brought against all or several of the owners or occupants of any or all such property within the territorial jurisdiction of the same court, justice or judge; judgment shall be made for immediate removal of persons defaulting in appearance or in answering, or withdrawing their answers, if any, without awaiting the trial or decision of issues raised by contestants, if any.

(i) Upon making any agreement provided for in section three hundred four of the eminent domain procedure law, the commissioner of mental hygiene shall deliver to the comptroller such agreement and a certificate stating the amount due such owner or owners thereunder on account of such appropriation of his or their property and the amounts so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of such real property, but not until there shall have been filed with the comptroller a certificate of the attorney general showing the person or persons claiming the amount so agreed upon to be legally entitled thereto.

(j) Application for reimbursement of incidental expenses as provided in section seven hundred two of the eminent domain procedure law shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereof, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from monies appropriated for the acquisition of property under this section.

(k) The commissioner, with the approval of the director of the budget, shall establish and may amend rules and regulations authorizing the payment of actual reasonable and necessary moving expenses of occupants of property acquired pursuant to this section or in hardship cases for the advance payment of reasonable and necessary moving expenses. Such rules and regulations may further define the terms used in this subdivision. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of residential property may elect to accept a moving expense allowance, plus a dislocation allowance, determined in accordance with a schedule prepared by the

commissioner and made a part of such rules and regulations. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of commercial property who relocates or discontinues his business or farm operation may elect to accept a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, or five thousand dollars, whichever is the lesser. In the case of a business, no such fixed relocation payment shall be made unless the commissioner finds and determines that the business cannot be relocated without a substantial loss of its existing patronage, and that the business is not part of a commercial enterprise having at least one other establishment, which is not being acquired by the state or the United States, which is engaged in the same or similar business. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section. As used in this subdivision "commercial property" shall include property owned by an individual, family, business concern (including the operation of a farm) and a non-profit organization.

(1) Authorization is hereby given to the commissioner to make supplemental relocation payments, separately computed and stated, to displaced owners and tenants of residential property acquired pursuant to this section who are entitled thereto, as determined by him. The commissioner, with the approval of the director of the budget, may establish and amend rules and regulations providing for such supplemental relocation payments. Such rules and regulations may further define the terms used in this subdivision. In the case of property acquired pursuant to this section which is improved by a single, two-family or three-family dwelling actually owned and occupied by the owner for not less than one year immediately prior to the initiation of negotiations for the acquisition of such property, such payment to such owner shall not exceed five thousand dollars. Such payment shall be the amount, if any, which, when added to the acquisition payment equals the

average price, established by the commissioner on a class, group or individual basis, required to obtain a comparable replacement dwelling that is decent, safe and sanitary to accommodate the displaced owner. Such payment shall be made only to a displaced owner who purchases and occupies a dwelling within one year subsequent to the date on which he is required to move from the dwelling acquired pursuant to this section, except advance payment of such amount may be made in hardship cases. In the case of property acquired pursuant to this section from which an individual or family, not otherwise eligible to receive a payment pursuant to other provisions of this subdivision, is displaced from any dwelling thereon which has been actually and lawfully occupied by such individual or family for not less than ninety days immediately prior to the initiation of negotiations for the acquisition of such property, such payment to such individual or family shall not exceed one thousand five hundred dollars. Such payment shall be the amount which is necessary to enable such individual or family to lease or rent for a period not to exceed two years, or to make the down payment on the purchase of, a decent, safe and sanitary dwelling adequate to accommodate such individual or family. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller, together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section.

(m) The owner of any real property so acquired may present to the court of claims, pursuant to section five hundred three of the eminent domain procedure law a claim for the value of such property acquired and for legal damages caused by such acquisition, as provided by law for the filing of claims with the court of claims. Awards and judgments of the court of claims shall be paid in the same manner as awards and judgments of that court for the acquisition of lands generally and shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of such real property.

(n) If the commissioner of mental hygiene shall determine subsequent

to the acquisition of a temporary easement in any real property that the purposes for which such easement right was acquired have been accomplished and that the exercise of such easement is no longer necessary, he shall make his certificate that the exercise of such easement is no longer necessary and that such easement right is therefore terminated, released and extinguished. The commissioner of mental hygiene shall cause such certificate to be filed in the office of the department of state and upon such filing all rights acquired by the state in such property shall cease and determine. The commissioner of mental hygiene shall cause a certified copy of such certificate as so filed in the office of the department of state to be mailed to the owner of the property affected, as certified by the attorney general, if the place of residence of such owner is known or can be ascertained by a reasonable effort and such commissioner of mental hygiene shall cause a further certified copy of such certificate to be filed in the office of the recording officer of each county in which the property affected or any part thereof is situated. On the filing of such certified copy of such certificate with such recording officer, it shall be his duty to record the same in his office in the books used for recording deeds and to index the same against the name of the people of the state of New York as grantor.

(o) If moneys appropriated by the legislature for the acquisition of any real property under this section are subject to repayment, the comptroller shall annually certify to the trustees of the health and mental hygiene facilities improvement corporation on or before May first in every year, the costs of acquisition of such real property paid during the preceding state fiscal year and the aggregate costs of acquisition of such real property paid during all preceding state fiscal years out of the state treasury from moneys so appropriated.

ARTICLE 75

COMMUNITY MENTAL HEALTH SERVICES AND DEVELOPMENTAL DISABILITIES SERVICES COMPANIES

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§ 75.01 Short title.

This article shall be known and may be cited and referred to as the "community mental health services and developmental disabilities services companies law".

§ 75.03 Policy and purposes of article.

It is hereby declared that the provision of new and improved community facilities is necessary to care for the increasing number of persons afflicted with mental disability. Such facilities should be located close to the people they serve in order to speed rehabilitation and restoration and to provide for out-patient care, in-patient care, including after care, diagnostic and rehabilitative services, and residential accommodations for operation as hostels. Such facilities should supplement the services provided by the commissioner and the department of mental hygiene and should be available to cities and counties operating approved community services programs pursuant to the provisions of article eleven of this chapter.

It is hereby further declared that non-profit corporations should be

created to construct, acquire, reconstruct, rehabilitate, own, and operate such facilities and that provision should be made for mortgage loan participation by a lending institution or the New York state housing finance agency in order to insure that the full resources of the private enterprise sector of the economy may be made available for this purpose; that there is a need for public assistance to such corporations by the granting of tax exemption; that it is the policy of the state to promote the provision of community facilities by such nonprofit corporations; and that such provision is a public use and purpose.

§ 75.05 Definitions.

As used in this article the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context:

1. "Company", "community mental health services company" or "community developmental disabilities services company". A company, duly incorporated pursuant to the provisions of the not-for-profit corporation law and this article, for the purpose of providing for the care, treatment, training, education, and residence of the mentally disabled, and such facilities as may be incidental or appurtenant thereto.

2. "Project", "community mental health services project" or "community developmental disabilities services project". A specific work or improvement, including lands, buildings, improvements, fixtures, and articles of personal property, constructed, acquired, reconstructed, rehabilitated, managed, owned, or operated by a company pursuant to this article, to provide community residential facilities for operation as hostels for the mentally disabled or for the care, treatment, training, education of the mentally disabled, or both, including such facilities as may be incidental or appurtenant thereto.

3. "Local governmental unit." A local governmental unit established pursuant to the provisions of article eleven of this chapter.

4. "Project cost", "community mental health services project cost" or "community developmental disabilities services project cost". The sum total of all costs incurred by a company as approved by the commissioner as reasonable and necessary for carrying out all works and undertakings and providing all necessary equipment for the development of a project less any portion of any state, federal or municipal assistance grant, as the commissioner shall, prior to the making of a mortgage loan by the New York state housing finance agency to a company, determine to be available to reimburse the company for the payment of such project costs prior to the initial occupancy of the project, and all costs relating to the refinancing of existing indebtedness associated with the development of the project which constitutes a lien or other encumbrance upon the real property or assets of a company to be mortgaged or otherwise pledged to the agency. These shall include but are not necessarily limited to the carrying charges during construction up to and including the occupancy date, working capital not exceeding three per centum of the estimated total cost or three percentum of the actual total final cost, whichever is larger, the cost of all necessary studies, surveys, plans and specifications, architectural, engineering, legal, or other special services, the cost of acquisition of land and any improvements thereon, site preparation and development, construction, reconstruction, rehabilitation, improvement and equipment, including fixtures, equipment, and articles of personal property required for the operation of care, treatment, training, educational, and residential facilities, the reasonable cost of financing incurred by the company in the course of the development of the project, up to and including the occupancy date, the fees imposed by the commissioner and by the New York state housing finance agency; other fees charged, and necessary expenses incurred in connection with the initial occupancy of the project, and the cost of such other items as the commissioner may determine to be reasonable and necessary for the development of a project, less any and all rents and other net revenues from the operation of the real property, improvements or personal property on the project site, or any part thereof, by the company on and after the date on which the contract between the company and the New York state housing finance agency was entered into and prior to the occupancy date.

5. "Occupancy date". The date defined in the document providing for a mortgage loan between a company and the New York state housing finance agency.

6. "Lending Institution" means the original lender under the loan agreement or participants therein and its successors and assigns, and may include a banking institution, insurance company, foundation, labor union, employers association, trustees, fiduciaries or any combination of the foregoing.

§ 75.07 Companies; how created.

Notwithstanding the provisions of any other law or requirement to the contrary, companies shall be incorporated and organized pursuant to the not-for-profit corporation law and this article.

In addition to those matters required to be set forth in the certificate of incorporation by the not-for-profit corporation law, the certificate shall state:

1. That, among the purposes for which it is formed, the company is to plan, construct, acquire, alter, reconstruct, rehabilitate, improve, own, maintain, and operate one or more projects pursuant to this article.

2. The number of directors, which shall be not less than three nor more than fifteen. Directors shall be elected by the members of the company. One additional director may be designated by the commissioner. In the absence of fraud or bad faith the director appointed by the commissioner shall not be personally liable for the debts, obligations, or liabilities of the company.

3. That the real property of the company shall not be sold, transferred, encumbered, or assigned except as permitted by the provisions of this article.

4. That the company has been organized exclusively to serve a public purpose and that it shall be and remain subject to the supervision and control of the commissioner pursuant to the provisions of this article and all applicable laws and regulations.

5. That all income and earnings of the company shall be used exclusively for its corporate purposes.

6. That no part of the net income or net earnings of the company shall inure to the benefit or profit of any private individual, firm, or corporation.

§ 75.09 Approval of commissioner.

Whenever any such certificate shall be presented to the secretary of state, he shall not file such certificate unless there is endorsed thereon or annexed thereto the written approval of the commissioner in accordance with section 13.22 of this chapter; nor shall any amendment to the certificate of incorporation be filed unless it is accompanied by a certificate of the commissioner approving such amendment.

§ 75.13 Powers and limitations of a company.

(a) Except as is inconsistent with the provisions of this article, a company shall have, in carrying out the purposes of this article, the powers conferred on corporations by the not-for-profit corporation law and shall be subject to the limitations contained therein.

(b) Companies shall have the following additional powers:

1. To make and execute contracts and other instruments necessary or convenient in the exercise of its powers;

2. To acquire or contract to acquire from any persons, firm, corporation, public corporation, municipality, federal or state agency, by grant, purchase, or otherwise, leaseholds, real, personal, or mixed

property or any interest therein, and to sell, assign, exchange, transfer, mortgage, or encumber the same;

3. To own, hold, clear, and improve, leasehold, real, personal or mixed property or any interest therein;

4. To issue non-interest bearing debentures up to an amount representing the difference, if any, between the amount of the mortgage made by the company and the estimated project cost; and in the event the final project cost shall exceed the estimated project cost, the difference between the amount of the mortgage made by the company and such final project cost;

5. To construct, reconstruct, rehabilitate, improve, alter, repair, lease, manage, or operate and otherwise provide community mental health services or developmental disabilities services projects;

6. To insure or provide for the insurance of its property or operations as required by law and also against such other risks as it may deem advisable;

7. To limit by contract the exercise of any of its powers;

8. To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control;

9. To sue and be sued;

10. To have a seal and alter the same at pleasure;

11. To make and from time to time amend and repeal bylaws, rules, and regulations not inconsistent with the provisions of this article;

12. To enter into contracts with the New York state housing finance agency for mortgage loans, to pay all such fees and charges as may be imposed by such agency as a condition of such mortgage loan;

13. To enter into contracts with lending institutions for mortgage loans, to pay all such fees and charges as may be imposed by such lending institution as a condition of such mortgage loan;

14. To enter into contracts with a local governmental unit for the rendering of services;

15. To receive assistance from the state, federal government, municipalities, local governmental units, or any person, firm, or corporation by contract or otherwise; to comply, subject to the provisions of this article, with the terms and conditions of such assistance; and in connection with assistance grants which are made by the state, federal government or a municipality to reimburse the company for project costs which have been paid for by such company from the proceeds of the mortgage loan or such other funds which are legally made available to the company, to hold and apply such assistance grants in accordance with the requirements of the commissioner and the New York state housing finance agency;

16. To do all other things necessary or convenient to carry out its powers.

(c) No company shall:

1. Acquire any real property or interest therein unless such company shall first have obtained from the commissioner a certificate that such acquisition is consistent with the purposes of this article;

2. Issue notes, bonds, debentures, or other obligations in an aggregate amount greater than project cost;

3. Without first having obtained the written consent of the commissioner:

(i) Construct, reconstruct, rehabilitate, improve, alter, or repair any project, or enter into any contract for such purposes;

(ii) Sell, transfer, lease, or encumber any real property, except that no such consent shall be necessary in any sale in foreclosure pursuant

to section 75.29;

(iii) Enter into any contracts relating to the management or operation of community mental health services or developmental disabilities services projects;

(iv) Enter into any contract for the payment of any salary, fee, or emolument to officers or employees;

(v) Make a guaranty or payment, or pledge any or all of its assets, income, or revenues to secure payment of its obligations;

(vi) Lease a project or a portion thereof to a third party for the purposes of operation, such lease to be subject to all the terms, provisions, and limitations of any mortgage loan made by the New York state housing finance agency relating to such project;

(vii) Voluntarily dissolve after twenty years, or such earlier date as the bonds issued by the New York state housing finance agency with respect to the project are subject to redemption; provided, however, that in the event an unpaid balance remains due on a mortgage held by the New York state housing finance agency, the consent of the agency must also be obtained.

4. Expend any state moneys except for value received. No company shall make any charitable contribution of moneys received from the state or use state funds to pay above market value for any goods or services, except as authorized by the offices of the department.

§ 75.15 Members, officers, and directors.

No member or director of a company shall receive any salary or other compensation for services as such member or director, other than reimbursement of actual and necessary expenses incurred in the performance of his duties. No member, officer, or employee of a company shall acquire any interest, direct or indirect, in any property then or thereafter included or planned to be included in a project, nor retain any interest, direct or indirect in any property acquired subsequent to his appointment or employment which is later included or planned to be included in a project. If any member, officer, or employee of any company owns or controls an interest, direct or indirect, in any

property included in a project, which was acquired prior to his appointment or employment, he shall disclose such interest and the date of acquisition thereof in writing to the company and such disclosure shall be entered upon the minutes of the company.

§ 75.17 Mortgage loans.

(a) Any company formed under this article may, subject to the approval of the commissioner, borrow funds from the New York state housing finance agency and secure the repayment thereof by bond or note and mortgage which shall contain such terms and conditions as may be deemed necessary or desirable by the New York state housing finance agency or required by any agreement between the New York state housing finance agency and the holders of its notes and bonds with respect to such companies, including the right to assignment of rates and fees and entry into possession in case of default, but the operation of such project, in the event of such entry, shall be subject to regulations promulgated by the commissioner.

(b) The New York state housing finance agency may make a contract to make loans to companies not to exceed the total project cost. Any such loan shall be secured by a first mortgage lien upon all the real property and improvements of which the project consists and upon all fixtures and articles of personal property attached to or used in connection with the construction, acquisition, reconstruction, rehabilitation, improvement, or operation of the project.

(c) Any inconsistent provision of law to the contrary notwithstanding, mortgages of a company shall be exempt from the mortgage recording taxes imposed by article eleven of the tax law.

§ 75.19 Conditions and security for loans.

No loan shall be made by the New York state housing finance agency to a company until the commissioner has approved the project and finds that:

1. The company has complied with all of the provisions of this article

and all applicable laws and regulations;

2. There is a need for a project of the type proposed in the region to be served and that the services and facilities to be provided by the project are consistent with such need;

3. The local governmental unit in the city or county in which the project is located has certified that the project is consistent with its plan for the provision of services for the mentally disabled;

4. The plans and specifications conform to the requirements of all laws and regulations applicable thereto and assure adequate light, air, sanitation, and fire protection and are satisfactory to him;

5. The estimated revenue of the project will be sufficient to cover all probable costs of operation and maintenance, of fixed charges and such reserves as may be authorized by the commissioner or required by the New York state housing finance agency;

6. Provision has been made for the purpose of providing for the payment of the difference, if any, between the estimated project cost and the mortgage loan; and in the event the final project cost shall exceed the estimated project cost, the difference between such final project cost and the mortgage loan;

7. Provision has been made for the filing by the company with the commissioner and the New York state housing finance agency of such financial statements including an annual report setting forth such information as the commissioner may require; and

8. Provision has been made for the examination by the commissioner and the New York state housing finance agency of the books and records of the company.

§ 75.21 Rates and fees.

A company shall, with the approval of the commissioner, fix maximum rates and fees to be charged in-patients or out-patients of each project for the facilities and services provided by the company to such in-patients or out-patients, the average of such rates and fees for any one project not to exceed the maximum average rates and fees determined by the commissioner before any commitments are made by the company for the construction, acquisition, reconstruction, rehabilitation, or improvement of the project. The commissioner upon his own motion, or upon application by the company or lienholder may vary the amount of such rates and fees from time to time so as to secure, together with all other income of the company, sufficient income to meet, within reasonable limits, all necessary payments by the said company of all expenses, including fixed charges, sinking funds, and reserves.

§ 75.23 Transfer of real property.

Notwithstanding any requirement of law to the contrary or any provision of any general, special or local law, charter or ordinance, every executor, administrator, trustee, guardian, or other person holding trust funds or acting in a fiduciary capacity, unless the instrument under which such fiduciary is acting expressly forbids, and the state, its subdivisions, municipalities, all other public bodies, all public officers, persons, partnerships, and corporations owning or holding any real property, may grant, sell, lease, or otherwise transfer any such real property or interest therein to a company and receive and hold any cash, exchanged therefor by such company and may execute such instruments and do such acts as may be deemed necessary or desirable by them or it and by the company in connection with a project or projects and such sale, lease, or transfer may be made without public auction or bidding; provided, however, that where such real property is within an urban renewal area, the disposition thereof shall be in accordance with the provisions of paragraph (d) of subdivision two of section five hundred seven of the general municipal law.

§ 75.25 Supervision and regulation.

(a) The commissioner may from time to time make, alter, amend, and repeal rules and regulations for the supervision, examination, regulation, and audit of companies and for carrying into effect the provisions and purposes of this article, and each company shall submit an annual report of its operations to the commissioner, and the New York state housing finance agency or a lending institution if the mortgage loan was received from such lending institution who may examine and audit the books and records of the company at any time.

(b) The commissioner and the department of mental hygiene shall have power to act for and in behalf of the agency in servicing the mortgage loans of the agency, and to perform such functions and services in connection with the making, servicing, and collection of such loans as shall be requested by the agency.

(c) Notwithstanding any inconsistent provision of law, general or special, the health and mental hygiene facilities improvement corporation is hereby authorized and empowered to render such services as may be requested by the commissioner in the performance of his duties, powers, and functions pursuant to the provisions of this article. The commissioner shall reimburse the health and mental hygiene facilities improvement corporation for the actual and necessary cost of all services so performed.

(d) 1. The commissioner and the department of mental hygiene may, with respect to any project of which the New York state housing finance agency has acquired the fee or otherwise, enter into an agreement with said agency subject to the approval of the director of the budget, for the department of mental hygiene, as provided in paragraph (two) hereof, to operate the said project in a manner consistent with the purposes of this article. In such event, the commissioner, on behalf of the department of mental hygiene, shall have the power to use any available funds to pay all operating expenses and to comply with all the terms and provisions of the mortgage, as though the mortgage had not been foreclosed, and to comply with the provisions of this article.

2. Subject to the provisions of the agreement with said agency, the commissioner may contract with any person, firm, or corporation which he deems qualified to operate and manage such project and to perform such duties and functions as he may deem necessary.

§ 75.27 Voluntary dissolution.

At any time after the expiration of twenty years after the occupancy date, or such earlier date as the bonds issued by the New York state housing finance agency with respect to the project are subject to redemption, a company may be voluntarily dissolved, with the consent of the commissioner, upon repayment in full of all obligations under the mortgage and payment of all obligations of the company, as approved by the commissioner.

§ 75.29 Foreclosures and judgments.

(a) In any foreclosure action the commissioner shall be made a party defendant. He shall take all steps necessary to protect the interests of the public therein and no costs shall be awarded against him. Foreclosures shall not be decreed unless the court to which application is made shall be satisfied that the interests of the lienholder or holders cannot be adequately assured except by the sale of the property. In any such proceeding, the court shall be authorized to appoint the commissioner as receiver of the property, or to grant such other and further relief as may be reasonable and proper.

(b) Notwithstanding the foregoing provisions of this section, wherever it shall appear that the New York state housing finance agency shall have loaned on a mortgage which is a first lien upon any such property, such New York state housing finance agency shall have all the remedies available to a mortgagee under the laws of the state of New York, free from any restrictions contained in this section, except that the commissioner shall be made a party defendant and that the commissioner shall take all steps necessary to protect the interests of the public and no costs shall be awarded against him.

(c) In the event of a judgment against a company in any action not pertaining to the collection of a mortgage indebtedness, there shall be no sale of any of the real property of such company except upon sixty days' written notice to the commissioner and the New York state housing finance agency. Upon receipt of such notice the commissioner and the

agency shall take such steps as in their judgment may be necessary to protect the rights of all parties.

§ 75.33 Fees and charges.

The commissioner may by regulation establish and charge to any company such fees and charges for inspection, regulation, supervision, and audit as to the commissioner may appear just and reasonable in order to recover the departmental costs in performing these functions.

§ 75.35 Separability.

If any clause, sentence, paragraph, or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

ARTICLE 79

PROCEEDINGS RELATIVE TO INCOMPETENT VETERANS AND INFANT WARDS OF THE UNITED STATES VETERANS' ADMINISTRATION

Section 79.01 Definitions.

79.03 Application.

79.05 Limitations on number of wards.

79.07 Petition; contents.

79.09 Consolidated procedure.

79.11 Prima facie evidence of infancy or incompetency.

79.13 Notice.

79.15 Bonds; sureties.

79.17 Accounts.

79.19 Removal of guardian for failure to account or for other reasons.

79.21 Compensation of guardian.

- 79.23 Investments by guardians.
- 79.25 Maintenance and support.
- 79.27 Filing and recording of papers and copies of public records to be furnished.
- 79.29 Admission and retention of mentally ill veterans.
- 79.31 Discharge of guardian.
- 79.33 Liberal construction.
- 79.35 Uniformity of construction.
- 79.37 Invalidity of part of article.
- 79.39 Recognition of veterans' administration as a party in interest.
- 79.41 Funds to be kept separate.
- 79.43 Notice of pendency of proceeding; effect.

§ 79.01 Definitions. As used in this article:

The term "person" includes a partnership, corporation, or an association.

The term "administration" means the United States veterans' administration or its successor.

The terms "estate" and "income" shall include only moneys received by the guardian from the administration and all earnings, interest, and profits derived therefrom.

The term "benefits" shall mean all moneys payable by the United States through the administration.

The term "director" means the director of the United States veterans' administration or his successor.

