New York State Office of Mental Health HIPAA Preemption Analysis

NYS Statute	HIPAA Regulation (45 CFR Parts 160, 164)	Preemption Analysis
MHL Article 9 - Hospitalization of Mentally ill		
Voluntary Admissions: **MHL §9.13(b):** …if there are reasonable grounds for belief that the patient may be in need of involuntary care and treatment, the director may retain the need for the patient for a period not to exceed 72 hours… Before the expiration of such 72 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.	**§164.512(a)** (a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law **§164.512(e)**: PHI can be released w/out patient consent in the course of any judicial or administrative proceeding(1)in response to an order of a court or administrative tribunal, provided release is limited to that PHI expressly authorized in the order; or(2) in response to a subpoena, discovery request, or other lawful	**No preemption:** If a person meets the statutory criteria for involuntary treatment, a court will issue an order requiring that such treatment be provided (i.e., the treatment is "required by law.") Inasmuch as the disclosures necessary to initiate an action to obtain such order must be made, the "treatment required by law" exception can be reasonably be deemed to extend back to the information that forms the foundation of the order

	process if the covered entity has received satisfactory assurances from the party making the request that reasonable efforts have been made to give the patient notice of the request or the covered entity is assured that reasonable efforts have been made to secure a qualified protective order.	
Voluntary/Informal Admissions; Review of Status: **MHL §9.25:** …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…..	**§164.512(a)** (a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law **§164.512(e)**: PHI can be released w/out patient consent in the course of any judicial or	**No preemption:** State law applies; the use/disclosure of PHI is required by law; provided it complies with that law, it is not preempted, though the disclosure must be limited to the relevant requirements of the law.

	administrative proceeding(1)in response to an order of a court or administrative tribunal, provided release is limited to that PHI expressly authorized in the order; or(2) in response to a subpoena, discovery request, or other lawful process if the covered entity has received satisfactory assurances from the party making the request that reasonable efforts have been made to give the patient notice of the request or the covered entity is assured that reasonable efforts have been made to secure a qualified protective order.	
Involuntary Admission on Medical Certification: **MHL §9.27(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.	**§164.512(a)** (a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or	**No preemption:** State law applies; the use/disclosure of PHI is required by law; provided it complies with that law, it is not preempted, though the disclosure must be limited to the relevant requirements of the law.

	disclosures required by law **§164.512(e)**: PHI can be released w/out patient consent in the course of any judicial or administrative proceeding(1)in response to an order of a court or administrative tribunal, provided release is limited to that PHI expressly authorized in the order; or(2) in response to a subpoena, discovery request, or other lawful process if the covered entity has received satisfactory assurances from the party making the request that reasonable efforts have been made to give the patient notice of the request or the covered entity is assured that reasonable efforts have been made to secure a qualified protective order.	
Involuntary Admission on Medical Certification: Notice of Admission to Patients and Others **MHL §9.29:** (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 Services. (b) The director shall cause written notice of the admission of such person….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	**§164.512(a)** (a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative	**No preemption:** State law applies; the use/disclosure of PHI to the MHLS and the nearest relative of the patient is required by law; provided it complies with that law, it is not preempted, though the disclosure must be limited to the relevant requirements of the law. Further, the ability afforded a patient by State law to designate other persons to receive notice of the patient's hospitalization is consistent with HIPAA provisions that permit such notifications, provided patients have agreed to them.

director; 2. As many as 3 additional persons, if designated in writing to receive such notice by the person admitted.	proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law **§1§164.512(e)**: PHI can be released w/out patient consent in the course of any judicial or administrative proceeding(1)in response to an order of a court or administrative tribunal, provided release is limited to that PHI expressly authorized in the order; or(2) in response to a subpoena, discovery request, or other lawful process if the covered entity has received satisfactory assurances from the party making the request that reasonable efforts have been made to give the patient notice of the request or the covered entity is assured that reasonable efforts have been made to secure a qualified protective order. **164.510(b)(1):** A covered entity may disclose to a family member, other relative, close personal friend of the individual or any other person identified by the individual, the PHI directly relevant to such persons involvement with the individual's care or payment related to the individual's care, if the individual is given the opportunity to agree, prohibit, or restrict the disclosure.	
Involuntary Admission on Medical Certification: Patient's Right to a Hearing **MHL §9.31(a),(b),(f)** **(a)** If….a patient or any relative or	**§164.512(a)** (a) Standard: Uses and disclosures required by law. (1) A covered entity may	**No preemption:** State law applies; the use/disclosure of PHI is required by law; provided it complies with that law, it is not preempted, though the disclosure must be limited to the relevant requirements of the law.