The term "ward" means a beneficiary of the administration.

The term "guardian" as used herein shall mean any person acting as a fiduciary for a ward.

§ 79.03 Application.

Whenever, pursuant to any law of the United States or regulation of the administration, the director requires, prior to payment of benefits, that a guardian be appointed for a ward, such appointment shall be made in the manner hereinafter provided. The provisions of this article shall apply only to the wards of the administration and with respect to such wards, except as herein otherwise specifically provided, shall supersede any inconsistent provision of law relating to incompetents, conservatees or infants.

§ 79.05 Limitations on number of wards.

Except as hereinafter provided it shall be unlawful for any person to accept appointment as guardian of any ward if such proposed guardian shall at that time be acting as guardian for five wards. In any case upon presentation of a petition by an attorney of the administration under this section alleging that a guardian is acting in a fiduciary capacity for more than five wards and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge such guardian in said case.

The limitations of this section shall not apply where the guardian is a bank or trust company. An individual may be guardian of more than five wards if they are all members of the same family.

§ 79.07 Petition; contents.

A petition for the appointment of a guardian for an incompetent or conservatee ward may be filed in the supreme court or in the county court pursuant to jurisdiction given in the laws of the state, by or on behalf of any person who, under the laws of the state, is entitled to

file such a petition. A petition for the appointment of a guardian for an infant ward may be filed in the surrogate's court pursuant to jurisdiction given in the surrogate's court procedure act, by or on behalf of any person who, under the provision of the surrogate's court procedure act, is entitled to file such petition.

The petition for appointment of a guardian, whether the ward be a mental incompetent or an infant, shall set forth the name, age, place of residence of the ward, the names and places of residence of the nearest relative, if known, and the fact that such ward is entitled to receive moneys payable by or through the administration and shall set forth the amount of moneys then due and the amount of probable future payments.

The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward.

In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent on examination by the administration in accordance with the laws and regulations governing the administration.

§ 79.09 Consolidated procedure.

Upon petition for the appointment of a guardian the court may appoint such guardian to receive not only benefits from the veterans' administration and income from such benefits, but such other property of the ward to which he may be entitled and which is not then being administered by a committee appointed pursuant to the provisions of article seventy-eight of this chapter in the case of an incompetent or pursuant to article seventy-seven of this chapter in the case of a conservatee, or guardian appointed pursuant to the provisions of the surrogate's court procedure act in the case of an infant; provided, however, that if objection to such appointment of a guardian be made by or on behalf of such ward, such appointment shall not be made except upon compliance with said provisions of this chapter in the case of an incompetent or conservatee, or the surrogate's court procedure act in

the case of an infant.

§ 79.11 Prima facie evidence of infancy or incompetency.

(a) Where a petition is filed for the appointment of a guardian of an infant ward, a certificate of the director, or his representative, setting forth the age of such infant as shown by the records of the administration and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the infant by the administration shall be prima facie evidence of the necessity for the appointment of a guardian to receive benefits from the administration and income from such benefits.

(b) Where a petition is filed for the appointment of a guardian of a mentally incompetent ward, a certificate of the director, or his representative, setting forth the fact that such person has been rated incompetent by the administration on examination in accordance with the laws and regulations governing such administration and that the appointment of a guardian is a condition precedent to the payment of any moneys due such person by the administration shall be prima facie evidence of the necessity for the appointment of a guardian to receive benefits from the administration and income from such benefits.

§ 79.13 Notice.

(a) Upon the filing of a petition for the appointment of a guardian under the provisions of this article, the court shall cause the same notice to be given that is required by this chapter when the appointment is being made for an incompetent and by the surrogate's court procedure act when it is being made for an infant.

(b) Due and timely notice shall be given to the administration of any proceeding had involving the estate of a claimant of said administration where said claimant is receiving payment from said administration through a guardian.

§ 79.15 Bonds; sureties.

Before making an appointment under the provisions of this article the court shall be satisfied that the guardian, whose appointment is sought, is a fit and proper person to be appointed. Upon the appointment being made the guardian shall execute and file a bond to be approved by the court in an amount not less than the sum then due and estimated to become payable during the ensuing year, if he is to receive only the benefits from the administration and income from such benefits. If the guardian is also to receive other property of the ward, the minimum amount of the said bond shall be increased, in the case of an incompetent ward, by the amount of the bond required of a committee appointed under article seventy-eight of this chapter, and in the case of an infant ward, by the amount of the bond required of a guardian appointed under the surrogate's court procedure act; or else the guardian shall execute and file an additional bond in the amount required by the applicable statute. The said bond or bonds shall be in the form and be conditioned as required of guardians appointed under article seventy-eight of this chapter, in the case of an incompetent ward, and under the surrogate's court procedure act, in the case of an infant ward. The court shall have power from time to time to require the guardian to file an additional bond. The necessity of requiring a bank or trust company to give bond when acting as guardian shall be governed by subdivision five of section one hundred-a of the banking law.

Where a bond is tendered by a guardian with personal sureties, such sureties shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and that they are each worth the sum named in the bond as the penalty thereof over and above all their debts and liabilities and exclusive of property exempt from execution.

§ 79.17 Accounts.

(a) Every guardian or committee, whether appointed under this article or under any other law of this state, who shall receive or has received on account of his ward any moneys from the administration or income from such moneys shall file annually with the court by which he was appointed on the anniversary date of the appointment, in addition to such other

accounts as may be required by the court, a full, true, and accurate account under oath of all moneys or income so received by him, of all disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested. A certified copy of each of such accounts filed with the court, including a copy of all certificates and affidavits required by this section, shall be sent by the guardian to the office of the veterans' administration having jurisdiction over the area in which such court is located, and if the incompetent person, for whom such guardian is appointed, has been committed to a state facility and is an inmate thereof, a certified copy of each such account filed with the court shall also be filed by the guardian with the superintendent or officer having special jurisdiction over the facility where the incompetent person is confined.

(b) Such account shall be examined or caused to be examined, approved, disapproved, or acted upon in the manner provided by section 78.25 of this chapter in the case of an incompetent person, or by section seventeen hundred twenty-one of the surrogate's court procedure act if it relates to the estate of a minor ward; and the expense of such examination shall be paid in the manner provided in section 78.25 of this chapter in the case of an incompetent person or by section seventeen hundred twenty-two of the surrogate's court procedure act in the case of a minor ward.

(c) If the guardian holds property other than benefits received from the veterans' administration and income from such benefits, the guardian shall account for such other property as provided for in article seventy-eight of this chapter and in the surrogate's court procedure act, except that such account shall be filed on the anniversary date of the guardian's appointment. Such account for other property may be combined with the account filed in accordance with the provisions of subdivision (b) of this section.

(d) The anniversary account required to be filed by this section shall be in the form prescribed by the surrogate's court procedure act upon the annual accounting of a general guardian of an infant's property as provided in section 78.23 of this chapter. In such an anniversary account, the schedule in which are listed and described the securities and investments shall have appended or attached thereto an affidavit of the surety on the bond of the committee certifying that the securities

and investment described in said schedule, on the closing date of said accounting period, were in the custody of or under the joint control of the surety and committee or guardian. If the securities or investments were neither in the custody nor under the control of the surety the certificate of said surety shall state that the securities were exhibited to said surety on the anniversary date or closing date of said accounting or within thirty days thereafter, and if not so exhibited to the surety the reason therefor. The affidavit required of the surety by this section shall note any discrepancies or omission in the descriptive schedule. If the securities are held by a depository under order granted pursuant to subdivision (b) of section 78.09 of this chapter there shall be attached to or appended to the schedule describing the securities in said anniversary account a certificate that the securities, on the anniversary date or closing date of said accounting, were held by said depository and said certificate shall note and explain any discrepancies or omissions in the said schedule of the account describing the securities. The certificate of each bank in which moneys of the estate of the incompetent veteran are on deposit showing the balance on the closing date of the anniversary account shall be annexed to and made part of the original account before it is filed in the county clerk's office of the county of which the veteran was a resident at the time of the appointment of the joint guardian or committee of his estate.

(e) The provisions regulating intermediate and final accountings as prescribed by section 78.29 of this chapter shall also apply to any intermediate or final accounting of a guardian or committee of a veteran incompetent, provided, however, that notice of the application for permission to file such intermediate or final account shall be given to the office of veterans' administration as a party in interest.

§ 79.19 Removal of guardian for failure to account or for other reasons.

If any guardian shall fail to file any account of the moneys received by him from the administration on account of his ward within thirty days after such account is required by either the court or the administration, or shall fail to furnish the bureau a copy of his accounts as required by this article, such failure shall be grounds for

removal. A guardian may also be removed when the judge has reason to believe that sufficient cause therefor exists.

§ 79.21 Compensation of guardian.

(a) Where a guardian has received only the benefits from the administration or income from such benefits, compensation payable to the guardian for administering the estate of a ward shall be fixed by the court not to exceed five per centum of the income of the ward during any year. In the event of extraordinary services rendered by such guardian the court may, upon petition and after hearing thereon, authorize additional compensation therefor, payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the administration. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of his ward reasonable premiums, not exceeding one per centum per annum upon the amount of the bond, paid by him to any corporate surety upon his bond.

(b) Where a guardian has also received property of the ward other than benefits and income therefrom, additional compensation may be had, in the case of an incompetent ward, as prescribed by article seventy-eight of this chapter, and in the case of an infant ward, as prescribed by the surrogate's court.

§ 79.23 Investments by guardians.

(a) A guardian of an infant ward, in the investment both of the funds of the estate and of other property of the infant which he may receive, shall be governed by the laws which govern investments by a guardian of an infant who has executed and filed a bond with surety.

(b) A guardian of an incompetent ward, in the investment both of the funds of the estate and other property of the incompetent which he may receive, shall be governed by the laws which govern investments by a committee of an incompetent.

§ 79.25 Maintenance and support.

A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, except upon order of the court after a hearing, notice of which has been given the proper office of the administration. In case of an infant ward, the application of property to his support or education shall be governed by sections seventeen hundred thirteen, seventeen hundred fourteen, and seventeen hundred fifteen of the surrogate's court procedure act.

§ 79.27 Filing and recording of papers and copies of public records to be furnished.

The official, charged with the responsibility of receiving public records for filing and recording, shall receive any such public records pertaining to the appointment, discharge, or removal of any guardian of a claimant of the veterans' administration where such appointment, discharge, or removal is required by said administration, and file and when necessary record same without charge to the claimant or his estate, and likewise shall any papers be received and filed and when necessary recorded without charge where incidental proceedings develop, including court orders for the expenditure of funds for support and maintenance of a ward or his dependents, and issuance of certified copies thereof, and whenever a copy of any public record is required by the administration to be used in determining the eligibility of any person to participate in the benefits made available by such administration, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the representative of such administration with a certified copy of such record.

§ 79.29 Admission and retention of mentally ill veterans.

Whenever it appears that a mentally ill veteran of any war, military occupation or expedition is eligible for treatment in a United States veterans' administration hospital or that a mentally ill seaman or other

person is eligible for treatment in a United States public health service hospital and the official in charge of such hospital determines that such person is suitable for voluntary admission to such hospital or that an involuntary admission to such hospital is necessary for the proper care and treatment of such veteran, seaman, or other person, such official is authorized to admit and retain such veteran, seaman or other person, provided, however, such official shall comply with all applicable provisions of article nine of this chapter relating to admission and retention of patients. The officials in charge of such hospitals are also authorized to apply to the commissioner for approval to receive and retain such veterans, seamen or other eligible persons on an emergency basis, in accordance with the provisions of section 9.39 of this chapter. Such veteran, seaman, or other person, upon admission, shall be subject to the rules and regulations of such hospital to the extent that such rules and regulations do not conflict with the provisions of this section.

§ 79.31 Discharge of guardian.

(a) When a minor ward for whom a guardian has been appointed under the provisions of this article or other laws of this state shall have attained his or her majority, and if incompetent, shall be declared competent by the administration and the court, and when any incompetent ward, not a minor, shall be declared competent by said administration and the court, the guardian shall upon making a satisfactory accounting be discharged upon a petition filed for that purpose. Provided, however, if a guardian has received other property in addition to the benefits from the administration and income from such benefits, his discharge as to such property shall, in the case of an incompetent ward, be governed by the laws which govern the discharge of a committee of an incompetent, and in the case of an infant ward, by the laws which govern the discharge of a guardian of an infant.

§ 79.33 Liberal construction.

This article shall be construed liberally to secure the beneficial

intents and purposes thereof.

§ 79.35 Uniformity of construction.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 79.37 Invalidity of part of article.

The invalidity of any portion of this article shall not affect the validity of any other portion thereof which can be given effect without such invalid part.

§ 79.39 Recognition of veterans' administration as a party in interest.

(a) With respect to benefits from the administration or the income therefrom, the administrator of the United States veterans' administration or his duly authorized attorney, for the purpose of bringing any action, or otherwise appearing, in behalf of a ward of the administration to whom benefits from said administration may accrue, shall be recognized as a party in interest and entitled to all the rights and privileges of a party.

(b) In addition to any official authorized by law to administer oaths, any attorney or field representative employed by the United States veterans' administration shall be authorized to administer any oath required in any court proceeding wherein such administration is a party in interest, as provided in subdivision (a). The certification, on any affidavit, instrument, or document, as to an oath taken by any such attorney or field representative of the United States veterans' administration pursuant to the authority of this section, shall contain a statement of the title of the office or employment of such attorney or field representative in such administration.

§ 79.41 Funds to be kept separate.

Every guardian shall keep the funds received by him in his capacity as guardian separate and distinct from his own personal funds and property. He shall not invest the same or deposit the same with any person, association or corporation doing business under the banking law, or other person or institution in his own name, but, except as provided in section 11-1.6 of the estates, powers and trusts law, all transactions had and done by him shall be in his name as such guardian. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

§ 79.43 Notice of pendency of proceeding; effect.

In all proceedings taken under this article, if real property or any interest therein is intended to be affected, the petitioner shall file in the clerk's office of each county where the property is situated a notice of the pendency of such proceeding which shall set forth the general nature and object of the proceeding and a brief description of the real property in that county to be affected thereby, which notice must be filed with the petition or at any time thereafter and before any final adjudication in the proceeding. The clerk shall index such notice against the name of the alleged incompetent. The pendency of the proceeding is constructive notice from the time of so filing the notice only to a purchaser or incumbrancer of the property affected thereby from or against the alleged incompetent with respect to whom the notice is directed to be indexed. A person whose conveyance or incumbrance is subsequently executed or subsequently recorded is bound by all proceedings taken after the filing of the notice to the same extent as if he was a party to the proceeding. But this provision shall not prevent a jury in a proper proceeding, on sufficient proof, from rendering a verdict that shall overreach any conveyance or incumbrance theretofore executed by the alleged incompetent, so as to make such conveyance or incumbrance prima facie void.

ARTICLE 80

SURROGATE DECISION-MAKING FOR MEDICAL CARE AND TREATMENT

Section 80.01 Legislative findings and purpose.

80.03 Definitions.

80.05 Surrogate decision-making committees and panels;
organization.

80.07 Procedures of the committees and panels.

80.09 Right of appeal; temporary restraining order.

80.11 Effect of determination that a person is in need of
surrogate decision-making.

80.13 Committee reports.

§ 80.01 Legislative findings and purpose.

The legislature hereby finds and declares that timely access to health care for people who are mentally disabled is an important objective for New York state; that the autonomy of persons with decision-making capacity to make health care decisions for themselves must be respected; and that, in cases involving persons with impaired decision-making capacity, efforts should be made to ensure that health care decisions are based on the best interests of the patient and reflect, to the extent possible, the patient's own personal beliefs and values. The legislature further finds that the exclusive utilization of judicial authorization to obtain consent for medical care for the mentally disabled has in some cases resulted in undue delay in the provision of necessary care, needlessly jeopardizing the health of the mentally disabled. The legislature further finds and declares that the public interest will be served by the establishment of a statewide quasi-judicial surrogate decision-making process, which would determine patient capacity to consent to or refuse medical treatment and assess whether the proposed treatment promotes the patient's best interests, consistent with the patient's values and preferences. The process will strengthen the surrogate decision-making role of parents and other family members, while assuring that those individuals without available family members have access to medical care.

§ 80.03 Definitions.

When used in this article:

(a) "Major medical treatment" means a medical, surgical or diagnostic intervention or procedures where a general anesthetic is used or which involves any significant risk or any significant invasion of bodily integrity requiring an incision or producing substantial pain, discomfort, debilitation or having a significant recovery period. Such term does not include: any routine diagnosis or treatment such as the administration of medications other than chemotherapy for non-psychiatric conditions or nutrition or the extraction of bodily fluids for analysis; electroconvulsive therapy; dental care performed with a local anesthetic; any procedures which are provided under emergency circumstances, pursuant to section twenty-five hundred four of the public health law; the withdrawal or discontinuance of medical treatment which is sustaining life functions; or sterilization or the termination of a pregnancy.

(b) "A patient in need of surrogate decision-making" means a patient as defined in subdivision twenty-three of section 1.03 of this chapter who is: a resident of a mental hygiene facility including a resident of housing programs funded by an office of the department or whose federal funding application was approved by an office of the department or for whom such facility maintains legal admission status therefor; or, receiving home and community-based services for persons with mental disabilities provided pursuant to section 1915 or 1115 of the federal social security act; or receiving individualized support services; or, case management or service coordination funded, approved, or provided by the office for people with developmental disabilities; and, for whom major medical treatment is proposed, and who is determined by the surrogate decision-making committee to lack the ability to consent to or refuse such treatment, but shall not include minors with parents or persons with legal guardians, committees or conservators who are legally authorized, available and willing to make such health care decisions. Once a person is eligible for surrogate decision-making, such person may continue to receive surrogate decision-making as authorized by this section regardless of a change in residential status.

(c) "Lack of ability to consent to or refuse major medical treatment" means the patient cannot adequately understand and appreciate the nature and consequences of a proposed major medical treatment, including the benefits and risks of and alternatives to such treatment, and cannot thereby reach an informed decision to consent to or to refuse such treatment in a knowing and voluntary manner that promotes the patient's well-being.

(d) "Best interests" means promoting personal well-being by the assessment of the risks, benefits and alternatives to the patient of a proposed major medical treatment, taking into account factors including the relief of suffering, the preservation or restoration of functioning, improvement in the quality of the patient's life with and without the proposed major medical treatment and consistency with the personal beliefs and values known to be held by the patient.

(e) "Surrogate decision-making committee" means a committee of at least twelve persons established pursuant to section 80.05 of this article.

(f) "Panel" means a subcommittee of four members of the surrogate decision-making committee.

(g) "Commission" means the commission on quality of care and advocacy for persons with disabilities.

(h) "Providers of health services" means, for the purposes of this article, those defined in subdivisions five and six of section 1.03 of this chapter; hospitals, as defined pursuant to article twenty-eight of the public health law; physicians and dentists.

(i) "Declarant" means a person who submits a declaration pursuant to the provisions of this article and may include any provider of health services, the director of the patient's residential facility or a relative or correspondent of the patient.

(j) "Declaration" means a written statement submitted in accordance with section 80.07 of this article.

(k) "Correspondent" means a person who has demonstrated a genuine interest in promoting the best interests of the patient by having a personal relationship with the patient, by participating in the patient's care and treatment, by regularly visiting the patient, or by regularly communicating with the patient.

§ 80.05 Surrogate decision-making committees and panels; organization.

(a) Surrogate decision-making committees of at least twelve persons shall be established by the commission in geographic areas of the state, as may be designated by the commission. A committee designated after April first, nineteen hundred eighty-eight shall not accept applications for review pursuant to this article until April first, nineteen hundred eighty-nine and within appropriations made therefor.

(b) The members shall be appointed by the commission. The commission shall designate one member of each of the committees to serve as chairperson, who shall serve at the pleasure of the commission. Members appointed as of July thirty-first, nineteen hundred ninety shall serve for terms expiring on July thirty-first, nineteen hundred ninety-one. Upon expiration of such terms, such members may be appointed for terms of two years commencing on August first, nineteen hundred ninety-one. Any additional members and members appointed due to vacancies shall be appointed for terms of two years commencing on the date of completion of training by the commission. Members may be reappointed for additional two year terms of office but the provisions of section five of the public officers law shall not apply to such members. The commission may assign a committee member to serve on an additional committee or committees as deemed necessary or appropriate by the commission.

(c) Members of the committee and panel shall include members from each of the following groups:

(i) physicians, nurses, psychologists, or other health care professionals licensed by the state of New York; (ii) former patients or parents, spouses, adult children, siblings or advocates of mentally disabled persons; (iii) attorneys admitted to the practice of law in New York state; and (iv) other persons with recognized expertise or demonstrated interest in care and treatment of mentally disabled persons.

(d) A member who has failed to attend three consecutive meetings of the committee or panel to which the member has been appointed shall be considered to have vacated his or her office unless the commission determines that the absences should be excused. The members shall be reimbursed for their actual and necessary expenses and shall be considered public officers for the purpose of sections seventeen,

nineteen and seventy-four of the public officers law.

(e) The committees shall have available to them such staff and assistance as may be deemed necessary by the commission. In providing for such staff and assistance, the commission may enter into agreements with nonprofit organizations, including but not limited to community dispute resolution centers authorized under article twenty-one-A of the judiciary law, and the staff of such organizations in carrying out such functions shall be considered public officers for the purpose of sections seventeen, nineteen and seventy-four of the public officers law. Provided, however, the commission may not delegate pursuant to such agreements responsibility for the appointment of members to serve on surrogate decision-making committees, the training of any such members, the review of declarations, maintenance of the record of the hearing and original file, and general oversight of panel activities. Any information, books, records, or data which are confidential as provided for by law, received by such an organization pursuant to an agreement with the commission, shall be kept confidential by the organization, and any limitations on the further release thereof, imposed by law upon the party furnishing the information, books, records or data, shall apply to the organization.

(f) Each surrogate decision-making committee shall undertake its responsibilities through panels composed of four of its members. The chairman of each committee or his or her designee shall designate the chairman of the panel who shall serve at the pleasure of the committee chairman or his or her designee.

(g) A panel shall be convened as often as deemed necessary by the chairman of the committee or his or her designee to assure timely review of pending declarations; provided, however, that neither article six nor article seven of the public officers law shall apply to the conduct of such committee or panel. The proceedings of the panel may be conducted with only three persons. Provided, however, if a panel chairperson receives reasonable notice that a panel member will not be able to attend a panel hearing, such chairperson or his or her designee shall undertake efforts to identify another appropriate member of the committee to serve on such panel.

(h) No member who is a provider of health services or an officer or employee of any provider of health services to a patient whose case is

under consideration by a panel may serve with respect to such patient.

§ 80.07 Procedures of the committees and panels.

(a) The committee shall receive declarations filed on behalf of patients, as follows:

1. A declaration may be filed by a declarant on behalf of any patient, residing within the geographic area served by the committee, who is believed to be in need of major medical treatment and to lack the capacity to consent to or refuse major medical treatment. Jurisdiction by the surrogate decision-making committee may continue throughout all subsequent proceedings related to the major medical treatment proposed in the initial declaration notwithstanding the patient's transfer outside of the geographic region or discharge from the facility.

2. A declaration shall be signed by the declarant and shall state the following:

(i) the patient does not have a parent, spouse, adult child, committee of the person, conservator or legal guardian, or other available surrogate authorized by regulation in accordance with section 33.03 of this chapter; or that the patient's parent, spouse, adult child, committee of the person, conservator, legal guardian, or other available surrogate authorized by regulation in accordance with section 33.03 of this chapter is willing to allow the panel to act upon the declaration;

(ii) the reasons for believing that the patient lacks the capacity to consent to or refuse major medical treatment and the factual and professional basis for this belief, which may include an independent evaluation by a person qualified to assess the patient's capacity to make such medical decisions;

(iii) a description of the proposed major medical treatment and of the patient's medical condition which requires such treatment; the risks, alternatives and benefits to the patient of such treatment; a statement of declarant's opinion of whether the best interests of the patient would be promoted by such treatment and the basis for the opinion; the patient's view of the proposed treatment, if known; and such other information as may be necessary to establish the need for such

treatment.