friend on behalf of a patient or the Mental Hygiene Legal Services gives notice of a request for a hearing, a hearing shall be held… **(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….A copy of such notice shall also be given to the Mental Hygiene Legal Service. **(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.	use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law **§164.512(e)**: PHI can be released w/out patient consent in the course of any judicial or administrative proceeding(1)in response to an order of a court or administrative tribunal, provided release is limited to that PHI expressly authorized in the order; or(2) in response to a subpoena, discovery request, or other lawful process if the covered entity receives satisfactory assurances from the party making the request that reasonable efforts have been made to give the patient notice of the request or the covered entity is assured that reasonable efforts have been made to secure a qualified protective order.	With regard to MHL §9.31(f), there is no corresponding provision in HIPAA; hence State law provides more protection to PHI in this instance and prevails.
Court Authorization to Retain an Involuntary Patient	**§164.512(a)**	**No preemption:** State law applies; the use/disclosure of PHI

MHL §9.33(a),(d): (a): If the director determines that a patient admitted upon an application supported by medical certification , for whom there is no court order authorizing retention for a specific period, is in need of retention and if such patient does not agree to remain in the hospital as a voluntary patient, the director shall apply to the supreme court or the county court…for an order authorizing continued retention….The director shall cause written notice of the application to be given to the patient and a copy thereof…to the persons required by this article to be served with notice of such patient's initial application and to the mental hygiene legal service. (d): If the director 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…for an order authorizing continued retention of such patient…	(a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law **§164.512(e)**: PHI can be released w/out patient consent in the course of any judicial or administrative proceeding(1)in response to an order of a court or administrative tribunal, provided release is limited to that PHI expressly authorized in the order; or(2) in response to a subpoena, discovery request, or other lawful process if the covered entity has received satisfactory assurances from the party making the request that reasonable efforts have been made to give the patient notice of the request or the covered entity is assured that reasonable efforts have been made to secure a qualified	is required by law; provided it complies with that law, it is not preempted, though the disclosure must be limited to the relevant requirements of the law.

	protective order.	
Involuntary admission on Certificate of Director of Community Services or his designee **MHL §9.37(a),(d):** (a): The director of a hospital, upon application by a director of community services or an examining physician duly designated by him 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 others… (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 to 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 his designee. Upon the written request of such	**§164.512(a)** (a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law **§164.512(e)**: PHI can be released w/out patient consent in the course of any judicial or administrative proceeding(1)in response to an order of a court or administrative tribunal, provided release is limited to that PHI expressly authorized in the order; or(2) in response to a subpoena, discovery request, or other lawful process if the covered entity has received satisfactory assurances from the party making the request that reasonable efforts have been made to give the	**No preemption:** State law applies; the use/disclosure of PHI is required by law; provided it complies with that law, it is not preempted, though the disclosure must be limited to the relevant requirements of the law. Under HIPAA, patient consent is not required o use/disclose PHI for treatment, payment, or health care operations purposes.

director or designee, an ambulance service,….is authorized to transport any such person.	patient notice of the request or the covered entity is assured that reasonable efforts have been made to secure a qualified protective order. **§164.506(c):(1)** A covered entity may use/disclose PHI for its own treatment, payment, or health care operations. (2) A covered entity may disclose PHI for treatment activities of a health care provider. (3) A covered entity may disclose PHI to another covered entity or health care provider for the payment activities of the entity that receives the information….	
Emergency admissions for immediate observation, care, and treatment: **MHL §9.39** (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….may receive and retain therein as a patient for a period of 15 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 himself or others… Such person shall be served, at the time of admission, with written notice of his status and rights as a patient under this section. Such notice shall contain the patient's name. At the same	**§164.512(a)** (a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law	**No preemption:** State law applies; the use/disclosure of PHI is required by law; provided it complies with that law, it is not preempted, though the disclosure must be limited to the relevant requirements of the law. HIPAA does not require patient consent to use/disclose PHI for treatment, payment, or health care operations

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…..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…A copy of such notice and record shall also be given to the mental hygiene legal services.	**§164.506(c):(1)** A covered entity may use/disclose PHI for its own treatment, payment, or health care operations. (2) A covered entity may disclose PHI for treatment activities of a health care provider. (3) A covered entity may disclose PHI to another covered entity or health care provider for the payment activities of the entity that receives the information…. **§164.510(b)(1):** A covered entity may disclose to a family member, other relative, close personal friend of the individual or any other person identified by the individual, the PHI directly relevant to such persons involvement with the individual's care or payment related to the individual's care, if the individual is given the opportunity to agree/ prohibit, restrict the disclosure **§164.512(e)**: PHI can be released w/out patient consent in the course of any judicial or administrative proceeding(1)in response to an order of a court or administrative tribunal, provided release is limited to that PHI expressly authorized in the order; or(2) in response to a subpoena, discovery request, or other lawful process if the covered entity has received satisfactory assurances that reasonable efforts have been made to give the patient notice of the request or the covered entity is assured that reasonable efforts have been made to secure a qualified protective order.	
Emergency admissions for immediate observation, care, and treatment in comprehensive	**§164.512(a)**	**No preemption:** State law applies; the use/disclosure of PHI is required by law; provided it