(b) Upon receipt of the declaration, the committee shall send a copy of the declaration forthwith to the patient and to the patient's parent, spouse, adult child, or other available surrogate authorized by regulation in accordance with section 33.03 of this chapter, committee of the person, conservator, legal guardian or correspondent, if known, the director of the patient's residential mental hygiene facility, if any, or such director's designee and the mental hygiene legal service which serves the same region as the committee. The chairperson of the committee or his or her designee shall assign the declaration to one of its panels, whose members will also receive a copy of the declaration. The declaration shall be accompanied by a notice of the time, place and date of the panel hearing on the declaration. The hearing shall be scheduled no earlier than five days after such declaration is sent, except where medical circumstances require a more immediate hearing or where the consent of the patient's parent, spouse, adult child, committee of the person, conservator, legal guardian or correspondent, if known, the director of the patient's mental hygiene residential facility, if any, or such director's designee and the mental hygiene legal service has been obtained for conducting a more immediate hearing. The notice shall inform recipients of the procedures of the panels, including the opportunity for the recipient to be present and to be heard.

(c) The declaration shall, prior to the date of the panel hearing, be reviewed by the panel chairman or his designee to ascertain whether additional information may be necessary to assist the panel in determining the patient's need for surrogate decision-making and in determining whether the patient's best interests will be served by consenting to or refusing major medical treatment on the patient's behalf. The panel chairman or his designee may:

1. Request and shall, notwithstanding any other law to the contrary, be entitled to receive from any physician, mental hygiene facility or health care facility or person licensed to render health care, any information which is relevant to the patient's need for surrogate decision-making or for the proposed major medical treatment. Information, books, records or data which are confidential as provided

for by law shall be kept confidential by the panel and any limitations on the further release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to the panel.

2. Order an independent assessment of the patient, or of information concerning the patient, to be undertaken, including obtaining an independent opinion, where such independent assessment or opinion is determined by the panel chairman to be necessary.

3. Consult with any other person who might assist in such a determination of the best interests of the patient, including ascertainment of the personal beliefs and values of the patient.

(d) The panel shall conduct a hearing, at which the patient, any other person requested by the patient to appear on his or her behalf, and the mental hygiene legal service have the right to be present and to be heard. Where practicable, the panel members shall personally interview and observe the patient prior to making their decision. The panel shall be empowered to administer oaths to and to take testimony from any person who might assist the panel in making its decision. Such hearing shall be recorded and any information, record, assessment or consultation submitted to or considered by the panel shall be maintained as part of the record of the deliberations of the panel. Formal rules of evidence shall not apply to the proceedings of the panel.

(e) The panel shall make a determination, based on clear and convincing evidence, as to whether the patient is in need of surrogate decision-making; provided, however, that minor patients shall be deemed to lack such capacity, to the extent that minors generally are deemed to lack such capacity. Unless three panel members concur in the determination that the patient is in need of surrogate decision-making, the patient shall be deemed not to need surrogate decision-making. In such event, a record of such determination shall be made and the patient's consent to such treatment, if given, shall constitute legally valid consent.

(f) For any patient determined to be in need of surrogate decision-making, the panel shall make a further determination as to whether the proposed major medical treatment is or is not in the best interests of the patient based on a fair preponderance of the evidence;

provided, however, that evidence of a previously articulated preference by the patient concerning the proposed treatment shall be given full consideration by the panel. The panel shall provide a record of its determination which consents to or refuses major medical treatment on the patient's behalf, which shall reflect the opinion of at least three of the panel members. If the panel determination consents to such treatment, such consent shall constitute legally valid consent to such treatment in the same manner and to the same extent as if the patient were able to consent to or refuse such treatment on his or her own behalf.

(g) If at anytime during the pendency of a proceeding, a parent, spouse or adult child, or other available surrogate authorized by regulation in accordance with section 33.03 of this chapter objects to the panel acting upon the declaration or a committee of the person, conservator or legal guardian who is legally authorized to consent to or refuse such treatment on the patient's behalf, objects to the panel acting upon the declaration, the proceedings regarding such patient shall cease. A record of such person's objection shall be included as part of the record as provided for by this section.

(h) A copy of any determination made pursuant to this section shall contain a statement describing the right to appeal set forth herein and shall promptly be sent or provided to the patient; other persons requested by the patient to appear on his or her behalf; declarant; parent, spouse, adult child, legal guardian, committee of the person, or other available surrogate authorized by regulation in accordance with section 33.03 of this chapter or, in the absence of such persons, known correspondents of the patient; the director of the patient's mental hygiene residential facility, if any; and the mental hygiene legal service. Where practicable, the panel shall reach its determination or determinations at the time of the hearing and provide notice to the above persons forthwith. The terms of such determinations and the giving of such notice shall be made a part of the record. The decision shall state when the consent shall become effective after such determination has been provided or mailed to the parties specified in this section. The panel may delay the effective date of its decision for up to five days in order to enable an objecting party to exercise the right of appeal, pursuant to section 80.09 of this article.

§ 80.09 Right of appeal; temporary restraining order.

The patient, declarant, a parent, spouse, adult child, conservator, legal guardian, committee of the person, or other available surrogate authorized by regulation in accordance with section 33.03 of this chapter or correspondent of the patient, the mental hygiene legal service, or the director of the patient's residential facility may apply to the supreme court for review, pursuant to article seventy-eight of the civil practice law and rules, of whether a determination by a panel is supported by substantial evidence. If a trial is required, it shall receive an immediate preference, as provided for in rule thirty-four hundred three of the civil practice law and rules.

Within the discretion of the court, a temporary restraining order may be granted by the supreme court to facilitate appeal by a proper party, unless it is found by the court to be inconsistent with a need for more timely medical attention. In the event such an order is granted, the court shall conduct an expedited review of the panel's determination.

§ 80.11 Effect of determination that a person is in need of surrogate decision-making.

The determination by a panel that a patient is in need of surrogate decision-making under this article shall not be construed or deemed to be a determination that such person is impaired or incompetent pursuant to article seventy-seven or seventy-eight of this chapter, nor shall it be valid for any other purpose or any other future medical treatment, unless the determination explicitly applies to related or continuing treatment necessitated by the original treatment. Nothing in this article shall be construed to limit the availability of other lawful means to obtain substitute consent for medical treatment, without utilizing the procedures set forth in this article. No person shall be deemed to have failed to exhaust administrative remedies by commencing a legal action to obtain consent to or refusal of medical treatment in the

absence of or prior to a review of the case by a surrogate decision-making committee or panel.

§ 80.13 Committee reports.

The chairman of each committee shall provide a quarterly report on the activities of the committee and its panels to the commission on quality of care for the mentally disabled. Such report shall provide all information in the manner and form requested by the commission.

ARTICLE 81

PROCEEDINGS FOR APPOINTMENT OF A GUARDIAN FOR PERSONAL NEEDS OR PROPERTY MANAGEMENT

- Section 81.01 Legislative findings and purpose.
- 81.02 Power to appoint a guardian of the person and/or property; standard for appointment.
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§ 81.01 Legislative findings and purpose.

The legislature hereby finds that the needs of persons with incapacities are as diverse and complex as they are unique to the individual. The current system of conservatorship and committee does not provide the necessary flexibility to meet these needs. Conservatorship which traditionally compromises a person's rights only with respect to property frequently is insufficient to provide necessary relief. On the other hand, a committee, with its judicial finding of incompetence and the accompanying stigma and loss of civil rights, traditionally involves a deprivation that is often excessive and unnecessary. Moreover, certain persons require some form of assistance in meeting their personal and

property management needs but do not require either of these drastic remedies. The legislature finds that it is desirable for and beneficial to persons with incapacities to make available to them the least restrictive form of intervention which assists them in meeting their needs but, at the same time, permits them to exercise the independence and self-determination of which they are capable. The legislature declares that it is the purpose of this act to promote the public welfare by establishing a guardianship system which is appropriate to satisfy either personal or property management needs of an incapacitated person in a manner tailored to the individual needs of that person, which takes in account the personal wishes, preferences and desires of the person, and which affords the person the greatest amount of independence and self-determination and participation in all the decisions affecting such person's life.

§ 81.02 Power to appoint a guardian of the person and/or property; standard for appointment.

(a) The court may appoint a guardian for a person if the court determines:

1. that the appointment is necessary to provide for the personal needs of that person, including food, clothing, shelter, health care, or safety and/or to manage the property and financial affairs of that person; and

2. that the person agrees to the appointment, or that the person is incapacitated as defined in subdivision (b) of this section. In deciding whether the appointment is necessary, the court shall consider the report of the court evaluator, as required in paragraph five of subdivision (c) of section 81.09 of this article, and the sufficiency and reliability of available resources, as defined in subdivision (e) of section 81.03 of this article, to provide for personal needs or property management without the appointment of a guardian. Any guardian appointed under this article shall be granted only those powers which are necessary to provide for personal needs and/or property management of the incapacitated person in such a manner as appropriate to the

individual and which shall constitute the least restrictive form of intervention, as defined in subdivision (d) of section 81.03 of this article.

(b) The determination of incapacity shall be based on clear and convincing evidence and shall consist of a determination that a person is likely to suffer harm because:

1. the person is unable to provide for personal needs and/or property management; and

2. the person cannot adequately understand and appreciate the nature and consequences of such inability.

(c) In reaching its determination, the court shall give primary consideration to the functional level and functional limitations of the person. Such consideration shall include an assessment of that person's:

1. management of the activities of daily living, as defined in subdivision (h) of section 81.03 of this article;

2. understanding and appreciation of the nature and consequences of any inability to manage the activities of daily living;

3. preferences, wishes, and values with regard to managing the activities of daily living; and

4. the nature and extent of the person's property and financial affairs and his or her ability to manage them.

It shall also include an assessment of (i) the extent of the demands placed on the person by that person's personal needs and by the nature and extent of that person's property and financial affairs; (ii) any physical illness and the prognosis of such illness; (iii) any mental disability, as that term is defined in section 1.03 of this chapter, alcoholism or substance dependence as those terms are defined in section 19.03 of this chapter, and the prognosis of such disability, alcoholism or substance dependence; and (iv) any medications with which the person is being treated and their effect on the person's behavior, cognition

and judgment.

(d) In addition, the court shall consider all other relevant facts and circumstances regarding the person's:

1. functional level; and

2. understanding and appreciation of the nature and consequences of his or her functional limitations.

§ 81.03 Definitions.

When used in this article,

(a) "guardian" means a person who is eighteen years of age or older, a corporation, or a public agency, including a local department of social services, appointed in accordance with terms of this article by the supreme court, the surrogate's court, or the county court to act on behalf of an incapacitated person in providing for personal needs and/or for property management.

(b) "functional level" means the ability to provide for personal needs and/or the ability with respect to property management.

(c) "functional limitations" means behavior or conditions of a person which impair the ability to provide for personal needs and/or property management.

(d) "least restrictive form of intervention" means that the powers granted by the court to the guardian with respect to the incapacitated person represent only those powers which are necessary to provide for that person's personal needs and/or property management and which are consistent with affording that person the greatest amount of independence and self-determination in light of that person's understanding and appreciation of the nature and consequences of his or her functional limitations.

(e) "available resources" means resources such as, but not limited to, visiting nurses, homemakers, home health aides, adult day care and multipurpose senior citizen centers, powers of attorney, health care proxies, trusts, representative and protective payees, and residential care facilities.

(f) "personal needs" means needs such as, but not limited to, food, clothing, shelter, health care, and safety.

(g) "property management" means taking actions to obtain, administer, protect, and dispose of real and personal property, intangible property, business property, benefits, and income and to deal with financial affairs.

(h) "activities of daily living" means activities such as, but not limited to, mobility, eating, toileting, dressing, grooming, housekeeping, cooking, shopping, money management, banking, driving or using public transportation, and other activities related to personal needs and to property management.

(i) "major medical or dental treatment" means a medical, surgical or diagnostic intervention or procedure where a general anesthetic is used or which involves any significant risk or any significant invasion of bodily integrity requiring an incision or producing substantial pain, discomfort, debilitation, or having a significant recovery period, or which involves the administration of psychotropic medication or electroconvulsive therapy; it does not include any routine diagnosis or treatment such as the administration of medications other than chemotherapy for non-psychiatric conditions or nutrition or the extraction of bodily fluids for analysis; dental care performed with a local anesthetic; and any procedures which are provided under emergency circumstances, pursuant to section two thousand five hundred four of the public health law.

(j) "life sustaining treatment" means medical treatment which is sustaining life functions and without which, according to reasonable medical judgment, the patient will die within a relatively short time period.

(k) "facility" means a facility, hospital, or school, or an alcoholism facility in this state as such terms are defined in section 1.03 of this chapter, a substance abuse program as such term is defined in article nineteen of this chapter, an adult care facility as such term is defined in section two of the social services law, or a residential health care facility or a general hospital as such terms are defined in section two thousand eight hundred one of the public health law.

(l) "mental hygiene facility" means a facility, hospital, or school, or an alcoholism facility in this state as such terms are defined in

section 1.03 of this chapter.

§ 81.04 Jurisdiction.

(a) If after a hearing or trial in accordance with the provisions of this article it is determined that relief under this article is necessary, the supreme court, and the county courts outside the city of New York, shall have the power to provide the relief set forth in this article:

1. for a resident of the state;
2. for a nonresident of the state present in the state;
3. for a nonresident of the state pursuant to section 81.18 of this article.

(b) Notwithstanding the provisions of subdivision (a) of this section, when it appears in any proceeding in the surrogate's court that a person interested in an estate is entitled to money or property as a beneficiary of the estate, or entitled to the proceeds of any action as provided in section 5-4.1 of the estates, powers and trusts law, or to the proceeds of a settlement of a cause of action brought on behalf of an infant for personal injuries, and that the interested person is a resident of, is physically present, or has any property in, the county in which the proceeding is pending and is allegedly incapacitated with respect to property management under the provisions of this article, and the surrogate's court is satisfied after a hearing or trial in accordance with the provisions of this article that the interested person is incapacitated with respect to property management, the surrogate's court shall have the power to order relief for that person with respect to property management in accordance with the provisions of this article.

§ 81.05 Venue.

(a) A proceeding under this article shall be brought in the supreme court within the judicial district, or in the county court of the county

in which the person alleged to be incapacitated resides, or is physically present, or in the surrogate's court having jurisdiction pursuant to subdivision (b) of section 81.04 of this article. If the person alleged to be incapacitated is being cared for as a resident in a facility, the residence of that person shall be deemed to be in the county where the facility is located and the proceeding shall be brought in that county, subject to application by an interested party for a change in venue to another county because of the inconvenience of the parties or witnesses or the condition of the person alleged to be incapacitated. If the person alleged to be incapacitated is not present in the state, or the residence of such person cannot be ascertained, the residence shall be deemed to be in the county in which all or some of such person's property is situated.

(b) After the appointment of a guardian, temporary guardian, special guardian, standby guardian, or alternate standby guardians, any proceeding to modify a prior order shall be brought in the supreme court, county court, or surrogate's court which granted the prior order. If, at the time of the application to modify a prior order, the incapacitated person is being cared for as a resident in a facility, the proceeding shall be brought in the county where the facility is located, subject to application by an interested party for a change in venue to the court which granted the prior order because of the inconvenience of the parties or witnesses or the condition of the incapacitated person.

§ 81.06 Who may commence a proceeding.

(a) A proceeding under this article shall be commenced by the filing of the petition with the court by:

1. the person alleged to be incapacitated;
2. a presumptive distributee of the person alleged to be incapacitated, as that term is defined in subdivision forty-two of section one hundred three of the surrogate's court procedure act;
3. an executor or administrator of an estate when the alleged incapacitated person is or may be the beneficiary of that estate;

4. a trustee of a trust when the alleged incapacitated person is or may be the grantor or a beneficiary of that trust;

5. the person with whom the person alleged to be incapacitated resides;

6. a person otherwise concerned with the welfare of the person alleged to be incapacitated. For purposes of this section a person otherwise concerned with the welfare of the person alleged to be incapacitated may include a corporation, or a public agency, including the department of social services in the county where the person alleged to be incapacitated resides regardless of whether the person alleged to be incapacitated is a recipient of public assistance;

7. the chief executive officer, or the designee of the chief executive officer, of a facility in which the person alleged to be incapacitated is a patient or resident.

§ 81.07 Notice.

(a) Proceeding. A proceeding under this article shall be commenced upon the filing of the petition.

(b) Order to show cause. Upon the filing of the petition, the court shall:

1. set the date on which the order to show cause is heard no more than twenty-eight days from the date of the signing of the order to show cause. The court may for good cause shown set a date less than twenty-eight days from the date of the signing of the order to show cause. The date of the hearing may be adjourned only for good cause shown;

2. include in the order to show cause the name, address, and telephone number of the person appointed as court evaluator in accordance with section 81.09 of this article;

3. require the order to show cause to be served together with a copy of the petition and any supporting papers upon the alleged incapacitated person, the court evaluator, and counsel for the alleged incapacitated person in the form and manner prescribed in this section; the court shall not require that supporting papers contain medical information; and

4. require notice of the proceeding together with a copy of the order to show cause to be given to the persons identified in paragraph one of subdivision (e) of this section and in the form and manner prescribed in this section.

(c) Form of the order to show cause. The order to show cause shall be written in large type, in plain language, and in a language other than English if necessary to inform the person alleged to be incapacitated of his or her rights, and shall include the following information:

1. date, time, and place of the hearing of the petition;

2. a clear and easily readable statement of the rights of the person alleged to be incapacitated that are set forth in section 81.11 of this article;

3. the name, address, and telephone number of the person appointed as court evaluator pursuant to section 81.09 of this article;

4. the name, address, and telephone number of the attorney if one has been appointed for the person alleged to be incapacitated pursuant to section 81.10 of this article; and

5. a list of the powers which the guardian would have the authority to exercise on behalf of the person alleged to be incapacitated if the relief sought in the petition is granted.

(d) Legend. The order to show cause shall also include on its face the following legend in twelve point or larger bold face double spaced type:

IMPORTANT

An application has been filed in court by _____ who believes

you may be unable to take care of your personal needs or financial affairs. _____ is asking that someone be appointed to make decisions for you. With this paper is a copy of the application to the court showing why _____ believes you may be unable to take care of your personal needs or financial affairs. Before the court makes the appointment of someone to make decisions for you the court holds a hearing at which you are entitled to be present and to tell the judge if you do not want anyone appointed. This paper tells you when the court hearing will take place. If you do not appear in court, your rights may be seriously affected.

You have the right to demand a trial by jury. You must tell the court if you wish to have a trial by jury. If you do not tell the court, the hearing will be conducted without a jury. The name and address, and telephone number of the clerk of the court are:

The court has appointed a court evaluator to explain this proceeding to you and to investigate the claims made in the application. The court may give the court evaluator permission to inspect your medical, psychological, or psychiatric records. You have the right to tell the judge if you do not want the court evaluator to be given that permission. The court evaluator's name, address, and telephone number are:

You are entitled to have a lawyer of your choice represent you. If you want the court to appoint a lawyer to help you and represent you, the court will appoint a lawyer for you. You will be required to pay that lawyer unless you do not have the money to do so.

(e) Service of the order to show cause.

1. The persons entitled to service of the order to show cause shall include:

- (i) the person alleged to be incapacitated; and
- (ii) the attorney for the person alleged to be incapacitated, if known to the petitioner; and
- (iii) the court evaluator.

2. Manner of service.

(i) the order to show cause and a copy of the petition shall be personally delivered to the person alleged to be incapacitated not less than fourteen days prior to the hearing date of the order to show cause. However, the court may direct that the order to show cause and a copy of the petition be served on the person alleged to be incapacitated in a manner other than personal delivery when the petitioner demonstrates to the court's satisfaction that the person alleged to be incapacitated has refused to accept service.

(ii) the order to show cause and a copy of the petition shall be served upon the court evaluator and the attorney for the alleged incapacitated person, if there is one, by facsimile, provided that a facsimile telephone number is designated by the attorney for that purpose, or by delivering the papers personally or by overnight delivery service to the office of the court evaluator and the attorney for the alleged incapacitated person, if there is one, within three business days following the appointment of the court evaluator and the appointment of the attorney or the appearance of an attorney retained by the alleged incapacitated person.

3. The court may direct that the order to show cause be served within a time period less than the period required in paragraph two of this subdivision for good cause shown.

(f) Form of the notice of the proceeding. The notice of the proceeding shall substantially set forth:

1. The name and address of the alleged incapacitated person to whom the guardianship proceeding relates;

2. The name and address of the petitioner;

3. The names of all persons to be given notice of the proceeding;

4. The time when and the place where the order to show cause shall be heard;

5. The object of the proceeding and the relief sought in the petition;

6. The name, address and telephone number of the petitioner's attorney.

(g) Notice of the proceeding.

1. Persons entitled to notice of the proceeding shall include:

(i) the following persons, other than the petitioner, who are known to the petitioner or whose existence and address can be ascertained by the petitioner with reasonably diligent efforts: the spouse of the person alleged to be incapacitated, if any; the parents of the person alleged to be incapacitated, if living; the adult children of the person alleged to be incapacitated, if any; the adult siblings of the person alleged to be incapacitated, if any; the person or persons with whom person alleged to be incapacitated resides; and

(ii) in the event no person listed in subparagraph (i) of this paragraph is given notice, then notice shall be given to at least one and not more than three of the living relatives of the person alleged to be incapacitated in the nearest degree of kinship who are known to the petitioner or whose existence and address can be ascertained by the petitioner with reasonably diligent efforts; and

(iii) any person or persons designated by the alleged incapacitated person with authority pursuant to sections 5-1501, 5-1505, and 5-1506 of the general obligations law, or sections two thousand nine hundred five and two thousand nine hundred eighty-one of the public health law, if known to the petitioner; and

(iv) if known to the petitioner, any person, whether or not a relative of the person alleged to be incapacitated, or organization that has demonstrated a genuine interest in promoting the best interests of the person alleged to be incapacitated such as by having a personal relationship with the person, regularly visiting the person, or regularly communicating with the person; and

(v) if it is known to the petitioner that the person alleged to be incapacitated receives public assistance or protective services under article nine-B of the social services law, the local department of social services; and

(vi) if the person alleged to be incapacitated resides in a facility, the chief executive officer in charge of the facility; and

(vii) if the person alleged to be incapacitated resides in a mental hygiene facility, the mental hygiene legal service of the judicial department in which the residence is located; and

(viii) such other persons as the court may direct based on the recommendation of the court evaluator in accordance with subparagraph (xvii) of paragraph five of subdivision (c) of section 81.09 of this article.

2. Notice of the proceeding together with a copy of the order to show cause shall be mailed to the persons identified in paragraph one of this subdivision not less than fourteen days prior to the hearing date in the order to show cause.

3. The court may direct that the notice of proceeding be mailed within a time period less than the period required in paragraph two of this subdivision for good cause shown.

§ 81.08 Petition.