psychiatric emergency programs **MHL §9.40** (a) The director of any comprehensive emergency program may receive and retain patients….may receive and retain therein as a patient for a period not to exceed 72 hours 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 himself or others… (b) The director shall cause examination of such persons to be initiated by a staff physician of the program as soon as practicable….. (c) ….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. (e) If at any time….it is determined that such person continues to require immediate observation, care and treatment in accordance with this section…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	(a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law **§164.506(c):(1)** A covered entity may use/disclose PHI for its own treatment, payment, or health care operations. (2) A covered entity may disclose PHI for treatment activities of a health care provider. (3) A covered entity may disclose PHI to another covered entity or health care provider for the payment activities of the entity that receives the information…. **§164.510(b)(1):** A covered entity may disclose to a family member, other relative, close personal friend of the individual or any other person identified by the individual, the PHI directly relevant to such persons	complies with that law, it is not preempted, though the disclosure must be limited to the relevant requirements of the law. HIPAA does not require patient consent to use/disclose PHI for treatment, payment, or health care operations purposes

for admission and, if appropriate, shall be admitted to such hospital in accordance with section 9.39 of this article….. (f) Nothing in this section shall preclude the involuntary admission of a person to an appropriate hospital pursuant to the provisions of this article……efforts shall be made to assure that any arrangements for such involuntary admission shall be made within a reasonable period of time.	involvement with the individual's care or payment related to the individual's care, if the individual is given the opportunity to agree, prohibit, or restrict the disclosure **§164.512(e)**: PHI can be released w/out patient consent in the course of any judicial or administrative proceeding(1)in response to an order of a court or administrative tribunal, provided release is limited to that PHI expressly to a subpoena, discovery request, or other lawful process if the covered entity has made reasonable efforts to give the patient notice of the request or the covered entity is assured that reasonable efforts have been made to secure a qualified protective order.	
Emergency admissions for immediate observation, care, and treatment; powers of certain peace officers and police officers **MHL §9.41** Any peace officer, when acting pursuant to his or her special duties, or police officer who is a member of the state police……Such officer may direct the removal of such person….or…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 of county of such action.	**164.103: *Covered entity*** means: (1) a health plan; (2) a health care clearinghouse; (3) a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter. **§164.506(c):(1)** A covered entity may use/disclose PHI for its own treatment, payment, or health care operations. (2) A covered entity may disclose PHI for treatment activities of a health care provider. (3) A covered entity may disclose PHI to another covered entity or health care provider for the payment activities of the entity that receives the information…	**No preemption:** Peace/police officers are not covered entities under HIPAA; hence it does not apply. State law applies. To the extent a peace officer is employed by a covered entity, patient consent is not needed for disclosures made for health care operations purposes.

Emergency admissions for immediate observation, care, and treatment; powers ofdirectors of community services **MHL §9.45** The director of community services or the director's designee shall have the power to direct the removal of any person, within his jurisdiction, to a hospital……if the parent, adult, sibling, spouse, or child of the person, a committee of the person, a licensed psychologist……currently responsible for providing treatment services…reports to him 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 him/herself or others….. It shall be the duty of peace officers….or police officers….to take into custody and transport any such person. Upon the request of a director of community services…an ambulance service…is authorized to transport any such person. Such person may then be retained in a hospital pursuant…to section 9.39 of this article.	**§164.501: *Health oversight agency*** means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory…or a person or entity operating under a grant of authority from or contract with such public agency….that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. **§164.506(c):(1)** A covered entity may use/disclose PHI for its own treatment, payment, or health care operations. (2) A covered entity may disclose PHI for treatment activities of a health care provider. (3) A covered entity may disclose PHI to another covered entity or health care provider for the payment activities of the entity that receives the information…. **§164.512(d)(3)** PHI may be disclosed to health oversight agencies for oversight activities authorized by law, including licensure or disciplinary actions. (p. 82814:2) **§164.512(j):** A covered entity may, consistent with applicable law and standards of ethical conduct, use/disclose PHI if it believes, in good faith, that the use/disclosure (i)(A) is necessary to prevent or lessen a serious and imminent threat to the health or	**No preemption:** State law applies; the use/disclosure of PHI by the director of community services is authorized pursuant to the DCS' health oversight authority. Disclosures/use made by peace and police officers are not governed by HIPAA, since these are not covered entities. Finally, disclosures by health professionals pursuant to this section of law are authorized to lessen or prevent a serious threat to the health/safety of the person with mental illness, due to the "likelihood of serious harm to him/herself or others" criterion within the State statute. Hence, State law applies.