(a) The petition shall be verified under oath and shall include the following information:

1. the name, age, address, and telephone number of the person alleged to be incapacitated;

2. the name, address, and telephone number of the person or persons with whom the person alleged to be incapacitated resides, if any, and the name, address and telephone number of any persons that the petitioner intends to serve with the order to show cause and the nature of their relationship to the alleged incapacitated person;

3. a description of the alleged incapacitated person's functional level including that person's ability to manage the activities of daily living, behavior, and understanding and appreciation of the nature and consequences of any inability to manage the activities of daily living;

4. if powers are sought with respect to the personal needs of the

alleged incapacitated person, specific factual allegations as to the personal actions or other actual occurrences involving the person alleged to be incapacitated which are claimed to demonstrate that the person is likely to suffer harm because he or she cannot adequately understand and appreciate the nature and consequences of his or her inability to provide for personal needs;

5. if powers are sought with respect to property management for the alleged incapacitated person, specific factual allegations as to the financial transactions or other actual occurrences involving the person alleged to be incapacitated which are claimed to demonstrate that the person is likely to suffer harm because he or she cannot adequately understand and appreciate the nature and consequences of his or her inability to provide for property management; if powers are sought to transfer a part of the alleged incapacitated person's property or assets to or for the benefit of another person, including the petitioner or guardian, the petition shall include the information required by subdivision (b) of section 81.21 of this article;

6. the particular powers being sought and their relationship to the functional level and needs of the person alleged to be incapacitated;

7. the duration of the powers being sought;

8. the approximate value and description of the financial resources of the person alleged to be incapacitated and whether, to the best of the petitioner's knowledge, the person is a recipient of public assistance;

9. the nature and amount of any claim, debt, or obligations of the person alleged to be incapacitated, to the best of the petitioner's knowledge;

10. the names, addresses, and telephone numbers of presumptive distributees of the person alleged to be incapacitated as that term is defined in subdivision forty-two of section one hundred three of the surrogate's court procedure act unless they are unknown and cannot be reasonably ascertained;

11. the name, address, and telephone number of the petitioner;

12. the name, address, and telephone number of the person or persons, if any, proposed as guardian and standby guardian, the relationship of the proposed guardian or standby guardian to the person alleged to be incapacitated, and the reasons why the proposed guardian or standby guardian is suitable to exercise the powers necessary to assist the person alleged to be incapacitated;

13. any relief sought pursuant to section 81.23 of this article;

14. the available resources, if any, that have been considered by the petitioner and the petitioner's opinion as to their sufficiency and reliability;

15. any other information which in the petitioner's opinion will assist the court evaluator in completing the investigation and report in accordance with section 81.09 of this article.

§ 81.09 Appointment of court evaluator.

(a) At the time of the issuance of the order to show cause, the court shall appoint a court evaluator.

(b) 1. the court may appoint as court evaluator any person including, but not limited to, the mental hygiene legal service in the judicial department where the person resides, a not-for-profit corporation, an attorney-at-law, physician, psychologist, accountant, social worker, or nurse, with knowledge of property management, personal care skills, the problems associated with disabilities, and the private and public resources available for the type of limitations the person is alleged to have. The name of the court evaluator shall be drawn from a list maintained by the office of court administration;

2. if the court appoints the mental hygiene legal service as the evaluator and upon investigation in accordance with section 81.10 of this article it appears to the mental hygiene legal service that the

mental hygiene legal service represents the person alleged to be incapacitated as counsel, or that counsel should otherwise be appointed in accordance with section 81.10 of this article for the person alleged to be incapacitated, the mental hygiene legal service shall so report to the court. The mental hygiene legal service shall be relieved of its appointment as court evaluator whenever the mental hygiene legal service represents as counsel, or is assigned to represent as counsel, the person alleged to be incapacitated.

(c) The duties of the court evaluator shall include the following:

1. meeting, interviewing, and consulting with the person alleged to be incapacitated regarding the proceeding.

2. determining whether the alleged incapacitated person understands English or only another language, and explaining to the person alleged to be incapacitated, in a manner which the person can reasonably be expected to understand, the nature and possible consequences of the proceeding, the general powers and duties of a guardian, available resources, and the rights to which the person is entitled, including the right to counsel.

3. determining whether the person alleged to be incapacitated wishes legal counsel of his or her own choice to be appointed and otherwise evaluating whether legal counsel should be appointed in accordance with section 81.10 of this article.

4. interviewing the petitioner, or, if the petitioner is a facility or government agency, a person within the facility or agency fully familiar with the person's condition, affairs and situation.

5. investigating and making a written report and recommendations to the court; the report and recommendations shall include the court evaluator's personal observations as to the person alleged to be incapacitated and his or her condition, affairs and situation, as well as information in response to the following questions:

- (i) does the person alleged to be incapacitated agree to the appointment of the proposed guardian and to the powers proposed for the

guardian;

(ii) does the person wish legal counsel of his or her own choice to be appointed or is the appointment of counsel in accordance with section 81.10 of this article otherwise appropriate;

(iii) can the person alleged to be incapacitated come to the courthouse for the hearing;

(iv) if the person alleged to be incapacitated cannot come to the courthouse, is the person completely unable to participate in the hearing;

(v) if the person alleged to be incapacitated cannot come to the courthouse, would any meaningful participation result from the person's presence at the hearing;

(vi) are available resources sufficient and reliable to provide for personal needs or property management without the appointment of a guardian;

(vii) how is the person alleged to be incapacitated functioning with respect to the activities of daily living and what is the prognosis and reversibility of any physical and mental disabilities, alcoholism or substance dependence? The response to this question shall be based on the evaluator's own assessment of the person alleged to be incapacitated to the extent possible, and where necessary, on the examination of assessments by third parties, including records of medical, psychological and/or psychiatric examinations obtained pursuant to subdivision (d) of this section. As part of this review, the court evaluator shall consider the diagnostic and assessment procedures used to determine the prognosis and reversibility of any disability and the necessity, efficacy, and dose of each prescribed medication;

(viii) what is the person's understanding and appreciation of the nature and consequences of any inability to manage the activities of daily living;

(ix) what is the approximate value and nature of the financial resources of the person alleged to be incapacitated;

(x) what are the person's preferences, wishes, and values with regard to managing the activities of daily living;

(xi) has the person alleged to be incapacitated made any appointment or delegation pursuant to section 5-1501, 5-1505, or 5-1506 of the general obligations law, section two thousand nine hundred sixty-five or

two thousand nine hundred eighty-one of the public health law, or a living will;

(xii) what would be the least restrictive form of intervention consistent with the person's functional level and the powers proposed for the guardian;

(xiii) what assistance is necessary for those who are financially dependent upon the person alleged to be incapacitated;

(xiv) is the choice of proposed guardian appropriate, including a guardian nominated by the allegedly incapacitated person pursuant to section 81.17 or subdivision (c) of section 81.19 of this article; and what steps has the proposed guardian taken or does the proposed guardian intend to take to identify and meet the current and emerging needs of the person alleged to be incapacitated unless that information has been provided to the court by the local department of social services when the proposed guardian is a community guardian program operating pursuant to the provisions of title three of article nine-B of the social services law;

(xv) what potential conflicts of interest, if any, exist between or among family members and/or other interested parties regarding the proposed guardian or the proposed relief;

(xvi) what potential conflicts of interest, if any, exist involving the person alleged to be incapacitated, the petitioner, and the proposed guardian; and

(xvii) are there any additional persons who should be given notice and an opportunity to be heard.

In addition, the report and recommendations shall include any information required under subdivision (e) of this section, and any additional information required by the court.

6. interviewing or consulting with professionals having specialized knowledge in the area of the person's alleged incapacity including but not limited to developmental disabilities, alcohol and substance abuse, and geriatrics.

7. retaining an independent medical expert where the court finds it is appropriate, the cost of which is to be charged to the estate of the

allegedly incapacitated person unless the person is indigent.

8. conducting any other investigations or making recommendations with respect to other subjects as the court deems appropriate.

9. attending all court proceedings and conferences.

(d) The court evaluator may apply to the court for permission to inspect records of medical, psychological and/or psychiatric examinations of the person alleged to be incapacitated; except as otherwise provided by federal or state law, if the court determines that such records are likely to contain information which will assist the court evaluator in completing his or her report to the court, the court may order the disclosure of such records to the court evaluator, notwithstanding the physician/patient privilege, the psychologist/patient privilege, or the social worker/client privilege as set forth in sections four thousand five hundred four, four thousand five hundred seven, and four thousand five hundred eight of the civil practice law and rules; if the court orders that such records be disclosed to the court evaluator, the court may, upon the court's own motion, at the request of the court evaluator, or upon the application of counsel for the person alleged to be incapacitated, or the petitioner, also direct such further disclosure of such records as the court deems proper.

(e) The court evaluator shall have the authority to take the steps necessary to preserve the property of the person alleged to be incapacitated pending the hearing in the event the property is in danger of waste, misappropriation, or loss; if the court evaluator exercises authority under this subdivision, the court evaluator shall immediately advise the court of the actions taken and include in his or her report to the court an explanation of the actions the court evaluator has taken and the reasons for such actions.

(f) When judgment grants a petition, the court may award a reasonable compensation to a court evaluator, including the mental hygiene legal service, payable by the estate of the allegedly incapacitated person. When a judgment denies or dismisses a petition, the court may award a reasonable allowance to a court evaluator, including the mental hygiene legal service, payable by the petitioner or by the person alleged to be

incapacitated, or both in such proportions as the court may deem just. When the person alleged to be incapacitated dies before the determination is made in the proceeding, the court may award a reasonable allowance to a court evaluator, payable by the petitioner or by the estate of the decedent, or by both in such proportions as the court may deem just.

§ 81.10 Counsel.

(a) Any person for whom relief under this article is sought shall have the right to choose and engage legal counsel of the person's choice. In such event, any attorney appointed pursuant to this section shall continue his or her duties until the court has determined that retained counsel has been chosen freely and independently by the alleged incapacitated person.

(b) If the person alleged to be incapacitated is not represented by counsel at the time of the issuance of the order to show cause, the court evaluator shall assist the court in accordance with subdivision (c) of section 81.09 of this article in determining whether counsel should be appointed.

(c) The court shall appoint counsel in any of the following circumstances unless the court is satisfied that the alleged incapacitated person is represented by counsel of his or her own choosing:

1. the person alleged to be incapacitated requests counsel;
2. the person alleged to be incapacitated wishes to contest the petition;
3. the person alleged to be incapacitated does not consent to the authority requested in the petition to move the person alleged to be incapacitated from where that person presently resides to a nursing home or other residential facility as those terms are defined in section two thousand eight hundred one of the public health law, or other similar facility;

4. if the petition alleges that the person is in need of major medical or dental treatment and the person alleged to be incapacitated does not consent;

5. the petition requests the appointment of a temporary guardian pursuant to section 81.23 of this article;

6. the court determines that a possible conflict may exist between the court evaluator's role and the advocacy needs of the person alleged to be incapacitated;

7. if at any time the court determines that appointment of counsel would be helpful to the resolution of the matter.

(d) If the person refuses the assistance of counsel, the court may, nevertheless, appoint counsel if the court is not satisfied that the person is capable of making an informed decision regarding the appointment of counsel.

(e) The court may appoint as counsel the mental hygiene legal service in the judicial department where the residence is located.

(f) The court shall determine the reasonable compensation for the mental hygiene legal service or any attorney appointed pursuant to this section. The person alleged to be incapacitated shall be liable for such compensation unless the court is satisfied that the person is indigent. If the petition is dismissed, the court may in its discretion direct that petitioner pay such compensation for the person alleged to be incapacitated. When the person alleged to be incapacitated dies before the determination is made in the proceeding, the court may award reasonable compensation to the mental hygiene legal service or any attorney appointed pursuant to this section, payable by the petitioner or the estate of the decedent or by both in such proportions as the court may deem just.

(g) If the court appoints counsel under this section, the court may dispense with the appointment of a court evaluator or may vacate or suspend the appointment of a previously appointed court evaluator.

§ 81.11 Hearing.

(a) A determination that the appointment of a guardian is necessary for a person alleged to be incapacitated shall be made only after a hearing.

(b) In a proceeding brought pursuant to this article any party to the proceeding shall have the right to:

1. present evidence;
2. call witnesses, including expert witnesses;
3. cross examine witnesses, including witnesses called by the court;
4. be represented by counsel of his or her choice.

(c) The hearing must be conducted in the presence of the person alleged to be incapacitated, either at the courthouse or where the person alleged to be incapacitated resides, so as to permit the court to obtain its own impression of the person's capacity. If the person alleged to be incapacitated physically cannot come or be brought to the courthouse, the hearing must be conducted where the person alleged to be incapacitated resides unless:

1. the person is not present in the state; or

2. all the information before the court clearly establishes that (i) the person alleged to be incapacitated is completely unable to participate in the hearing or (ii) no meaningful participation will result from the person's presence at the hearing.

(d) If the hearing is conducted without the presence of the person alleged to be incapacitated and the court appoints a guardian, the order of appointment shall set forth the factual basis for conducting the hearing without the presence of the person for whom the appointment is made.

(e) If the hearing is conducted in the presence of the person alleged to be incapacitated and the person is not represented by counsel, the court shall explain to that person, on the record, the purpose and possible consequences of the proceeding, the right to be represented by counsel and the fact that the court will appoint an attorney to

represent the person alleged to be incapacitated if the person wishes to be represented by counsel, and shall inquire of the person whether he or she wishes to have an attorney appointed. If the person refuses the assistance of counsel, the court may nevertheless appoint counsel if the court is not satisfied that the person is capable of making an informed decision regarding the appointment of counsel.

(f) If on or before the return date designated in the order to show cause the alleged incapacitated person or counsel for the alleged incapacitated person raises issues of fact regarding the need for an appointment under this article and demands a jury trial of such issues, the court shall order a trial by jury thereof. Failure to make such a demand shall be deemed a waiver of the right to trial by jury.

§ 81.12 Burden and quantum of proof.

(a) A determination that a person is incapacitated under the provisions of this article must be based on clear and convincing evidence. The burden of proof shall be on the petitioner.

(b) The court may, for good cause shown, waive the rules of evidence. The report of the court evaluator may be admitted in evidence if the court evaluator testifies and is subject to cross examination; provided, however, that if the court determines that information contained in the report is, in the particular circumstance of the case, not sufficiently reliable, the court shall require that the person who provided the information testify and be subject to cross examination.

§ 81.13 Timing of hearing.

Unless the court, for good cause shown, orders otherwise, a proceeding under this article is entitled to a preference over all other causes in the court. Unless the court, for good cause shown, orders otherwise, the hearing or trial shall be conducted within the time set forth in subdivision (b) of section 81.07 of this article. A decision shall be rendered within seven days after the hearing, unless for good cause shown, the court extends the time period for rendering the decision. In the event the time period is extended, the court shall set forth the

factual basis for the extension. The commission shall be issued to the guardian within fifteen days after the decision is rendered.

§ 81.14 Record of the proceedings.

(a) A record of the proceedings shall be made in all cases.

(b) The court shall not enter an order sealing the court records in a proceeding under this article, either in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interest of the public, the orderly and sound administration of justice, the nature of the proceedings, and the privacy of the person alleged to be incapacitated. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard. Court records shall include all documents and records of any nature filed with the clerk in connection with the proceeding. Documents obtained through disclosure and not filed with the clerk shall remain subject to protective orders under the civil practice law and rules.

(c) The court shall not exclude a person or persons or the general public from a proceeding under this article except upon written findings of good cause shown. In determining whether good cause has been shown, the court shall consider the interest of the public, the orderly and sound administration of justice, the nature of the proceedings, and the privacy of the person alleged to be incapacitated.

(d) At the time of the commencement of the hearing, the court shall inform the allegedly incapacitated person of his or her right to request for good cause that the court records be sealed and that a person, persons, or the general public be excluded from the hearing.

§ 81.15 Findings.

(a) Where the court determines that the person agrees to the appointment and that the appointment is necessary, the court shall make the following findings on the record:

1. the person's agreement to the appointment;

2. the person's functional limitations which impair the person's ability to provide for personal needs or property management;

3. the necessity of the appointment of a guardian as a means of providing for personal needs and/or property management for the person;

4. the specific powers of the guardian which constitute the least restrictive form of intervention consistent with the person's functional limitations; and

5. the duration of the appointment.

(b) Where the petition requests the appointment of a guardian to provide for the personal needs for a person alleged to be incapacitated and the court determines that such person is incapacitated and that the appointment is necessary, the court shall make the following findings on the record:

1. the person's functional limitations which impair the person's ability to provide for personal needs;

2. the person's lack of understanding and appreciation of the nature and consequences of his or her functional limitations;

3. the likelihood that the person will suffer harm because of the person's functional limitations and inability to adequately understand and appreciate the nature and consequences of such functional limitations;

4. the necessity of the appointment of a guardian to prevent such harm;

5. the specific powers of the guardian which constitute the least restrictive form of intervention consistent with the findings of this subdivision;

6. the duration of the appointment; and

7. whether the incapacitated person should receive copies of the initial and annual report.

(c) Where the petition requests the appointment of a guardian for property management for the person alleged to be incapacitated, and the court determines that the person is incapacitated and that the appointment of a guardian is necessary, the court shall make the following findings on the record:

1. the type and amount of the property and financial resources of the person alleged to be incapacitated;

2. the person's functional limitations which impair the person's ability with respect to property management;

3. the person's lack of understanding and appreciation of the nature and consequences of his or her functional limitations;

4. the likelihood that the person will suffer harm because of the person's functional limitations and inability to adequately understand and appreciate the nature and consequences of such functional limitations;

5. any additional findings that are required under section 81.21 of this article;

6. the necessity of the appointment of a guardian to prevent such harm;

7. if so, the specific powers of the guardian which constitute the least restrictive form of intervention consistent with the person's functional limitations and the likelihood of harm because of the person's inability to adequately understand and appreciate the nature and consequences of such functional limitations;

8. the duration of the appointment; and

9. whether the incapacitated person should receive copies of the initial and annual report.

§ 81.16 Dispositional alternatives.

(a) Dismissal of the petition.

If the person alleged to be incapacitated under this article is found not to be incapacitated, the court shall dismiss the petition.

(b) Protective arrangements and single transactions. If the person alleged to be incapacitated is found to be incapacitated, the court without appointing a guardian, may authorize, direct, or ratify any transaction or series of transactions necessary to achieve any security, service, or care arrangement meeting the foreseeable needs of the incapacitated person, or may authorize, direct, or ratify any contract, trust, or other transaction relating to the incapacitated person's property and financial affairs if the court determines that the transaction is necessary as a means of providing for personal needs and/or property management for the alleged incapacitated person. Before approving a protective arrangement or other transaction under this subdivision, the court shall consider the interests of dependents and creditors of the incapacitated person, and in view of the person's functional level, whether the person needs the continuing protection of a guardian. The court may appoint a special guardian to assist in the accomplishment of any protective arrangement or other transaction authorized under this subdivision. The special guardian shall have the authority conferred by the order of appointment, shall report to the court on all matters done pursuant to the order of appointment and shall serve until discharged by order of the court. The court may approve a reasonable compensation for the special guardian; however, if the court finds that the special guardian has failed to discharge his or her duties satisfactorily in any respect, the court may deny or reduce the amount of compensation or remove the special guardian.

(c) Appointing a guardian.

1. If the person alleged to be incapacitated is found to have agreed to the appointment of a guardian and the court determines that the

appointment of a guardian is necessary, the order of the court shall be designed to accomplish the least restrictive form of intervention by appointing a guardian with powers limited to those which the court has found necessary to assist the person in providing for personal needs and/or property management.

2. If the person alleged to be incapacitated is found to be incapacitated and the court determines that the appointment of a guardian is necessary, the order of the court shall be designed to accomplish the least restrictive form of intervention by appointing a guardian with powers limited to those which the court has found necessary to assist the incapacitated person in providing for personal needs and/or property management.

3. The order of appointment shall identify all persons entitled to notice of all further proceedings.

4. The order of appointment shall identify the persons entitled to receive notice of the incapacitated person's death, the intended disposition of the remains of the decedent, funeral arrangements and final resting place when that information is known or can be reasonably ascertained by the guardian.

5. The order of appointment may identify the person or persons entitled to notice of the incapacitated person's transfer to a medical facility.

6. The order of appointment may identify the persons entitled to visit the incapacitated person, if they so choose. However, the identification of such persons in the order shall in no way limit the persons entitled to visit the incapacitated person.

(d) The court shall direct that a judgment be entered determining the rights of the parties.

(e) The order and judgment must be entered and served within ten days of the signing of the order. A copy of the order and judgment shall be personally served upon and explained to the person who is the subject of the proceedings in a manner which the person can reasonably be expected

to understand by the court evaluator, or by counsel for the person, or by the guardian.

(f) When a petition is granted, or where the court otherwise deems it appropriate, the court may award reasonable compensation for the attorney for the petitioner, including the attorney general and the attorney for a local department of social services.

§ 81.17 Nomination of guardian.

In the petition, or in a written instrument duly executed, acknowledged, and filed in the proceeding before the appointment of a guardian, the person alleged to be incapacitated may nominate a guardian.

§ 81.18 Foreign guardian for a person not present in the state.

Where the person alleged to be incapacitated is not present in the state and a guardian, by whatever name designated, has been duly appointed pursuant to the laws of any other country where the person alleged to be incapacitated resides to assist such person in property management, the court in its discretion, may make an order appointing the foreign guardian as a guardian under this article with powers with respect to property management within this state on the foreign guardian's giving such security as the court deems proper. In its discretion, the court may utilize the provisions of article eighty-three of this title.

§ 81.19 Eligibility as guardian.

(a) 1. Any individual over eighteen years of age, or any parent under eighteen years of age, who is found by the court to be suitable to exercise the powers necessary to assist the incapacitated person may be appointed as guardian, including but not limited to a spouse, adult child, parent, or sibling.

2. A not-for-profit corporation organized to act in such capacity, a social services official, or public agency authorized to act in such capacity which has a concern for the incapacitated person, and any community guardian program operating pursuant to the provisions of title three of article nine-B of the social services law which is found by the court to be suitable to perform the duties necessary to assist the incapacitated person may be appointed as guardian, provided that a community guardian program shall be appointed as guardian only where a special proceeding for the appointment of a guardian under this article has been commenced by a social services official with whom such program was contracted.

3. A corporation, except that no corporation (other than as provided in paragraph two of this subdivision) may be authorized to exercise the powers necessary to assist the incapacitated person with personal needs.

(b) The court shall appoint a person nominated as the guardian in accordance with the provisions of section 81.17 of this article unless the court determines the nominee is unfit or the alleged incapacitated person indicates that he or she no longer wishes the nominee to be appointed.

(c) In the absence of a nomination in accordance with section 81.17 of this article, the court shall appoint a person nominated by the person alleged to be incapacitated orally or by conduct during the hearing or trial unless the court determines for good cause that such appointment is not appropriate.

(d) In making any appointment under this article the court shall consider:

1. any appointment or delegation made by the person alleged to be incapacitated in accordance with the provisions of section 5-1501, 5-1601 or 5-1602 of the general obligations law and sections two thousand nine hundred sixty-five and two thousand nine hundred eighty-one of the public health law;

2. the social relationship between the incapacitated person and the person, if any, proposed as guardian, and the social relationship between the incapacitated person and other persons concerned with the

welfare of the incapacitated person;

3. the care and services being provided to the incapacitated person at the time of the proceeding;

4. the powers which the guardian will exercise;

5. the educational, professional and business experience relevant to the nature of the services sought to be provided;

6. the nature of the financial resources involved;

7. the unique requirements of the incapacitated person; and

8. any conflicts of interest between the person proposed as guardian and the incapacitated person.

(e) Unless the court finds that no other person or corporation is available or willing to act as guardian, or to provide needed services for the incapacitated person, the following persons or corporations may not serve as guardian:

1. one whose only interest in the person alleged to be incapacitated is that of a creditor;

2. one, other than a relative, who is a provider, or the employee of a provider, of health care, day care, educational, or residential services to the incapacitated person, whether direct or indirect.

(f) Mental hygiene legal service may not serve as a guardian.

(g) 1. In making an appointment or considering a revocation of an appointment under this article, the court also may obtain and consider, and may authorize a court evaluator to review the same and report to the court concerning, any of the following information regarding the guardian or proposed guardian, and, if the incapacitated person resides or will reside with such guardian or proposed guardian, any person eighteen years or older residing in the guardian or proposed guardian's household:

(i) a criminal history record check of such person or persons; and in

furtherance thereof, the court shall be authorized to: (1) obtain a set of such person's fingerprints; (2) direct that the division of criminal justice services promptly provide to the court a criminal history record, if any, with respect to such person or a statement that such person has no criminal record; and (3) direct the submission of such person's fingerprints by the division of criminal justice services to the federal bureau of investigation for purposes of a nationwide criminal history record check pursuant to and consistent with public law 92-544 to determine if such person has a criminal history in any state or federal jurisdiction;

(ii) reports for such person or persons from the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law;

(iii) indicated reports for such person or persons from the statewide central register of child abuse and maltreatment established and maintained pursuant to section four hundred twenty-two of the social services law, upon a finding by the court, pursuant to paragraph e of subdivision four of such section, that such information is necessary for the court to determine whether to make or continue an appointment pursuant to this article;

(iv) reports for such person or person from the statewide computerized registry of orders of protection established and maintained pursuant to section two hundred twenty-one-a of the executive law; and

(v) related decisions in court proceedings initiated pursuant to article ten of the family court act and related warrants issued under the family court act.

2. The court shall obtain and consider records and reports specified in paragraph one of this subdivision between the time the judge executes the order to show cause and the hearing date of the order to show cause if a guardian or guardians are proposed in the petition or, as soon as a guardian or guardians are proposed by a party to the proceeding or nominated by the person alleged to be incapacitated, during a proceeding under this article.

3. Upon consideration of all factors bearing on the best interests of the incapacitated person including consideration of all relevant factors

in section seven hundred fifty-three of the correction law, the records and reports specified in paragraph one of this subdivision, and the court evaluator's report thereon, and after notifying counsel involved in the proceeding, or in the event of a self-represented party notifying such party, the court may appoint, refuse to appoint or revoke the appointment of any person as guardian pursuant to this article.

4. Where the court requests a criminal history record for a person pursuant to this section, the court shall provide the subject of the request with a copy of his or her criminal history record, if any, a reasonable time before consideration of such record under this subdivision and inform such person of his or her right to seek correction of any incorrect information contained in such record pursuant to regulations and procedures established by the division of criminal justice services.

§ 81.20 Duties of guardian.

(a) Duties of guardian generally.

1. a guardian shall exercise only those powers that the guardian is authorized to exercise by court order;

2. a guardian shall exercise the utmost care and diligence when acting on behalf of the incapacitated person;

3. a guardian shall exhibit the utmost degree of trust, loyalty and fidelity in relation to the incapacitated person;

4. a guardian shall file an initial and annual reports in accordance with sections 81.30 and 81.31 of this article;

5. a guardian shall visit the incapacitated person not less than four times a year or more frequently as specified in the court order;

6. a guardian who is given authority with respect to property management for the incapacitated person shall:

(i) afford the incapacitated person the greatest amount of independence and self-determination with respect to property management in light of that person's functional level, understanding and appreciation of his or her functional limitations, and personal wishes, preferences and desires with regard to managing the activities of daily living;

(ii) preserve, protect, and account for such property and financial resources faithfully;

(iii) determine whether the incapacitated person has executed a will, determine the location of any will, and the appropriate persons to be notified in the event of the death of the incapacitated person and, in the event of the death of the incapacitated person, notify those persons;

(iv) use the property and financial resources and income available therefrom to maintain and support the incapacitated person, and to maintain and support those persons dependent upon the incapacitated person;

(v) at the termination of the appointment, deliver such property to the person legally entitled to it;

(vi) file with the recording officer of the county wherein the incapacitated person is possessed of real property, an acknowledged statement to be recorded and indexed under the name of the incapacitated person identifying the real property possessed by the incapacitated person, and the tax map numbers of the property, and stating the date of adjudication of incapacity of the person regarding property management, and the name, address, and telephone number of the guardian and the guardian's surety; and

(vii) perform all other duties required by law.

7. a guardian who is given authority relating to the personal needs of the incapacitated person shall afford the incapacitated person the greatest amount of independence and self-determination with respect to personal needs in light of that person's functional level, understanding and appreciation of that person's functional limitations, and personal wishes, preferences and desires with regard to managing the activities of daily living.

§ 81.21 Powers of guardian; property management.

(a) Consistent with the functional limitations of the incapacitated person, that person's understanding and appreciation of the harm that he or she is likely to suffer as the result of the inability to manage property and financial affairs, and that person's personal wishes, preferences, and desires with regard to managing the activities of daily living, and the least restrictive form of intervention, the court may authorize the guardian to exercise those powers necessary and sufficient to manage the property and financial affairs of the incapacitated person; to provide for the maintenance and support of the incapacitated person, and those persons depending upon the incapacitated person; to transfer a part of the incapacitated person's assets to or for the benefit of another person on the ground that the incapacitated person would have made the transfer if he or she had the capacity to act.

Transfers made pursuant to this article may be in any form that the incapacitated person could have employed if he or she had the requisite capacity, except in the form of a will or codicil.

Those powers which may be granted include, but are not limited to, the power to:

1. make gifts;
2. provide support for persons dependent upon the incapacitated person for support, whether or not the incapacitated person is legally obligated to provide that support;
3. convey or release contingent and expectant interests in property, including marital property rights and any right of survivorship incidental to joint tenancy or tenancy by the entirety;
4. exercise or release powers held by the incapacitated person as trustee, personal representative, guardian for minor, guardian, or donee of a power of appointment;

5. enter into contracts;

6. create revocable or irrevocable trusts of property of the estate which may extend beyond the incapacity or life of the incapacitated person;

7. exercise options of the incapacitated person to purchase securities or other property;

8. exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value;

9. exercise any right to an elective share in the estate of the incapacitated person's deceased spouse;

10. renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer consistent with paragraph (d) of section 2-1.11 of the estates, powers and trusts law;

11. authorize access to or release of confidential records;

12. apply for government and private benefits;

13. marshall assets;

14. pay the funeral expenses of the incapacitated person;

15. pay such bills as may be reasonably necessary to maintain the incapacitated person;

16. invest funds of the incapacitated person as permitted by section 11-2.3 of the estates, powers and trusts law;

17. lease the primary residence for up to three years;

18. retain an accountant;

19. pay bills after the death of the incapacitated person provided the authority existed to pay such bills prior to death until a temporary administrator or executor is appointed; and

20. defend or maintain any judicial action or proceeding to a conclusion until an executor or administrator is appointed.

The guardian may also be granted any power pursuant to this subdivision granted to committees and conservators and guardians by other statutes subject to the limitations, conditions, and responsibilities of the exercise thereof unless the granting of such power is inconsistent with the provisions of this article.

(b) If the petitioner or the guardian seeks the authority to exercise a power which involves the transfer of a part of the incapacitated person's assets to or for the benefit of another person, including the petitioner or guardian, the petition shall include the following information:

1. whether any prior proceeding has at any time been commenced by any person seeking such power with respect to the property of the incapacitated person and, if so, a description of the nature of such application and the disposition made of such application;

2. the amount and nature of the financial obligations of the incapacitated person including funds presently and prospectively required to provide for the incapacitated person's own maintenance, support, and well-being and to provide for other persons dependent upon the incapacitated person for support, whether or not the incapacitated person is legally obligated to provide that support; a copy of any court order or written agreement setting forth support obligations of the incapacitated person shall be attached to the petition if available to the petitioner or guardian;

3. the property of the incapacitated person that is the subject of the present application;

4. the proposed disposition of such property and the reasons why such disposition should be made;

5. whether the incapacitated person has sufficient capacity to make the proposed disposition; if the incapacitated person has such capacity, his or her written consent shall be attached to the petition;

6. whether the incapacitated person has previously executed a will or similar instrument and if so, the terms of the most recently executed will together with a statement as to how the terms of the will became known to the petitioner or guardian; for purposes of this article, the term "will" shall have the meaning specified in section 1-2.19 of the estates, powers and trusts law and "similar instrument" shall include a revocable or irrevocable trust:

(i) if the petitioner or guardian can, with reasonable diligence, obtain a copy, a copy of the most recently executed will or similar instrument shall be attached to the petition; in such case, the petition shall contain a statement as to how the copy was secured and the basis for the petitioner or guardian's belief that such copy is a copy of the incapacitated person's most recently executed will or similar instrument.

(ii) if the petitioner or guardian is unable to obtain a copy of the most recently executed will or similar instrument, or if the petitioner or guardian is unable to determine whether the incapacitated person has previously executed a will or similar instrument, what efforts were made by the petitioner or guardian to ascertain such information.

(iii) if a copy of the most recently executed will or similar instrument is not otherwise available, the court may direct an attorney or other person who has the original will or similar instrument in his or her possession to turn a photocopy over to the court for its examination, in camera. A photocopy of the will or similar instrument shall then be turned over by the court to the parties in such proceeding unless the court finds that to do so would be contrary to the best interests of the incapacitated person;

7. a description of any significant gifts or patterns of gifts made by the incapacitated person;

8. the names, post-office addresses and relationships of the presumptive distributees of the incapacitated person as that term is defined in subdivision forty-two of section one hundred three of the surrogate's court procedure act and of the beneficiaries under the most recent will or similar instrument executed by the incapacitated person.

(c) Notice of a petition seeking relief under this section shall be served upon:

(i) the persons entitled to notice in accordance with paragraph one of subdivision (e) of section 81.07 of this article;

(ii) if known to the petitioner or guardian, the presumptive distributees of the incapacitated person as that term is defined in subdivision forty-two of section one hundred three of the surrogate's court procedure act unless the court dispenses with such notice; and

(iii) if known to the petitioner or guardian, any person designated in the most recent will or similar instrument of the incapacitated person as beneficiary whose rights or interests would be adversely affected by the relief requested in the petition unless the court dispenses with such notice.

(d) In determining whether to approve the application, the court shall consider:

1. whether the incapacitated person has sufficient capacity to make the proposed disposition himself or herself, and, if so, whether he or she has consented to the proposed disposition;

2. whether the disability of the incapacitated person is likely to be of sufficiently short duration such that he or she should make the determination with respect to the proposed disposition when no longer disabled;

3. whether the needs of the incapacitated person and his or her dependents or other persons depending upon the incapacitated person for support can be met from the remainder of the assets of the incapacitated person after the transfer is made;

4. whether the donees or beneficiaries of the proposed disposition are

the natural objects of the bounty of the incapacitated person and whether the proposed disposition is consistent with any known testamentary plan or pattern of gifts he or she has made;

5. whether the proposed disposition will produce estate, gift, income or other tax savings which will significantly benefit the incapacitated person or his or her dependents or other persons for whom the incapacitated person would be concerned; and

6. such other factors as the court deems relevant.

(e) The court may grant the application if satisfied by clear and convincing evidence of the following and shall make a record of these findings:

1. the incapacitated person lacks the requisite mental capacity to perform the act or acts for which approval has been sought and is not likely to regain such capacity within a reasonable period of time or, if the incapacitated person has the requisite capacity, that he or she consents to the proposed disposition;

2. a competent, reasonable individual in the position of the incapacitated person would be likely to perform the act or acts under the same circumstances; and

3. the incapacitated person has not manifested an intention inconsistent with the performance of the act or acts for which approval has been sought at some earlier time when he or she had the requisite capacity or, if such intention was manifested, the particular person would be likely to have changed such intention under the circumstances existing at the time of the filing of the petition.

(f) Nothing in this article imposes any duty on the guardian to commence a special proceeding pursuant to this article seeking to transfer a part of the assets of the incapacitated person to or for the benefit of another person and the guardian shall not be liable or accountable to any person for having failed to commence a special proceeding pursuant to this article seeking to transfer a part of the assets of the incapacitated person to or for the benefit of another

person.

§ 81.22 Powers of guardian; personal needs.

(a) Consistent with the functional limitations of the incapacitated person, that person's understanding and appreciation of the harm that he or she is likely to suffer as the result of the inability to provide for personal needs, and that person's personal wishes, preferences, and desires with regard to managing the activities of daily living, and the least restrictive form of intervention, the court may grant to the guardian powers necessary and sufficient to provide for the personal needs of the incapacitated person. Those powers which may be granted include, but are not limited to, the power to:

1. determine who shall provide personal care or assistance;
2. make decisions regarding social environment and other social aspects of the life of the incapacitated person;
3. determine whether the incapacitated person should travel;
4. determine whether the incapacitated person should possess a license to drive;
5. authorize access to or release of confidential records;
6. make decisions regarding education;
7. apply for government and private benefits;
8. (i) for decisions in hospitals as defined by subdivision eighteen of section twenty-nine hundred ninety-four-a of the public health law, act as the patient's surrogate pursuant to and subject to article twenty-nine-CC of the public health law, and (ii) in all other circumstances, to consent to or refuse generally accepted routine or major medical or dental treatment, subject to the decision-making standard in subdivision four of section twenty-nine hundred

ninety-four-d of the public health law;

9. choose the place of abode; the choice of abode must be consistent with the findings under section 81.15 of this article, the existence of and availability of family, friends and social services in the community, the care, comfort and maintenance, and where appropriate, rehabilitation of the incapacitated person, the needs of those with whom the incapacitated person resides; placement of the incapacitated person in a nursing home or residential care facility as those terms are defined in section two thousand eight hundred one of the public health law, or other similar facility shall not be authorized without the consent of the incapacitated person so long as it is reasonable under the circumstances to maintain the incapacitated person in the community, preferably in the home of the incapacitated person.

(b) No guardian may:

1. consent to the voluntary formal or informal admission of the incapacitated person to a mental hygiene facility under article nine or fifteen of this chapter or to a chemical dependence facility under article twenty-two of this chapter;

2. revoke any appointment or delegation made by the incapacitated person pursuant to sections 5-1501, 5-1601 and 5-1602 of the general obligations law, sections two thousand nine hundred sixty-five and two thousand nine hundred eighty-one of the public health law, or any living will.

§ 81.23 Provisional remedies.

(a) Temporary guardian.

1. At the commencement of the proceeding or at any subsequent stage of the proceeding prior to the appointment of a guardian, the court may, upon showing of danger in the reasonably foreseeable future to the health and well being of the alleged incapacitated person, or danger of waste, misappropriation, or loss of the property of the alleged incapacitated person, appoint a temporary guardian for a period not to

extend beyond the date of the issuance of the commission to a guardian appointed pursuant to this article. The powers and duties of the temporary guardian shall be specifically enumerated in the order of appointment and are limited in the same manner as are the powers of a guardian appointed pursuant to this article. Prior to the expiration of the term of appointment, the temporary guardian shall report to the court all actions taken pursuant to the order appointment. The court may approve a reasonable compensation for the temporary guardian; however, if the court finds that the temporary guardian has failed to discharge his or her duties satisfactorily in any respect, the court may deny or reduce the amount of compensation or remove the temporary guardian.

2. Notice of the appointment of the temporary guardian shall be given to the person alleged to be incapacitated and to any person having custody or control over the person or property of the person alleged to be incapacitated in such manner as the court may prescribe.

3. The authority and responsibility of a temporary guardian begins upon the issuance of the commission of temporary guardianship.

4. The court may require the temporary guardian to file a bond in accordance with section 81.25 of this article.

(b) Injunction and temporary restraining order.

1. The court may, at any time prior to or after the appointment of a guardian or at the time of the appointment of a guardian with or without security, enjoin any person, other than the incapacitated person or the person alleged to be incapacitated from selling, assigning, or from disposing of property or confessing judgment which may become a lien on property or receiving or arranging for another person to receive property from the incapacitated person or the person alleged to be incapacitated or doing or suffering to be done any act or omission endangering the health, safety or welfare of the incapacitated person or the person alleged to be incapacitated when an application under this article seeks such an injunction and it satisfactorily appears from the application, affidavits, and other proofs that a person has done, has suffered to be done or omitted to do, or threatens to do or is about to

do an act that endangers the health, safety or welfare of the incapacitated person or the person alleged to be incapacitated or has acquired or is about to acquire any property from the incapacitated person or person alleged to be incapacitated during the time of that person's incapacity or alleged incapacity without adequate consideration. Such order shall be made upon an order to show cause or upon the initiative of the court and may, upon the application for the appointment of a guardian, in the discretion of the court, be continued for ten days after the appointment of a guardian. Notice of any injunction shall be given to any person enjoined, to the incapacitated person or the person alleged to be incapacitated, and to any person having custody or control over the person or property of the incapacitated person or the person alleged to be incapacitated in such manner as the court may prescribe.

2. A temporary restraining order may be granted with or without security when an application seeks an injunction under paragraph one of this subdivision and where the court is satisfied that in the absence of such restraining order, the property of the incapacitated person or person alleged to be incapacitated would be dissipated to that person's detriment or that the health, safety or welfare of the incapacitated person or the person alleged to be incapacitated would be endangered. Notice of the temporary restraining order shall be given to any person restrained, to the incapacitated person or the person alleged to be incapacitated, and to any person having custody or control over the person or property of the incapacitated person or person alleged to be incapacitated in such manner as the court may prescribe. Such temporary restraining order shall neither be vacated nor modified except upon notice to the petitioner and to each person required to receive notice of the petition pursuant to paragraph one of subdivision (g) of section 81.07 of this article.

3. When the court is satisfied that the interest of the incapacitated person or person alleged to be incapacitated would be appropriately served, the court may provide in a temporary restraining order that such temporary restraining order shall have the effect of:

(i) a restraining notice when served in a manner and upon such persons

as the court in its discretion shall deem appropriate;

(ii) conferring information subpoena power upon the attorney for the petitioner when the court in its discretion shall deem appropriate.

4. Where such a temporary restraining order provides for a restraining notice a person having custody or control over the person or property of the incapacitated person or the person alleged to be incapacitated is forbidden to make or suffer any sale, assignment, transfer or interference with any property of the incapacitated person or the person alleged to be incapacitated except pursuant to the order of the court.

5. Where such a temporary restraining order provides the petitioner's attorney with information subpoena power, service of a copy of the order together with an information subpoena shall require any person so subpoenaed to provide petitioner's attorney with any information concerning the financial affairs of the incapacitated person or the person alleged to be incapacitated.

§ 81.24 Notice of pendency.

The petitioner shall, prior to judgment, file a notice of pendency if real property or any interest therein is or may be affected by the proceeding.

§ 81.25 Filing of bond by guardian.

(a) Before the guardian, or special guardian appointed under this article, or a trustee of a trust created pursuant to this article, enters upon the execution of his or her duties, the court may require or dispense with the filing of a bond.

(b) The court may require or dispense with the filing of a bond by the temporary guardian. If the temporary guardian is required to file a bond, such bond must be filed within ten days after the issuance of the temporary guardian's commission.

(c) If the value of the estate of the person for whom a guardian, special guardian, temporary guardian, or trustee is appointed is so

great or for other sufficient reason the court deems it inexpedient to require security in the full amount prescribed by law it may direct that all or part of the assets of the estate be delivered subject to the further order of the court to the county treasurer, or other proper fiscal officer, the clerk of the court or a trust company, bank or safe deposit company or otherwise restrict the authority of the guardian or trustee. The court may thereupon fix the amount of the bond taking into consideration the value of the remainder only of the estate. The assets so deposited shall not be withdrawn from the custody of the depository and no person other than the proper fiscal officer of such county or depository shall receive or collect any principal or income or other benefits derived from such assets without order of the court.

(d) Notwithstanding any other provision of this section, any community guardian program operating pursuant to the provisions of title three of article nine-B of the social services law, appointed as guardian pursuant to subdivision (a) of section 81.19 of this article, may file with the clerk of the court before the thirty-first day of January of each year, a consolidated undertaking up to the amount of one million five hundred thousand dollars, in lieu of filing individual undertakings for each incapacitated person for whom it serves as guardian, as required by subdivision (a) of this section. To the extent of the aggregate value of such consolidated undertaking, the community guardian program will certify to the clerk of the court faithful discharge of the trust imposed upon it, obey all directions of the court in regard to the trust, and make and render a true account of all properties received by it and the application thereof and of its acts in the administration of its trust whenever so required to do by the court. At such time as the aggregate amount of the individual bonds, fixed by the court pursuant to subdivision (a) of this section for persons for whom the community guardian program is appointed guardian, shall exceed the consolidated bond filed by such program, the program shall before entering upon the execution of its duties, file with the clerk of the court individual undertakings, in the amounts fixed by the court, that it will faithfully discharge the trust imposed upon it.

(e) If the court requires the filing of a bond, the guardian or special or temporary guardian, or trustee, appointed under this article shall file with the clerk of the court by which such guardian was

appointed a bond that he or she will faithfully discharge the powers granted by the court to the guardian or special or temporary guardian, or trustee, obey all directions of the court in regard to the powers, and make and render a true account of all properties received by him or her and the application thereof and a true report of his or her acts in the administration of his or her powers, whenever so required to do by the court. The amount of the bond shall be fixed by the court. If the guardian, special or temporary guardian, or trustee, receives after-acquired property not covered by the bond, such guardian, special or temporary guardian, or trustee, shall immediately have such acquisition approved by the court and file a further bond.

§ 81.26 Designation of clerk to receive process.

No commission shall issue nor shall any order which in itself constitutes a commission become effective until an instrument executed and acknowledged by the guardian has been filed with the clerk of the court designating the clerk and the clerk's successor in office as a person on whom service of any process may be made in like manner and with like effect as if it were served personally upon the guardian whenever the guardian cannot, with due diligence, be served within the state.

§ 81.27 Commission to guardian.

Within five days after the guardian has filed a designation under section 81.26 of this article, and has filed a bond in accordance with the provisions of section 81.25 of this article unless the court has waived the filing of the bond or unless the guardian's appointment is pursuant to section 81.23 of this article, the clerk of the court shall issue a commission which shall state:

1. the title of the proceeding and the name, address, and telephone number of the incapacitated person; and

2. the name, address, and telephone number of the guardian and the specific powers of such guardian; and

3. the date when the appointment of the guardian was ordered by the court; and

4. the date on which the appointment terminates if one has been ordered by the court.

§ 81.28 Compensation of guardian.

(a) The court shall establish, and may from time to time modify, a plan for the reasonable compensation of the guardian or guardians. The plan for compensation of such guardian must take into account the specific authority of the guardian or guardians to provide for the personal needs and/or property management for the incapacitated person, and the services provided to the incapacitated person by such guardian.

(b) If the court finds that the guardian has failed to discharge his or her duties satisfactorily in any respect, the court may deny or reduce the compensation which would otherwise be allowed.

§ 81.29 Effect of the appointment on the incapacitated person.

(a) An incapacitated person for whom a guardian has been appointed retains all powers and rights except those powers and rights which the guardian is granted.

(b) Subject to subdivision (a) of this section, the appointment of a guardian shall not be conclusive evidence that the person lacks capacity for any other purpose, including the capacity to dispose of property by will.

(c) The title to all property of the incapacitated person shall be in such person and not in the guardian. The property shall be subject to the possession of the guardian and to the control of the court for the purposes of administration, sale or other disposition only to the extent directed by the court order appointing the guardian.

(d) If the court determines that the person is incapacitated and appoints a guardian, the court may modify, amend, or revoke any

previously executed appointment, power, or delegation under section 5-1501, 5-1505, or 5-1506 of the general obligations law or section two thousand nine hundred sixty-five of the public health law, or section two thousand nine hundred eighty-one of the public health law notwithstanding section two thousand nine hundred ninety-two of the public health law, or any contract, conveyance, or disposition during lifetime or to take effect upon death, made by the incapacitated person prior to the appointment of the guardian if the court finds that the previously executed appointment, power, delegation, contract, conveyance, or disposition during lifetime or to take effect upon death, was made while the person was incapacitated or if the court determines that there has been a breach of fiduciary duty by the previously appointed agent. In such event, the court shall require that the agent account to the guardian. The court shall not, however, invalidate or revoke a will or a codicil of an incapacitated person during the lifetime of such person.

§ 81.30 Initial report.

(a) No later than ninety days after the issuance of the commission to the guardian, the guardian shall file with the court that appointed the guardian a report in a form prescribed by the court stating what steps the guardian has taken to fulfill his or her responsibilities. Proof of completion of the guardian education requirements under section 81.39 of this article must be filed with the initial report.

(b) To the extent that the guardian has been granted powers with respect to property management, the initial report shall contain a verified and complete inventory of the property and financial resources over which the guardian has control, the location of any will executed by the incapacitated person, the guardian's plan, consistent with the court's order of appointment, for the management of such property and financial resources, and any need for any change in the powers authorized by the court.

(c) To the extent that the guardian has been granted powers regarding personal needs, the initial report shall contain a report of the guardian's personal visits with the incapacitated person, and the steps the guardian has taken, consistent with the court's order, to provide

for the personal needs of that person, the guardian's plan, consistent with the court's order of appointment, for providing for the personal needs of the incapacitated person, a copy of any directives in accordance with sections two thousand nine hundred sixty-five and two thousand nine hundred eighty-one of the public health law, any living will, and any other advance directive, and any necessary change in the powers authorized by the court. The plan for providing for the personal needs of the incapacitated person shall include the following information:

1. the medical, dental, mental health, or related services that are to be provided for the welfare of the incapacitated person;

2. the social and personal services that are to be provided for the welfare of the incapacitated person;

3. any physical, dental, and mental health examinations necessary to determine the medical, dental, and mental health treatment needs; and

4. the application of health and accident insurance and any other private or government benefits to which the incapacitated person may be entitled to meet any part of the costs of medical, dental, mental health, or related services provided to the incapacitated person.

(d) If the initial report sets forth any reasons for a change in the powers authorized by the court, the guardian shall make an application within ten days of the filing of the report on notice to the persons entitled to such notice in accordance with paragraph one of subdivision (d) of section 81.07 of this article for such relief. If the initial report sets forth any reasons for a change in the powers authorized by the court and the guardian fails to act under this subdivision, any person entitled to commence a proceeding under this article may petition the court for a change in such powers on notice to the guardian and the persons entitled to such notice in accordance with paragraph one of subdivision (d) of section 81.07 of this article for such relief.

(e) The guardian shall send a copy of the initial report to the incapacitated person by mail unless the court orders otherwise pursuant to paragraph seven of subdivision (b) and paragraph nine of subdivision

(c) of section 81.15 of this article.

(f) The guardian shall send a copy of the initial report to the court evaluator and counsel for the incapacitated person at the time of the guardianship proceeding unless the court orders otherwise pursuant to paragraph seven of subdivision (b) and paragraph nine of subdivision (c) of section 81.15 of this article.

(g) The guardian shall send a copy of the initial report to the court examiner.

(h) If the incapacitated person resides in a facility, the guardian shall send a duplicate of such report to the chief executive officer of that facility.

(i) If the incapacitated person resides in a mental hygiene facility, the guardian shall send a duplicate of such report to the mental hygiene legal service of the judicial department in which the residence is located.

§ 81.31 Annual report.

(a) Filing of annual report. Every guardian shall file a report annually in the month of May, or at any other time upon motion or order of the court.

(b) The report shall be in a form prescribed by the court and shall include the following information:

1. the present address and telephone number of the guardian.
2. the present address, and telephone number of the incapacitated person; if the place of residence of the incapacitated person is not his or her personal home, the name, address, and telephone number of the facility or place at which the person resides and the name of the chief executive officer of the facility or person otherwise responsible for the person's care.
3. any major changes in the physical or mental condition of the incapacitated person and any substantial change in medication.
4. the date that the incapacitated person was last examined or

otherwise seen by a physician and the purpose of that visit.

5. a statement by a physician, psychologist, nurse clinician, or social worker, or other person that has evaluated or examined the incapacitated person within the three months prior to the filing of the report regarding an evaluation of the incapacitated person's condition and the current functional level of the incapacitated person.

6. to the extent the guardian is charged with providing for the personal needs of the incapacitated person:

(i) a statement of whether the current residential setting is best suited to the current needs of the incapacitated person;

(ii) a resume of any professional medical treatment given to the ward in the preceding year;

(iii) the plan for medical, dental, and mental health treatment, and related services in the coming year;

(iv) information concerning the social condition of the incapacitated person, including: the social and personal services currently utilized by the incapacitated person; the social skills of the incapacitated person; and the social needs of the incapacitated person.

7. to the extent the guardian is charged with property management, information required by the provisions of the surrogate's court procedure act prescribing the form of papers to be filed upon the annual accounting of a general guardian of an infant's property.

8. where the guardian has used or employed the services of the incapacitated person or where moneys have been earned by or received on behalf of such incapacitated person an accounting of any moneys earned or derived from such services.

9. a resume of any other activities performed by the guardian on behalf of the incapacitated person.

10. facts indicating the need to terminate the appointment of the guardian, or for any alteration in the powers of the guardian and what specific authority is requested or what specific authority of the

guardian will be affected.

11. any other information which the guardian may be required to file by the order of appointment.

(c) The guardian shall send a copy of the annual report to the incapacitated person by mail unless the court orders otherwise pursuant to paragraph seven of subdivision (b) and paragraph nine of subdivision (c) of section 81.15 of this article, shall send a copy of the annual report to the court examiner, and shall file a copy of the annual report as provided herein. If the incapacitated person resides in a facility, the guardian shall send a duplicate of such report to the chief executive officer of that facility. If the incapacitated person resides in a mental hygiene facility, the guardian shall send a duplicate of such report to the mental hygiene legal service of the judicial department in which the residence is located. If mental hygiene legal service was appointed as court evaluator or as counsel for the incapacitated person at the time of the guardianship proceeding, the guardian shall send a duplicate of such report to the mental hygiene legal service of the judicial department where venue of the guardianship proceeding was located if so ordered by the court.

(d) The report shall be filed in the office of the clerk of the court which appointed the guardian.

(e) If the annual report sets forth any reasons for a change in the powers authorized by the court, the guardian shall make an application within ten days of the filing of the report on notice to the persons entitled to such notice in accordance with paragraph three of subdivision (c) of section 81.16 of this article for such relief. If the annual report sets forth any reasons for a change in the powers authorized by the court, and the guardian fails to act in accordance with this subdivision, any person entitled to commence a proceeding under this article may petition the court for a change in such powers on notice to the guardian and the persons entitled to such notice in accordance with paragraph three of subdivision (c) of section 81.16 of this article for such relief.

§ 81.32 Examination of initial and annual reports.

(a) Examination of reports generally.

1. Initial report. Within thirty days of the filing of the initial report, the initial report filed by a guardian under this article shall be examined.

2. Annual examination. Within thirty days after the filing of the annual report of the preceding year, the annual reports filed by guardians under this article shall be examined to determine the condition and care of the incapacitated person, the finances of the incapacitated person, and the manner in which the guardian has carried out his or her duties and exercised his or her powers.

(b) Examiners. The presiding justice of the appellate division in each department, or a justice of the supreme court or a special referee designated by a majority of the justices of the appellate division in each department at the request of the presiding justice, shall examine, or cause to be examined by persons designated by the presiding justice or the justices as examiners, all such reports.

(c) Failure to report.

1. If a guardian fails to file his or her initial or annual report, the person authorized to examine the report shall demand that the guardian file the report within fifteen days after the service of the demand upon him or her. A copy of the demand shall be served upon the guardian or his or her resident agent by certified mail.

2. Upon failure to comply with such demand, the court, may upon the motion of the court examiner, enter an order requiring compliance with the demand and may deny or reduce the amount of the compensation of the guardian, or remove the guardian pursuant to section 81.35 of this article absent a showing that the guardian has acted in good faith.

(d) Incomplete report.

1. If the person authorized to examine the report is of the opinion that a more complete or satisfactory report should be filed, the person authorized to examine the report shall demand that the guardian file a revised report or proof of any item in the report. A copy of the demand

shall be served upon the guardian or his or her resident agent by certified mail.

2. Upon failure to comply with such demand, the court, may upon the motion of the court examiner, enter an order requiring compliance with the demand and may deny or reduce the amount of the compensation of the guardian, or remove the guardian pursuant to section 81.35 of this article absent a showing that the guardian has acted in good faith.

(e) Duty of examiners. The person examining the report may examine the guardian and other witnesses under oath and reduce their testimony to writing. The person examining the report, on five days notice to the guardian, shall file a report in the form and manner prescribed by the order appointing the examiner.

(f) Expenses of examination. The expenses of the examination shall be payable out of the estate of the incapacitated person examined if the estate amounts to five thousand dollars or more, or, if the estate amounts to less than this sum, by the county treasurer of the county or, within the city of New York by the comptroller of the city of New York, out of any court funds in his or her hands.

§ 81.33 Intermediate and final report.

(a) A guardian may move in the court of his or her appointment for an order permitting him or her to render an intermediate report to the date of the filing thereof in a form prescribed by the court which shall include the same information as is required under section 81.31 of this article provided, however, that if the incapacitated person has died the report need not include information otherwise required in paragraphs five and six of subdivision (b) of section 81.31 of this article. The court may order the report to be filed with the clerk of the court on or before a fixed date.

(b) When a guardian dies or is removed, suspended, discharged pursuant to the provisions of this article, or allowed to resign, the court shall order a final report in a form prescribed by the court which shall include the same information as is required under section 81.31 of this article provided, however, that if the incapacitated person has died the report need not include information otherwise required in paragraphs

five and six of subdivision (b) of section 81.31 of this article. When such a report has been made in the course of a proceeding to remove a guardian, the court may dispense with a further report.

(c) Notice of the filing of a report under this section shall be served upon the persons entitled to notice pursuant to paragraph three of subdivision (c) of section 81.16 of this article. If the incapacitated person is deceased, notice shall also be served upon his or her executor or administrator, if any.

(d) The court may appoint counsel for the incapacitated person, if living, for the protection of such person's rights and interests with regard to such report. The court may appoint a referee to hear the matter and report to the court.

(e) Upon the motion for a confirmation of the report of the referee, or if the report is made before the court, upon the court's determination, the report shall be judicially approved and filed. The compensation of the referee and of counsel shall be fixed by the court and shall be payable out of the estate of the incapacitated person unless it is determined that the incapacitated person is indigent.

(f) If the incapacitated person resides in a facility, a copy of a report under this section shall be served upon the chief executive officer in charge of that facility and upon the mental hygiene legal service of the judicial department in which the residence is located.

§ 81.34 Decree on filing instruments approving accounts.

(a) The guardian or the personal representative of the guardian may present to the court a petition showing the names and addresses of all persons entitled to receive notice pursuant to paragraph three of subdivision (c) of section 81.16 of this article and the personal representative of the estate showing that, to the extent the guardian is responsible for the property of the incapacitated person, all taxes have been paid or that no taxes are due and that the petitioner has fully reported and has made full disclosure in writing of all the guardian's actions affecting the property of the incapacitated person to all persons interested and seeking a decree releasing and discharging the petitioner. Upon the death of the incapacitated person, the guardian is authorized to pay the funeral expenses of the incapacitated person and,

in the absence of a duly appointed personal representative of the estate, pay estimated estate and income tax charges, as well as other charges of emergent nature.

(b) The petitioner shall also show that the incapacitated person has died or that the guardian has died, or has been removed, suspended, or discharged pursuant to the provisions of this article, or allowed to resign.

(c) The petitioner shall also file with the petition acknowledged instruments executed by all persons interested or in the case of an infant, or incapacitated person whose claim has been paid, by the guardian, or guardian receiving payment, approving the report of the petitioner and releasing and discharging the petitioner.

(d) The court may thereupon make a decree releasing and discharging the petitioner and the sureties on his or her bond, if any, from any further liability to the persons interested.

§ 81.35 Removal of guardian.

Upon motion, the court appointing a guardian may remove such guardian when the guardian fails to comply with an order, is guilty of misconduct, or for any other cause which to the court shall appear just. Notice of motion shall be served on the guardian and persons entitled to receive notice pursuant to paragraph three of subdivision (c) of section 81.16 of this article. The motion may be made by the person examining initial and annual reports pursuant to section 81.32 of this article, or by any person entitled to commence a proceeding under this article, including the incapacitated person. The court may fix the compensation of any attorney or person prosecuting the motion. It may compel the guardian to pay personally the costs of the motion if granted.

§ 81.36 Discharge or modification of powers of guardian.

(a) The court appointing the guardian shall discharge such guardian, or modify the powers of the guardian where appropriate, if it appears to the satisfaction of the court that:

1. the incapacitated person has become able to exercise some or all of the powers necessary to provide for personal needs or property management which the guardian is authorized to exercise;

2. the incapacitated person has become unable to exercise powers necessary to provide for personal needs or property management which the guardian is not authorized to exercise;

3. the incapacitated person has died; or

4. for some other reason, the appointment of the guardian is no longer necessary for the incapacitated person, or the powers of the guardian should be modified based upon changes in the circumstances of the incapacitated person.

(b) The application for relief under this section may be made by the guardian, the incapacitated person, or any person entitled to commence a proceeding under this article.

(c) There shall be a hearing on notice to the persons entitled to notice pursuant to paragraph three of subdivision (c) of section 81.16 of this article. The court may for good cause shown dispense with the hearing provided that an order of modification increasing the powers of the guardian shall set forth the factual basis for dispensing with the hearing. If the incapacitated person or his or her counsel raises an issue of fact as to the ability of the incapacitated person to provide for his or her personal needs or property management and demands a jury trial of such issue, the court shall order a trial by jury thereof.

(d) To the extent that relief sought under this section would terminate the guardianship or restore certain powers to the incapacitated person, the burden of proof shall be on the person objecting to such relief. To the extent that relief sought under this section would further limit the powers of the incapacitated person, the burden shall be on the person seeking such relief.

(e) If the guardian is discharged because the incapacitated person becomes fully able to care for his or her property, the court shall order that there be restored to such person the property remaining in the hands of the guardian. If the incapacitated person dies, the guardian shall provide for such person's burial or other disposition the

cost of which shall be borne by the estate of the incapacitated person.

§ 81.37 Resignation or suspension of powers of guardian.

(a) The court appointing a guardian may allow the guardian to resign or may suspend the powers of the guardian.

(b) Where a guardian is engaged in war service as defined in section seven hundred seventeen of the surrogate's court procedure act, the court, upon motion by the guardian or any other person and upon such notice as the court may direct, may suspend the powers of the guardian until further order of the court. If the suspension will leave no other person acting as guardian, the motion shall seek the appointment of a successor. When the suspended guardian becomes able to serve, he or she may be reinstated by the court upon motion and such notice as the court may direct. If the suspended guardian is reinstated, the court shall thereupon discharge his or her successor, who may be required to account, and make any other order as justice requires.

§ 81.38 Vacancy in office.

(a) Interim guardian. A vacancy created by the death, removal, discharge, resignation, or suspension of a guardian shall be filled by the court. Upon the application of any person entitled to commence a proceeding under this article, the court shall appoint an interim guardian who shall serve for a period of ninety days or until a final accounting is filed and a successor guardian is appointed by the court. The powers and duties of the interim guardian shall be specifically enumerated in the order of appointment. The court may require service of the order to show cause seeking the appointment of an interim guardian on any persons it deems appropriate.

(b) Standby guardian. At the time of the appointment of the guardian, the court may in its discretion appoint a standby guardian to act in the event that the guardian shall resign, die, be removed, discharged, suspended, or become incapacitated. The court may also appoint an alternate and/or successive alternates to the standby guardian, to act if the standby guardian shall resign, die, be removed, discharged, suspended, or become incapacitated. Such standby guardian, or the

alternate in the event of the standby guardian's resignation, death, removal, discharge, suspension or adjudication of incapacity, shall without further proceedings be empowered to immediately assume the duties of office immediately upon resignation, death, removal, discharge, suspension or adjudication of incapacity, of the guardian or the standby guardian as set forth in the order of appointment, subject only to the confirmation of appointment by the court sixty days following the assumption of the duties of the office. Before confirming the appointment of a standby guardian, the court may conduct a hearing in accordance with the provisions set forth in section 81.11 of this article upon petition of any person entitled to commence a proceeding under this article.

§ 81.39 Guardian education requirements.

(a) Each incapacitated person is entitled to a guardian whom the court finds to be sufficiently capable of performing the duties and exercising the powers of a guardian necessary to protect the incapacitated person.

(b) Each person appointed by the court to be a guardian must complete a training program approved by the chief administrator which covers:

1. the legal duties and responsibilities of the guardian;
 2. the rights of the incapacitated person;
 3. the available resources to aid the incapacitated person;
 4. an orientation to medical terminology, particularly that related to the diagnostic and assessment procedures used to characterize the extent and reversibility of any impairment;
 5. the preparation of annual reports, including financial accounting for the property and financial resources of the incapacitated person.
- (c) The court may, in its discretion, waive some or all of the requirements of this section or impose additional requirements. In doing so, the court shall consider the experience and education of the guardian with respect to the training requirements of this section, the

duties and powers assigned to the guardian, and the needs of the incapacitated person.

§ 81.40 Court evaluator education requirements.

(a) Each incapacitated person is entitled to a court evaluator whom the court finds to be sufficiently capable of performing the duties of a court evaluator necessary to ensure that all the relevant information regarding a petition for the appointment of a guardian comes before the court and to assist the court in reaching a decision regarding the appointment of a guardian.

(b) Each person appointed by the court to be an evaluator must complete a training program approved by the chief administrator which covers:

1. the legal duties and responsibilities of the court evaluator;
2. the rights of the incapacitated person with emphasis on the due process rights to aid the court evaluator in determining his or her recommendation regarding the appointment of counsel and the conduct of the hearing;
3. the available resources to aid the incapacitated person;
4. an orientation to medical terminology, particularly that related to the diagnostic and assessment procedures used to characterize the extent and reversibility of any impairment;
5. entitlements;
6. psychological and social concerns relating to the disabled and frail older adults.

(c) The court may, in its discretion, waive some or all of the requirements of this section or impose additional requirements. In doing so, the court shall consider the experience and education of the court evaluator with respect to the training requirements of this section.

§ 81.41 Court examiner education requirements.

(a) Each incapacitated person is entitled to a thorough examination of all reports required to be filed by the guardian.

(b) Each person appointed pursuant to section 81.32 of this article must complete a training program approved by the chief administrator which covers the legal duties and responsibilities of the examiner and of guardians.

(c) The court may, in its discretion, waive some or all of the requirements of this section or impose additional requirements. In so doing, the court shall consider the experience and education of the court examiner with respect to the training requirements of this section.

§ 81.42 Compliance.

(a) A motion to dismiss based on the alleged failure to comply with any of the provisions of this article, other than subparagraph (i) of paragraph one of subdivision (d) of section 81.07 of this article, must be determined without regard to technical mistakes, deficiencies, and omissions that do not result in actual prejudice that affects the integrity of the proceeding.

(b) A judgment or order made pursuant to this article, unless reversed on appeal, releases the guardian and the sureties from all claims of the incapacitated person and/or any person affected thereby based on any act or omission directly authorized, approved or confirmed in the judgment or order. This section does not apply where the judgment or order is obtained by fraud or conspiracy or by misrepresentation contained in the notice, petition, account, or in the judgment or order as to any material fact. For purposes of this subdivision, misrepresentation of a material fact includes but is not limited to the omission of a material fact.

§ 81.43 Proceedings to discover property withheld.

(a) To the extent that it is consistent with the authority otherwise granted by the court a guardian may commence a proceeding in the court

which appointed the guardian to discover property withheld. The petition shall contain knowledge, or information and belief of any facts tending to show that any interest in real property or money or other personal property, or the proceeds or value thereof, which should be delivered and paid to the guardian, is in the possession, under the control, or within the knowledge or information of respondent who withholds the same from the guardian, whether such possession or control was obtained before or after the appointment of the guardian, or that the respondent refuses to disclose knowledge or information which such person may have concerning the same or which will aid the guardian in making discovery of such property. The petition shall request that respondent be ordered to attend an inquiry and be examined accordingly and deliver property of the incapacitated person if it is within his or her control. The petition may be accompanied by an affidavit or other written evidence, tending to support the allegations thereof. If the court is satisfied on the papers so presented that there are reasonable grounds for the inquiry, it must make an order accordingly, which may be returnable forthwith, or at a future time fixed by the court, and may be served at any time before the hearing. If it shall appear from the petition or from the answer interposed thereto, or in the course of the inquiry made pursuant to the order that a person other than the respondent in the proceeding claims an interest in the property or the proceeds or the value thereof, the court may by the original order or by supplemental order, direct such additional party to attend and be examined in the proceeding in respect of his or her adverse claim, and deliver the property if in his or her control or the proceeds or value thereof. Service of such an order must be made by delivery of a certified copy thereof to the person or persons named therein and the payment or tender, to each of the sum required by law to be paid or tendered to a witness who is subpoenaed to attend a trial in such court.

(b) If the person directed to appear submits an answer denying any knowledge concerning or the possession of any property which belongs to the incapacitated person or should be delivered to the guardian, or shall make default in answer, he or she shall be sworn to answer truly all questions put to him or her regarding the inquiry requested in the petition. Any claim of title to or right to the possession of any property of the incapacitated person must be made by verified answer in

writing. If such answer is interposed, the issues raised thereby shall be tried according to the usual practice of the court as a litigated issue but the interposition of such answer shall not limit the right of the guardian to proceed with the inquiry in respect of property not so claimed by the verified answer. If possession of the property is denied, proof on that issue may be presented to the court by either party. The court may in an appropriate case make interim decrees directing the delivery of property not claimed by verified answer and may continue the proceeding for determination of any litigated issue. If it appears that the guardian is entitled to the possession of the property, the decree shall direct delivery thereof to the guardian or if the property shall have been diverted or disposed of, the decree may direct payment of the proceeds or the value of such property or may impress a trust upon said proceeds or make any determination which a court of equity might decree in following trust property funds. In any case in which a verified answer is served and the court after a trial or hearing determines the issue, the court may in its discretion award costs not exceeding fifty dollars and disbursements to be paid by the unsuccessful party.

§ 81.44 Proceedings upon the death of an incapacitated person.

(a) When used in this section:

1. "Statement of death" means a statement, in writing and acknowledged, containing the caption and index number of the guardianship proceeding, and the name and address of the last residence of the deceased incapacitated person, the date and place of death, and the names and last known addresses of all persons entitled to notice of further guardianship proceedings pursuant to paragraph three of subdivision (c) of section 81.16 of this article including the nominated and/or appointed personal representative, if any, of the deceased incapacitated person's estate.

2. "Personal representative" means a fiduciary as defined by subdivision twenty-one of section 103 of the surrogate's court procedure act to whom letters have been issued and who is authorized to marshal the assets of the decedent's estate.

3. "Public administrator" means a public administrator within or without the city of New York, as established by articles eleven and twelve of the surrogate's court procedure act, or the chief fiscal officer of a county eligible to be appointed an administrator, pursuant to section twelve hundred nineteen of the surrogate's court procedure act. The role of the public administrator under this section is that of a stake holder or escrowee only, and the public administrator shall not, by virtue of this section, have a substantive role in administering the estate.

4. "Statement of assets and notice of claim" means a written statement under oath containing the caption and index number of the guardianship proceeding, the name and address of the incapacitated person at the time of death, a description of the nature and approximate value of guardianship property at the time of the incapacitated person's death; with the approximate amount of any claims, debts or liens against the guardianship property, including but not limited to medicaid liens, tax liens and administrative costs, with an itemization and approximate amount of such costs and claims or liens.

(b) Unless otherwise directed by the court, all papers required to be served by this section shall be served by regular mail and by certified mail return receipt requested.

(c) Within twenty days of the death of an incapacitated person, the guardian shall:

1. serve a copy of the statement of death upon the court examiner, the duly appointed personal representative of the decedent's estate, or, if no personal representative has been appointed, then upon the personal representative named in the decedent's will or any trust instrument, if known, upon the local department of social services and upon the public administrator or the chief fiscal officer of the county in which the guardian was appointed, and

2. file the original statement of death together with proof of service upon the personal representative and/or public administrator or chief fiscal officer, as the case may be, with the court which issued letters

of guardianship.

(d) Within one hundred fifty days of the death of the incapacitated person, the guardian shall serve upon the personal representative of the decedent's estate or where there is no personal representative, upon the public administrator or chief fiscal officer, a statement of assets and notice of claim, and, except for property retained to secure any known claim, lien or administrative costs of the guardianship pursuant to subdivision (e) of this section, shall deliver all guardianship property to:

1. the duly appointed personal representative of the deceased incapacitated person's estate, or

2. the public administrator or chief fiscal officer given notice of the filing of the statement of death, where there is no personal representative.

3. any dispute as to the size of the property retained shall be determined by the surrogate court having jurisdiction of the estate.

(e) Unless otherwise ordered by the court upon motion by the guardian on notice to the person or entity to whom guardianship property is deliverable, and the court examiner, the guardian may retain, pending the settlement of the guardian's final account, guardianship property equal in value to the claim for administrative costs, liens and debts.

(f) Within one hundred fifty days of the incapacitated person's death, the guardian shall file his or her final report with the clerk of the court of the county in which annual reports are filed, and thereupon proceed to judicially settle the final report upon such notice as required by subdivision (c) of section 81.33 of this article, including notice to the person or entity to whom the guardianship property was delivered. There shall be no extension of the time to file a final report except by order of the court.

(g) Upon failure of the guardian to comply with subdivisions (d) or (f) of this section, any person entitled to notice of this proceeding may file a petition to compel the guardian to account, to suspend and/or remove the guardian, and to take and state the guardian's account.

* ARTICLE 82

SUPPORTED DECISION-MAKING

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* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register, or the date such regulations are adopted, whichever is later.

*** § 82.01 Legislative findings and purpose.**

(a) The legislature finds that a person's right to make their own decisions is critical to their autonomy and self-determination. People with intellectual, developmental, cognitive and psychosocial disabilities are often denied that right because of stigma and outdated beliefs about their capability. This right is denied, despite the reality that very few people make decisions entirely on their own. Everyone uses supports, as do people with disabilities; who may just need more or different kinds of supports.

(b) The legislature further finds that the, now well recognized, practice of supported decision-making is a way in which many people with disabilities can make their own decisions with the support they need

from trusted persons in their lives, and that supported decision-making can be a less restrictive alternative to guardianship. Recognizing that supported decision-making can take a variety of forms, the legislature finds that a more formal process, resulting in a supported decision-making agreement between the person with a disability (the decision-maker) and their supporter or supporters, can provide the basis for requiring third parties, who might otherwise question a person's legal capacity because of their disability, to recognize their decisions on the same basis as others. When this more formal process is followed, people with disabilities can make choices confident that they will be respected by others and knowing they will be solely responsible for their own decisions.

(c) The legislature further finds that supported decision-making and supported decision-making agreements should be encouraged when appropriate for persons with disabilities, and that the execution of a supported decision-making agreement should not detrimentally impact the eligibility of a person for other services, including adult protective services.

(d) The legislature also strongly urges relevant state agencies and civil society to research and develop appropriate and effective means of support for older persons with cognitive decline, persons with traumatic brain injuries, and persons with psychosocial disabilities, so that full legislative recognition can also be accorded to the decisions made with supported decision-making agreements by persons with such conditions, based on a consensus about what kinds of support are most effective and how they can best be delivered.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.02 Definitions.**

When used in this article, the following terms shall have the following meaning, unless the context or subject matter requires a different interpretation:

(a) "abuse" encompasses physical abuse, sexual abuse, and emotional

abuse, as defined in section four hundred seventy-three of the social services law.

(b) "adult" means an individual eighteen years of age or older.

(c) "advance directive" means a legally recognized written or oral instruction by an adult relating to the provision of health care to the adult if and when they become incapacitated, including but not limited to a health care proxy, a consent to the issuance of an order not to resuscitate or other orders for life-sustaining treatment recorded in a patient's medical record, or other legally-recognized statements of wishes or beliefs.

(d) "decision-maker" means an adult who has executed, or seeks to execute, a supported decision-making agreement.

(e) "financial exploitation" has the meaning given in section four hundred seventy-three of the social services law.

(f) "good faith" means honest in fact and in the observance of reasonable standards of fair dealing.

(g) "neglect" has the meaning defined in paragraph (d) of subdivision one of section four hundred seventy-three of the social services law.

(h) "physical coercion" means to place under duress, menace, or threaten physical violence or imprisonment.

(i) "supported decision-making" means a way by which a decision-maker utilizes support from trusted persons in their life, in order to make their own decisions about their life, including, but not limited to, decisions related to where and with whom the decision-maker wants to live; decisions about finances; the services, supports, and health care the decision-maker wants to receive; and where the decision-maker wants to work.

(j) "supported decision-making agreement" is an agreement a decision-maker enters into with one or more supporters under this section that describes how the decision-maker uses supported decision-making to make their own decisions. Supported decision-making agreements can either be an informal arrangement between the decision-maker and his or her supporter or supporters, or one that is in accordance with section 82.11 of this article, which has been reviewed and signed by a facilitator.

(k) "supporter" means an adult who has voluntarily entered into a supported decision-making agreement with a decision-maker, agreeing to

assist the decision-maker in making their own decisions as prescribed by the supported decision-making agreement, and who is not ineligible under section 82.08 of this article.

(l) "undue influence" means moral or mental coercion that leads someone to carry out the wishes of another instead of their own because they are unable to refuse or resist.

(m) "facilitator" means an individual or entity authorized by the office for people with developmental disabilities that works with and educates the decision-maker and his or her supporter or supporters about supported decision-making and supported decision-making agreements authorized under this article.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.03 Presumption of capacity.**

(a) For the purposes of this article, every adult shall be presumed to have the capacity to enter into a supported decision-making agreement, unless that adult has a legal guardian, appointed by a court of competent jurisdiction, whose granted authority is in conflict with the proposed supported decision-making agreement. This presumption may be rebutted only by clear and convincing evidence.

(b) Capacity shall include capacity with decision-making support and/or accommodations.

(c) A diagnosis of a developmental or other disability or condition shall not constitute evidence of incapacity.

(d) The manner in which an adult communicates with others shall not constitute evidence of incapacity.

(e) Neither the execution of a supported decision-making agreement by an individual, nor the interest in or wish to execute a supported decision-making agreement by an individual, nor the failure of an individual to execute a supported decision-making agreement may be used or considered as evidence that the individual lacks capacity, or to deny the decision-maker benefits to which they are otherwise entitled, including adult protective services.

(f) A decision-maker may make and execute a supported decision-making

agreement, if the decision-maker understands that they are making and executing an agreement with their chosen supporters and that they are doing so voluntarily.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.04 Scope.**

(a) If a decision-maker voluntarily enters into a supported decision-making agreement with one or more supporters, the decision-maker may, in the agreement, authorize the supporter to provide support to them in making their own decisions in areas they choose, including, but not limited to: gathering information, understanding and interpreting information, weighing options and alternatives to a decision, considering the consequences of making a decision or not making it, participating in conversations with third parties if the decision-maker is present and requests their participation, communicating the decision-maker's decision to third parties if the decision-maker is present and requests their participation, and providing the decision-maker support in implementing the decision-maker's decision.

(b) Nothing in this article, nor the existence of an executed supported decision-making agreement, shall preclude the decision-maker from acting independently of the supported decision-making agreement or executing, with or without the assistance of supporters under a supported decision-making agreement, a power of attorney under title fifteen of article five of the general obligations law, health care proxy under article twenty-nine-C of the public health law, or other advance directive.

(c) Notwithstanding the existence of a supported decision-making agreement, a decision-maker shall continue to have unrestricted access to their personal information without the assistance of a supporter.

(d) Notwithstanding the existence of a supported decision-making agreement, a decision-maker may request and receive assistance in making any decision that is not covered under the supported decision-making agreement at any time and from any person, regardless of whether that

person is designated as a supporter in the supported decision-making agreement.

(e) A supported decision-making agreement made pursuant to this article may be evidence that the decision-maker has a less restrictive alternative to guardianship in place.

(f) The availability of supported decision-making agreements is not intended to limit the informal use of supported decision-making, or to preclude judicial consideration of such informal arrangements as less restrictive alternatives to guardianship.

(g) Execution of a supported decision-making agreement may not be a condition of participation in any activity, service, or program.

(h) If a decision-maker seeks from any person professional advice that would be otherwise covered by evidentiary privilege in accordance with sections forty-five hundred three, forty-five hundred four, forty-five hundred seven, forty-five hundred eight and forty-five hundred ten of the civil practice law and rules, the inclusion in the conversation of a supporter authorized by the supported decision-making agreement to provide support in the area in which the decision-maker seeks the professional advice shall not constitute a waiver of that privilege.

(i) Notwithstanding any other provision of law to the contrary, nothing within this article shall be construed to prohibit eligibility of a decision-maker for receipt of services or supports that they would have otherwise been entitled, including adult protective services, absent entering into a supported decision-making agreement under the provisions of this article.

(j) A supported decision-making agreement made between a decision-maker and his or her supporter or supporters after consultation and education, which is signed by a facilitator shall have the legal force and effect authorized under section 82.11 of this article.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.05 Duties, responsibilities, and authority of supporters.**

(a) A supporter must:

1. respect the decision-maker's right to make a decision, even when the supporter disagrees with the decision or believes it is not in the decision-maker's best interests;

2. act honestly, diligently, and in good faith;

3. act within the scope set forth in the executed supported decision-making agreement;

4. avoid conflicts of interest;

5. notify the decision-maker in writing, and in a manner the decision-maker can understand, of the supporter's intent to resign as a supporter; and

6. participate in facilitation and/or education programs developed under regulations promulgated by the office for people with developmental disabilities in order to enter a formal supported decision-making agreement.

(b) A supporter is prohibited from:

1. making decisions for the decision-maker, except to the extent otherwise granted in an advance directive;

2. exerting undue influence upon the decision-maker;

3. physically coercing the decision-maker;

4. obtaining, without the consent of the decision-maker, information acquired for a purpose other than assisting the decision-maker in making a decision authorized by the supported decision-making agreement;

5. obtaining, without the consent of the decision-maker, or as expressly granted by the supported decision-making agreement, and accompanied by an appropriate release, nonpublic personal information as defined in 15 U.S.C. § 6809(4)(A), or clinical records or information under subdivision (c) of section 33.13 of this chapter; and

6. communicating a decision-maker's decision to a third-party without the participation and presence of the decision-maker.

(c) The relationship between a decision-maker and a supporter is one of trust and confidence and serves to preserve the decision-making authority of the decision-maker.

(d) A supporter shall not be considered a surrogate or substitute decision maker for the decision-maker and shall not have the authority to sign legal documents on behalf of the decision-maker or bind the decision-maker to a legal agreement, but may, if such authority is expressly granted in the supported decision-making agreement, provide co-signature together with the decision-maker acknowledging the receipt of statements of rights and responsibilities in order to permit participation in such programs or activities that the decision-maker has communicated a choice to participate in.

(e) If expressly granted by the supported decision-making agreement, and the decision-maker has signed an appropriate release, the supporter may assist the decision-maker in obtaining educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g), protected health information under the Health Insurance Portability and Accountability Act of 1996 (45 CFR §§ 164.502, 164.508), clinical records and information under subdivision (c) of section 33.13 of this chapter, or patient information under subdivisions two and three of section eighteen of the public health law.

(f) A supporter shall ensure the information obtained under subdivision (e) of this section is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.06 Formation and term of agreement.**

(a) An adult may enter into a supported decision-making agreement at any time if the adult enters into the agreement voluntarily.

(b) A decision-maker may sign a supported decision-making agreement in

any manner, including electronic signatures permitted under article three of the state technology law.

(c) A supported decision-making agreement formed under the provisions of this article shall remain in effect unless and until revoked by the decision-maker.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.07 Revocation and amendment of agreement.**

(a) The decision-maker may revoke all or part of a supported decision-making agreement by notifying the supporters orally or in writing, or by any other act evincing a specific intent to revoke the agreement. The failure of the decision-maker to notify supporters shall not invalidate the revocation of all or part of the supported decision-making agreement.

(b) A decision-maker may amend a supported decision-making agreement at any time for any reason, subject to the requirements of this section. The decision-maker shall notify all supporters of any amendment made to the supported decision-making agreement, but the failure to do so shall not invalidate the amendment.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.08 Eligibility and resignation of supporters.**

(a) A supporter shall be any adult chosen by the decision-maker; if the supporter chosen by the decision-maker is an employee of a provider from whom the decision-maker receives services, the employee and the provider shall follow the requirements set out in regulations promulgated by the office for people with developmental disabilities, or other appropriate regulatory body which address those circumstances, with attention paid to relative labor law and employment obligations and possible conflicts of interest or the appearance of a conflict of interest.

(b) An individual who has been chosen by the decision-maker to be a supporter, or who has entered into a supported decision-making agreement as a supporter, shall be deemed ineligible to act, or continue to serve as supporter upon the occurrence of any of the following:

1. a court authorizes a protective order or restraining order against the supporter on request of or on behalf of the decision-maker; or

2. the local department of social services has found that the supporter has committed abuse, neglect, financial exploitation, or physical coercion against the decision-maker as such terms are defined in section 82.02 of this article.

(c) A supporter may resign as supporter by written or oral notice to the decision-maker and the remaining supporters.

(d) If the supported decision-making agreement includes more than one supporter or is amended to replace the supporter who is ineligible under subdivision (b) of this section or resigns under subdivision (c) of this section, the supported decision-making agreement shall survive for the remaining supporters, unless it is otherwise revoked under section 82.07 of this article.

(e) If the supported decision-making agreement does not include more than one supporter, and is not amended to replace the supporter who becomes ineligible under subdivision (b) of this section or resigns under subdivision (c) of this section, the supported decision-making agreement shall be considered terminated.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.09 Facilitation of agreement.**

The provisions of section 82.11 and subdivisions (b) through (d) of section 82.12 of this article shall only apply in circumstances where a decision is made by a decision-maker pursuant to a supported decision-making agreement created in accordance with this article where such decision-maker and his or her supporter or supporters have worked

with a facilitator, such supporter or supporters have followed a recognized supported decision-making facilitation or education process as defined and prescribed by regulations promulgated by the office for people with developmental disabilities and such facilitator has signed such agreement.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.10 Form of agreement.**

(a) A supported decision-making agreement may be in any form consistent with the requirements set forth in this article.

(b) A supported decision-making agreement must:

1. be in writing;
2. be dated;
3. designate the decision-maker, and at least one supporter;
4. list the categories of decisions with which a supporter is authorized to assist the decision-maker;
5. list the kinds of support that each supporter may give for each area in which they are designated as a supporter;
6. contain an attestation that the supporters agree to honor the right of the decision-maker to make their own decisions in the ways and areas specified in the agreement, respect the decision-maker's decisions, and, further, that they will not make decisions for the decision-maker;
7. state that the decision-maker may change, amend, or revoke the supported decision-making agreement at any time for any reason, subject to the requirements of section 82.06 of this article;
8. be signed by all designated supporters; and

9. be executed or endorsed by the decision-maker in the presence of at least two adult witnesses who are not also designated as supporters, or with the attestation of a notary public.

(c) A supported decision-making agreement may:

1. appoint more than one supporter;

2. authorize a supporter to obtain personal information as described in subdivision (e) of section 82.05 of this article;

3. authorize a supporter to share information with any other supporter or others named in the agreement; or

4. detail any other limitations on the scope of a supporter's role that the decision-maker deems important.

(d) In order to be subject to the provisions of section 82.11 and subdivisions (b) through (d) of section 82.12 of this article, a supported decision-making agreement must also:

1. be signed by a facilitator or educator;

2. include a statement that the supported decision-making agreement was made in accordance with a recognized facilitation and/or education process; and

3. include an attached attestation by the decision-maker that a particular decision has been made in accordance with the support described in the supported decision-making agreement.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.11 Legal effect of decisions made with support and third party obligations.**

(a) This section shall apply only to decisions made pursuant to

supported decision-making agreements created in accordance with this article and following a recognized supported decision-making facilitation or education process, as prescribed by regulations governing the facilitation and education processes promulgated by the office for people with developmental disabilities. Additionally, such decisions shall be signed by a facilitator.

(b) A decision or request made or communicated by a decision-maker with the assistance of a supporter in accordance with the provisions of a supported decision-making agreement must, notwithstanding any other provision of law, be recognized as the decision or request of the decision-maker and may be enforced by the decision-maker in law or equity on the same basis as all others.

(c) A person, entity, or agency required to recognize and honor a decision made pursuant to a supported decision-making agreement authorized by this section may require the decision-maker to execute or endorse an attestation, as provided in paragraph three of subdivision (d) of section 82.10 of this article, as a condition of recognizing and honoring the decision.

(d) A person, entity, or agency that receives a supported decision-making agreement must honor a decision made in accordance with the agreement, unless the person, entity, or agency has substantial cause to believe the supported decision-making agreement has been revoked, or the decision-maker is being abused, coerced, unduly influenced, or financially exploited by the supporter, or that the decision will cause the decision-maker substantial and imminent physical or financial harm.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.12 Limitations on liability.**

(a) Subdivisions (b), (c) and (d) of this section shall apply only to decisions made pursuant to supported decision-making agreements created in accordance with this article which are signed by a facilitator and following a recognized supported decision-making facilitation or education process, as prescribed by regulations governing the

facilitation and education processes promulgated by the office for people with developmental disabilities.

(b) A person shall not be subject to criminal or civil liability and shall not be determined to have engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a decision made by a decision-maker pursuant to a duly executed supported decision-making agreement created in accordance with this article.

(c) Any health care provider that provides health care based on the consent of a decision-maker, given with support or assistance provided through a duly executed supported decision-making agreement created in accordance with this article, shall be immune from any action alleging that the decision-maker lacked capacity to provide informed consent, unless the entity, custodian, or organization had actual knowledge or notice that the decision-maker had revoked the supported decision-making agreement, or that the supporter had committed abuse, physical coercion, undue influence, or financial exploitation with respect to the decision to grant consent.

(d) Any public or private entity, custodian, or organization that discloses personal information about a decision-maker in reliance on the terms of a duly executed supported decision-making agreement created in accordance with this article, to a supporter authorized by the terms of the supported decision-making agreement to assist the decision-maker in accessing, collecting, or obtaining that information under subdivision (e) of section 82.05 of this article, shall be immune from any action alleging that it improperly or unlawfully disclosed such information to the supporter unless the entity, custodian, or organization had actual knowledge that the decision-maker had revoked such authorization.

(e) This section may not be construed to provide immunity from actions alleging that a health care provider, or other third party, has done any of the following:

1. caused personal injury as a result of a negligent, reckless, or intentional act;

2. acted inconsistently with the expressed wishes of a decision-maker;

3. failed to provide information to either decision-maker or their supporter that would be necessary for informed consent; or

4. otherwise acted inconsistently with applicable law.

(f) The existence or availability of a supported decision-making agreement does not relieve a health care provider, or other third party, of any legal obligation to provide services to individuals with disabilities, including the obligation to provide reasonable accommodations or auxiliary aids and services, including, but not limited to, interpretation services and communication supports to individuals with disabilities under the federal Americans with Disabilities Act (42 U.S.C. § 12101).

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.13 Supporter notice.**

(a) If any state or municipal law requires that an agency, entity, or person provide a prescribed notice to a decision-maker, and the agency, entity, or person required to provide such notice has received a supported decision-making agreement from a decision-maker that specifies that a supporter is also to receive a copy of any such notice, then the agency, entity, or person in possession of the supported decision-making agreement shall also provide the specified supporter with a copy of such notice.

(b) Notwithstanding the provisions of this subsection, if any state or municipal law requires that an agency, entity, or person provide a prescribed notice to a decision-maker and such notice includes protected information, including private health information or educational records protected by state or federal law, such notice shall not be provided to the specified supporter unless the supported decision-making agreement is accompanied by a release authorizing the specified supporter to obtain the protected information.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.14 Reporting abuse, coercion, undue influence, or financial exploitation.**

(a) Any person who receives a copy of or an original supported decision-making agreement and has cause to believe the decision-maker is being abused, physically coerced, or financially exploited by a supporter, may report the alleged abuse, physical coercion, or financial exploitation to adult protective services pursuant to section four hundred seventy-three of the social services law.

(b) Nothing in this section may be construed as eliminating or limiting a person's duty or requirement to report under any other statute or regulation.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

*** § 82.15 Rules and regulations.**

(a) The commissioner of the office for people with developmental disabilities shall promulgate within one year of the passage of this act the rules and regulations necessary to implement this article for adults who receive or are eligible to receive services that are operated, certified, funded or approved by the office for people with developmental disabilities.

(b) Additional regulations related to this article may be promulgated by state agencies whose service populations may benefit from the implementation of supported decision-making.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.

ARTICLE 83

**UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS
JURISDICTION ACT**

Section 83.01 Short title.

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§ 83.01 Short title.

This article shall be known and may be cited as the "uniform adult guardianship and protective proceedings jurisdiction act".

§ 83.03 Definitions.

For purposes of this article, the following definitions shall apply:

(a) "Adult" means an individual who has attained eighteen years of age.

(b) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

(c) "Guardian of the property" means a person appointed by the court to administer the property of an adult, including a person appointed under article eighty-one of this title and article seventeen-A of the surrogate's court procedure act, and including a conservator appointed by a court in another state.

(d) "Guardian of the person" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under article eighty-one of this title and article seventeen-A of the surrogate's court procedure act.

(e) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian of the person; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(f) "Party" means the respondent, petitioner, guardian of the person, conservator guardian of the property, or any other person allowed by the court to participate in a guardianship proceeding for the appointment of a guardian of the person or a protective proceeding.

(g) "Person", except in the term incapacitated person for whom a guardian of the person has been appointed or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(h) "Protected person" means an adult for whom a protective order has been issued.

(i) "Protective order" means an order appointing a conservator, guardian of the property or other order related to management of an adult's property.

(j) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(k) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(l) "Respondent" means an adult for whom a protective order or the appointment of a guardian of the person is sought.

(m) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(n) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

§ 83.05 International application of this article.

A court of this state may treat a foreign country as if it were a state for the purpose of applying sections 83.01 through 83.37 of this article.

§ 83.07 Communication between courts.

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this article. The court may allow the parties to participate in the communication.

(b) If the parties are not allowed to participate in the communication, the court shall give all parties the opportunity to present facts and legal arguments before the court issues an order establishing jurisdiction.

(c) Except as otherwise provided in subdivision (d) of this section, the court shall make a record of any communication under this section and promptly inform the parties of the communication and grant them access to the record.

(d) Courts may communicate concerning schedules, calendars, court

records and other administrative matters without making a record.

§ 83.09 Cooperation between courts.

(a) In a proceeding for the appointment of a guardian of the person or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

1. hold an evidentiary hearing;
2. order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
3. order that an evaluation or assessment be made of the respondent;
4. order any appropriate investigation of a person involved in a proceeding;
5. forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph one of this subdivision or any other proceeding, any evidence otherwise produced under paragraph two of this subdivision, and any evaluation or assessment prepared in compliance with an order under paragraph three or four of this subdivision;
6. issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the person subject to a guardianship of the person or protected person; and
7. issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information.

(b) The court may receive any evidence produced pursuant to subdivision (a) of this section in the same manner that it would admit into evidence the report of a court evaluator after the court evaluator had been subject to cross examination;

(c) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subdivision (a) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

§ 83.11 Taking testimony in another state.

(a) In a proceeding for the appointment of a guardian of the person or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a proceeding for the appointment of a guardian of the person or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

§ 83.13 Significant connection factors.

In determining under section 83.17 and subdivision (e) of section 83.31 of this article whether a respondent has a significant connection with a particular state, the court shall consider:

(a) the location of the respondent's family and other persons required to be notified of the proceeding;

(b) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) the location of the respondent's property; and

(d) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

§ 83.15 Exclusive basis.

Subject to section 81.18 of this title, this article provides the exclusive jurisdictional basis for a court of this state to appoint a guardian of the person or issue a protective order for an adult.

§ 83.17 Jurisdiction.

A court of this state has jurisdiction to appoint a guardian of the person or issue a protective order for a respondent if:

(a) the state is the respondent's home state;

(b) on the date the petition is filed, this state is a significant-connection state and:

1. the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

2. the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant connection state, and before the court makes the appointment or issues the order:

(i) a petition for an appointment or order is not filed in the respondent's home state;

(ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) the court in this state concludes that it is an appropriate forum under the factors set forth in section 83.23 of this article;

(c) this state does not have jurisdiction under either subdivision (a)

or (b) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(d) the requirements for special jurisdiction under section 83.19 of this article are met.

§ 83.19 Special jurisdiction.

(a) A court of this state lacking jurisdiction under section 83.17 of this article has special jurisdiction to do any of the following:

1. appoint a guardian of the person in an emergency for a term not exceeding ninety days for a respondent who is physically present in this state;

2. issue a protective order with respect to a real or tangible personal property located in this state; and

3. appoint a guardian of the person or a guardian of the property for a person subject to a guardianship of the person or protected person for whom a provision order to transfer the proceeding from another state has been issued under procedures similar to section 83.31 of this article.

(b) If a petition for the appointment of a guardian of the person in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

§ 83.21 Exclusive and continuing jurisdiction.

Except as otherwise provided in section 83.19 of this article, a court that has appointed a guardian of the person or issued a protective order consistent with this article has exclusive and continuing jurisdiction

over the proceedings until it is terminated by the court or the appointment or order expires by its own terms.

§ 83.23 Appropriate forum.

(a) A court of this state having jurisdiction under section 83.17 of this article to appoint a guardian of the person or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this state declines to exercise its jurisdiction under subdivision (a) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian of the person or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

1. any expressed preference of the respondent;
2. whether abuse, neglect or exploitation of the respondent has occurred or is likely to occur, and which state could best protect the respondent from the abuse, neglect or exploitation;
3. the length of time the respondent was physically present in or was a legal resident of this or another state;
4. the distance of the respondent from the court in each state;
5. the financial circumstances of the respondent's estate;
6. the nature and location of the evidence;
7. the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
8. the familiarity of the court of each state with the facts and

issues in the proceeding; and

9. if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

§ 83.25 Jurisdiction declined by reason of conduct.

(a) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian of the person or issue a protective order because of unjustifiable conduct, the court may:

1. decline to exercise jurisdiction;

2. exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety and welfare of the respondent, or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian of the person or issuance of a protective order is filed in a court of another state having jurisdiction; or

3. continue to exercise jurisdiction after considering:

(i) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(ii) whether it is a more appropriate forum than the court of any other state under the factors set forth in subdivision (c) of section 83.23 of this article; and

(iii) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 83.17 of this article.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian of the person or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses.

The court may not assess fees, costs or expenses of any kind against this state or a governmental subdivision, agency or instrumentality of this state unless authorized by law other than this article.

§ 83.27 Notice of proceeding.

If a petition for the appointment of a guardian of the person or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

§ 83.29 Proceedings in more than one state.

Except for a petition for the appointment of a guardian of the person in an emergency or issuance of a protective order limited to property located in this state under paragraph one or two of subdivision (a) of section 83.19 of this article, if a petition for the appointment of a guardian of the person or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(a) If the court in this state has jurisdiction under section 83.17 of this article, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to such section before the appointment or issuance of the order.

(b) If the court in this state does not have jurisdiction under section 83.17 of this article, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate

forum.

§ 83.31 Transfer of guardianship or conservatorship to another state.

(a) A guardian of the person or a guardian of the property appointed in this state may petition the court to transfer the guardianship to another state.

(b) Notice of a petition under subdivision (a) of this section must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian of the person or a guardian of the property.

(c) On the court's own motion or on request of the guardian of the person, the guardian of the property, the person subject to the guardianship of the person, or the protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subdivision (a) of this section.

(d) The court shall issue an order provisionally granting a petition to transfer a guardianship of the person and shall direct the guardian of the person to petition for guardianship of the person in the other state if the court is satisfied that the guardianship of the person will be accepted by the court in the other state and the court finds that:

1. the person subject to the guardianship of the person is physically present in or is reasonably expected to move permanently to the other state;

2. an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the person subject to the guardianship of the person; and

3. plans for care and services for the person subject to the guardianship of the person in the other state are reasonable and sufficient.

(e) The court shall issue a provisional order granting a petition to transfer a guardianship of the property and shall direct the guardian of the property to petition for guardianship of the property in the other

state if the court is satisfied that the guardianship of the property will be accepted by the court of the other state and the court finds that:

1. the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section 83.13 of this article;

2. an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

3. adequate arrangements will be made for management of the protected person's property.

(f) The court shall issue a final order confirming the transfer and terminating the guardianship of the person or property upon its receipt of:

1. a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 83.33 of this article; and

2. the documents required to terminate a guardianship of the person or property in this state.

§ 83.33 Accepting guardianship or conservatorship transferred from another state.

(a) To confirm transfer of a guardianship of the person or guardianship of the property transferred to this state under provisions similar to section 83.31 of this article, the guardian of the person or guardian of the property must petition the court in this state pursuant to article eighty-one of this title or article seventeen-A of the surrogate's court procedure act to accept the guardianship of the person or guardianship of the property. The petition must include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subdivision (a) of this section must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian of the person or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(c) On the court's own motion or on request of the guardian of the person or guardian of the property, the person subject to the guardianship of the person or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subdivision (a) of this section.

(d) The court shall issue an order provisionally granting a petition filed under subdivision (a) of this section unless:

1. an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

2. the guardian of the person or guardian of the property is ineligible for appointment in this state.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian of the person or guardian of the property as guardian of the person or guardian of the property in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 83.31 of this article transferring the proceeding to this state.

(f) Not later than ninety days after issuance of a final order accepting transfer of a guardianship of the person or guardianship of the property, the court shall determine whether the guardianship of the person or guardianship of the property needs to be modified to conform to the law of this state.

(g) In granting a petition under this section, the court shall recognize a guardianship order from the other state, including the determination of incapacity and the appointment of the guardian of the person or guardian of the property.

(h) The denial by a court of this state of a petition to accept a guardianship of the person or guardianship of the property transferred

from another state does not affect the ability of the guardian of the person or guardian of the property to seek appointment as guardian of the person or guardian of the property in this state under article eighty-one of this title or article seventeen-A of the surrogate's court procedure act if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

§ 83.35 Registration of orders appointing a guardian of the person.

If a guardian of the person by whatever name designated has been appointed in another state and a petition for the appointment of a guardian of the person is not pending in this state, the guardian of the person appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship of the person order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

§ 83.37 Registration of protective orders.

If a guardian of the property has been appointed in another state and a petition for a protective order is not pending in this state, the guardian of the property appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond. Thereafter, said guardian of the property shall comply with the requirements of subparagraph (vi) of paragraph six of subdivision (a) of section 81.20 of this title with regard to any real property of the protected person in this state.

§ 83.39 Effect of registration.

(a) Upon registration of an order appointing a guardian of the person

or protective order from another state, the guardian of the person or guardian of the property may exercise in this state all powers authorized in the order of appointment or protective order except as prohibited under the laws of this state and, if the guardian of the person or guardian of the property is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) A court of this state may grant any relief available under this article and other law of this state to enforce a registered order.

(c) Notwithstanding any provision of law to the contrary, upon registration of an order appointing a guardian of the person or protective order from another state, the guardian of the person or guardian of the property, if so authorized in the order of appointment or protective order, may commence and defend actions and proceedings in this state.

(d) Upon registration of a protective order from another state, the guardian of the property, if so authorized in the protective order, may petition the court pursuant to article seventeen of the real property actions and proceedings law, for permission to dispose of the real property, or an interest in the real property, of the protected person.

§ 83.41 Uniformity of application and construction.

In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 83.43 Relation to electronic signatures in global and national commerce act.

This article modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit or supersede Section 101(c) of such act, 15 U.S.C. Section 7001 (c), or authorize electronic delivery of any of the notices described in Section 103(b) of such act, 15 U.S.C. Section 7003(b).

§ 83.45 Transitional provision.

(a) This article applies to proceedings begun on or after this article's effective date.

(b) Sections 83.01 through 83.05 and sections 83.31 through 83.43 of this article apply to proceedings begun before this article's effective date, regardless of whether a guardianship or protective order has been issued.

ARTICLE 84

NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS ACCOUNT ACT

Section 84.01 Short title.

84.03 Definitions.

84.05 Powers and duties of the comptroller.

84.07 NY ABLE account advisory council.

84.09 Program requirements.

84.11 Distribution requirements.

§ 84.01 Short title.

This article shall be known and may be cited as the "New York achieving a better life experience (NY ABLE) savings account act".

§ 84.03 Definitions.

As used in this article:

1. The term "financial organization" means an organization authorized to do business in the state of New York and which: (a) is licensed or chartered by the department of financial services; (b) is licensed or chartered by an agency of the federal government; or (c) is subject to the jurisdiction and regulation of the securities and exchange commission of the federal government.

2. "Account" or "NY ABLE account" shall mean an individual savings account established in accordance with the provisions of section 529A of the Internal Revenue Code.

3. "Account owner" shall mean a person who opens a savings account pursuant to the provisions of section 529A of the Internal Revenue Code, as amended, or any regulations promulgated thereunder. The account owner must also be the designated beneficiary of the account.

4. "Designated beneficiary" shall mean, with respect to an account or accounts, any individual who is an "eligible individual" as defined under paragraph (1) of subsection (e) of section 529A of the Internal Revenue Code of 1986, as amended, or any regulations promulgated thereunder and whose qualified expenses are expected to be paid from the account or accounts.

5. "Qualified expenses" shall mean any qualified disability expense included in paragraph (5) of subsection (e) of section 529A of the Internal Revenue Code of 1986, as amended, or any regulations promulgated thereunder.

6. "Nonqualified withdrawal" shall mean a withdrawal from an account for other than a qualified expense, or a withdrawal made as the result of the death or disability of the designated beneficiary of an account.

7. "Management contract" shall mean the contract executed by the comptroller and a financial organization selected to act as a depository and manager of the program.

8. "Savings agreement" shall mean an agreement between the comptroller or a financial organization and the account owner.

9. "Program manager" shall mean a financial organization selected by the comptroller to act as a depository and manager of the program.

§ 84.05 Powers and duties of the comptroller.

1. The comptroller shall establish a NY ABLE account plan for all eligible individuals for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life. The comptroller is hereby authorized to promulgate any and all rules and regulations necessary for the implementation of this article in consultation with the commissioners of the office for people with developmental disabilities, the office of mental health, the department of health, and the office of temporary and disability assistance.

2. The comptroller may implement the NY ABLE savings account program through use of third party vendors as administrators of such accounts, and financial organizations as account depositories and managers. Under the program, eligible individuals may establish accounts directly with an account depository.

3. The comptroller may solicit proposals from financial organizations to act as depositories and managers from the program. Financial organizations submitting proposals shall describe the investment instrument which will be held in accounts. The comptroller shall select as program depositories and managers the financial organization, from among the bidding financial organizations, that demonstrates the most advantageous combination, both to potential program participants and this state, of the following factors:

- (a) Financial stability and integrity of the financial organization;
- (b) The safety of the investment instrument being offered;
- (c) The ability of the investment instrument to track increasing costs of obtaining care for individuals with disabilities;
- (d) The ability of the financial organization to satisfy recordkeeping and reporting requirements;
- (e) The financial organization's plan for promoting the program and the investment it is willing to make to promote the program;
- (f) The fees, if any, proposed to be charged to persons for opening or maintaining accounts;
- (g) The minimum initial deposit and minimum contributions that the financial organization will require;

(h) The ability of banking organizations to accept electronic withdrawals, including payroll deduction plans; and

(i) Other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

3-a. Notwithstanding the provisions of subdivision three of this section, the comptroller may, in his or her discretion, enter into a contract with the existing third party administrator of the NYS college choice tuition savings program for the purpose of administering the NY ABLE savings account program and providing account depositories and managers. The term of such contract shall expire on the same date as the contract for the administration of the NYS college choice tuition savings program expires. Following such expiration, the comptroller may, in his or her discretion, solicit proposals for the purpose of administering the NY ABLE savings account program and solicit proposals for the purpose of administering the NYS college choice tuition savings program jointly or separately.

4. The comptroller may enter into a contract with a financial organization. Such financial organization management may provide one or more types of investment instrument.

5. The comptroller may select more than one financial organization for the program.

6. A management contract shall include, at a minimum, terms requiring the financial organization to:

(a) Take any action required to keep the program in compliance with requirements of section 84.09 of this article and any actions not contrary to its contract to manage the program to qualify as a "Qualified ABLE account" under subsection (1) of paragraph (b) of section 529A of the Internal Revenue Code of 1986, as amended.

(b) Keep adequate records of each account, keep each account segregated from each other account, and provide the comptroller with information as required;

(c) compile and total information contained in statements required to

be prepared under section 84.09 of this article and provide such compilations to the comptroller.

(d) If there is more than one program manager, provide the comptroller with such information necessary to determine compliance;

(e) Provide the comptroller or his or her designee access to the books and records of the program manager to the extent needed to determine compliance with the contract;

(f) Hold all accounts for the benefit of the account owner;

(g) Be audited at least annually by a firm of certified public accountants selected by the program manager and that the results of such audit be provided to the comptroller; and

(h) Provide the comptroller with copies of all regulatory filings and reports made by it during the term of the management contract or while it is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the comptroller the results of any periodic examination of such manager by any state or federal banking, insurance, or securities commission, except to the extent that such report or reports may not be disclosed under applicable law or the rules of such commission.

7. The comptroller may provide that an audit shall be conducted of the operations and financial position of the program depository and manager at any time if the comptroller has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of such program depository and manager.

8. During the term of any contract with a program manager, the comptroller shall conduct an examination of such manager and its handling of accounts. Such examination shall be conducted at least biennially if such manager is not otherwise subject to periodic examination by the superintendent of financial services, the federal deposit insurance corporation or other similar entity.

9. (a) If selection of a financial organization as a program manager or depository is not renewed, after the end of its term:

(i) Accounts previously established and held in investment instruments

at such financial organization may be terminated;

(ii) Additional contributions may be made to such accounts;

(iii) No new accounts may be placed with such financial organization;
and

(iv) Existing accounts held by such depository shall remain subject to all oversight and reporting requirements established by the comptroller.

(b) If the comptroller terminates a financial organization as a program manager or depository, he or she shall take custody of accounts held by such financial organization and shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

10. The comptroller may enter into such contracts as it deems necessary and proper for the implementation of the program.

§ 84.07 NY ABLE account advisory council.

1. The NY ABLE account advisory council is hereby established and shall consist of the following persons or their designees: the comptroller, the commissioner of the office of mental health, the commissioner of the office for people with developmental disabilities, the commissioner of the department of health, the superintendent of the department of financial services, the commissioner of the department of taxation and finance, the commissioner of the office of temporary disability assistance, three individuals appointed by the governor, and two individuals each by the temporary president of the senate and by the speaker of the assembly. Such executive and legislative appointees shall have knowledge, skill and expertise in issues relating to individuals with disabilities; expertise in services to persons with disabilities; or knowledge in management and support of the fiscal affairs of such disabilities.

2. The members shall be appointed for a term of three years and shall be representative of all geographic areas of the state.

3. The advisory council shall:

(a) Study and review the work of the comptroller in relation to the establishment of the NY ABLE account program;

(b) Advise the comptroller and make recommendations for the improvement of the NY ABLE account program;

(c) Advise the comptroller on legislative and regulatory activity which may be required for compliance; and

(d) Advise the comptroller on the development of materials to be provided to account owners, prospective account owners, and designated beneficiaries in accordance with subdivision fourteen of section 84.09 of this article.

4. The advisory council shall meet at least four times in each full calendar year during the first three years of the implementation of ABLE accounts, annually thereafter, and additionally upon the request of the comptroller.

5. The members of the advisory council shall receive no compensation for their services as members, but each shall be allowed the necessary and actual expenses incurred in the performance of his or her duties under this section.

§ 84.09 Program requirements.

1. "NY ABLE" accounts established pursuant to the provisions of this article shall be governed by the provisions of this section.

2. (a) An application for a NY ABLE account shall be in the form prescribed by the program and contain the following:

(i) the name, address and social security number or employer identification number of the account owner;

(ii) the designation of a designated beneficiary;

(iii) the name, address and social security number of the designated beneficiary; and

(iv) such other information as the program may require.

(b) The comptroller may establish a nominal fee for such application.

3. An account owner may own only one NY ABLE account unless otherwise permitted by section 529A of the Internal Revenue Code of 1986, as amended.

4. Any person, including the account owner, may make contributions to the account after the account is opened.

5. Contributions to accounts may be made only in cash.

6. Contributions to a NY ABLE account shall not exceed the limit on annual contributions established under paragraph (2) of subsection (b) of section 529A of the Internal Revenue Code of 1986, as amended.

7. An account owner may withdraw all or part of the balance from an account on sixty days notice or such shorter period as may be authorized under rules governing the program. Such rules shall include provisions that will generally enable the determination as to whether a withdrawal is a nonqualified withdrawal or a qualified withdrawal. Nonqualified withdrawals shall be subject to any penalties imposed under section 529A of the internal revenue code of 1986, as amended.

8. An account owner may change the designated beneficiary of an account to another beneficiary only as permitted under section 529A of the Internal Revenue Code.

9. The program shall provide a separate accounting for each designated beneficiary.

10. An account owner shall be permitted to direct the investment of any contributions to an account or the earnings thereon no more than two times in a calendar year.

11. Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account shall be of no force and effect.

12. The comptroller shall promulgate rules or regulations to prevent contributions on behalf of a designated beneficiary in excess of an amount that would cause the aggregate account balance for all accounts for a designated beneficiary to exceed a maximum account balance, as established from time to time by the comptroller. Such maximum amount shall reflect reasonable expenditures and shall be determined in accordance with any applicable state or federal law, rule, or regulation. Such maximum amount shall not exceed the federally authorized level of contribution established for the New York college choice tuition savings program pursuant to subdivision ten of section six hundred ninety-five-e of the education law unless otherwise permitted by law.

13. (a) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, such distribution shall be reported to the Internal Revenue Service and the account owner, the designated beneficiary, or the distributee to the extent required by federal law or regulation.

(b) Statements shall be provided to each account owner at least once each year within sixty days after the end of the twelve month period to which they relate. The statement shall identify the contributions made during a preceding twelve month period, the total contributions made to the account through the end of the period, the value of the account at the end of such period, distributions made during such period and any other information that the comptroller shall require to be reported to the account owner.

(c) Statements and information relating to accounts shall be prepared and filed to the extent required by federal and state tax law.

14. The program shall disclose the following information in writing to each account owner and prospective account owner of a NY ABLE account:

- (a) the terms and conditions for purchasing a NY ABLE account;
- (b) any restrictions on the substitution of beneficiaries;
- (c) the person or entity entitled to terminate the savings agreement;
- (d) the period of time during which a beneficiary may receive benefits under the savings agreement;
- (e) the terms and conditions under which money may be wholly or

partially withdrawn from the program, including, but not limited to, any reasonable charges and fees that may be imposed for withdrawal;

(f) the probable tax consequences associated with contributions to and distributions from accounts; and

(g) all other rights and obligations pursuant to NY ABLE savings agreements, including but not limited to the potential impact on means tested programs, that upon the death of the beneficiary any remaining balance may be subject to state recovery for Medicaid payments and any other terms, conditions, and provisions deemed necessary and appropriate by the commissioner, the advisory council, and the comptroller.

15. NY ABLE savings agreements shall be subject to section fourteen-c of the banking law and the "truth-in-savings" regulations promulgated thereunder.

16. Notwithstanding any other provisions of law, rule, or regulation to the contrary, assets contained in NY ABLE account, that is in compliance with all applicable state and federal laws, rules, and regulations, shall not be used in determining the eligibility of a designated beneficiary for any federal, state, or local means-tested program.

17. Subject to any outstanding payments due for qualified disability expenses, upon the death of the designated beneficiary, all amounts remaining will be subject to state recovery for medical assistance payments made on behalf of the beneficiary after the date of establishment of the account.

18. Nothing in this article shall create or be construed to create any obligation of the comptroller, the state, or any agency or instrumentality of the state to guarantee for the benefit of any account owner or designated beneficiary with respect to:

- (a) the rate of interest or other return on any account; and
- (b) the payment of interest or other return on any account.

§ 84.11 Distribution requirements.

Designated beneficiaries shall be eligible for a distribution from the accumulated funds deferred to their NY ABLE savings account established pursuant to this article, in full and partial disbursement options for qualified expenses.

ARTICLE 91

LAWS REPEALED; SAVINGS CLAUSE; TIME OF TAKING EFFECT

Section 91.01 Laws repealed.

91.02 Application of certain amendments, repeals or additions to former mental hygiene law.

91.03 Savings clause.

91.04 Separability clause.

91.05 Time of taking effect.

§ 91.01 Laws repealed.

Chapter four hundred twenty-six of the laws of nineteen hundred nine, entitled "An act relating to the mentally ill, mental defectives and epileptics, constituting chapter twenty-seven of the consolidated laws", and all acts amendatory thereof and supplemental thereto are hereby REPEALED.

§ 91.02 Application of certain amendments, repeals or additions to former mental hygiene law.

(a) An act of the legislature of the year in which this act shall have become a law which, in form, amends or repeals or purports to amend or repeal any provision or provisions of the former mental hygiene law, as in force immediately prior to the date that this act shall take effect, shall be legally effective notwithstanding the repeal of such former law by this act and shall be construed as an amendment, or repeal, as the case may be, of the corresponding provision or provisions of this act irrespective of whether such provision or provisions are contained in this act in one or more than one article, section, subdivision or other

part thereof and such corresponding provision or provisions shall be deemed and construed to be amended, modified, changed or repealed as though the same had been expressly and in terms so amended or repealed.

(b) An act of the legislature of the year in which this act shall have become a law which adds or purports to add a new article, section, subdivision or other provision of law to the former mental hygiene law, as in force and effect immediately prior to the date that this act shall take effect, shall be legally effective notwithstanding the repeal of such former law by this act and shall be construed as having been added to this act and shall be given full effect according to its context as if the same had been added expressly and in terms to this act and shall be deemed and construed to have been inserted in this act in juxtaposition to and as modifying the effect of the corresponding provision or provisions of this act.

§ 91.03 Savings clause.

Nothing contained in this chapter or any act amendatory thereof shall affect or impair the validity of any act done or right accruing, accrued or acquired, or any order, judgment, or status established prior to the enactment of this chapter or prior to the enactment of any act amendatory thereof. Persons admitted or certified pursuant to the provisions of article six or article seven of the mental hygiene law as it existed prior to the enactment of this chapter may be retained pursuant to the provisions of the respective articles but in no event to exceed a period of two years from the effective date of this chapter.

§ 91.04 Separability clause.

If any clause, sentence, paragraph, section, or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 91.05 Time of taking effect.

This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.