	safety of a person or the public; and (B) is to a person(s) reasonably able to prevent/lessen the threat.	
Reports of substantial risk or threat of harm by mental health professionals **MHL §9.46** (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 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 of the penal law, or is no longer	**§164.501: *Health oversight agency*** means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory…or a person or entity operating under a grant of authority from or contract with such public agency….that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. **§164.506(c):(1)** A covered entity may use/disclose PHI for its own treatment, payment, or health care operations. (2) A covered entity may disclose PHI for treatment activities of a health care provider. (3) A covered entity may disclose PHI to another covered entity or health care provider for the payment activities of the entity that receives the information…. **§164.512(d)(3)** PHI may be disclosed to health oversight agencies for oversight activities authorized by law, including licensure or disciplinary actions. (p. 82814:2) **§164.512(j):** A covered entity may, consistent with applicable law and standards of ethical conduct, use/disclose PHI if it	**No preemption:** State law applies; the use/disclosure of PHI by mental health professionals to the director of community services is authorized pursuant to lessen or prevent a serious threat to the health/safety of the person with mental illness, due to the "likelihood of serious harm to him/herself or others" criterion within the State statute. Hence, State law applies. Additionally, the use/disclosure of PHI is required by law; provided it complies with that law, it is not preempted, though the disclosure must be limited to the relevant requirements of the law. Redisclosures by the DCS to DCJS, are authorized for the same reasons noted above. In addition, such disclosures may be considered an exercise of the DCS' health oversight authority and, as such, are permissible disclosures under HIPAA.

permitted under state or federal law to possess a firearm	believes, in good faith, that the use/disclosure (i)(A) is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and (B) is to a person(s) reasonably able to prevent/lessen the threat. **§164.512(a)** (a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law	
Duties of local officers in regard to their mentally ill **MHL §9.47** (a) [Subd. designator expires and deemed repealed June 30, 2017, pursuant to L. 1999. c 408, §18..]	§164.501: ***Health oversight agency*** means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory…or a person or entity operating under a grant of authority from or contract with	**No preemption:** Disclosures to the director of community services are permitted by HIPAA without patient consent due to the establishment in this statute of the directors of community services, health officers, and social services officials, as health

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 mentally ill persons 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 mentally ill person, 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. (b) [Expires and deemed repealed June 30, 2017, pursuant to L. 1999. c 408, §18.] 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	such public agency….that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. **§164.512(d)(3)** PHI may be disclosed to health oversight agencies for oversight activities authorized by law, including licensure or disciplinary actions. (p. 82814:2) **§164.506(c):(1)** A covered entity may use/disclose PHI for its own treatment, payment, or health care operations. (2) A covered entity may disclose PHI for treatment activities of a health care provider. (3) A covered entity may disclose PHI to another covered entity or health care provider for the payment activities of the entity that receives the information….	oversight agencies. Furthermore, some of the express oversight activities authorized by law are set forth in this statute, including the filing of AOT petitions and coordination of the delivery of court ordered care by the director of community services. Uses/disclosures for treatment purposes are permitted because HIPAA permits uses/disclosures of PHI for treatment purposes without patient consent. To the extent that Directors of Community Services coordinate their health oversight services with other Department offices or contract with public or private providers to provide AOT services to assist in the performance of their statutory duties, Business Associate Agreements may need to be executed.

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. (c) [Expires and deemed repealed June 30, 2017, pursuant to to L. 1999. c 408, §18] 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.		
Duties of directors of assisted outpatient treatment (AOT) programs **MHL §9.48 [Effective until 6/30/17]**: a)(1) Directors of AOT programs established pursuant to MHL Section 9.60 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,	**§164.501:** ***Health oversight agency*** means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory…or a person or entity operating under a grant of authority from or contract with such public agency….that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil	**No preemption:** State law applies, as all disclosures without patient consent/authorization are permitted by HIPAA. As a designee of the Commissioner of the Office of Mental Health, reports to directors of AOT programs are permitted consistent with its health oversight function. Other disclosures, to the extent incorporated within the AOT court order, are required by law and are therefore permitted

within 3 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 AOT programs shall ensure the timely delivery of services described in paragraph 1 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.	rights laws for which health information is relevant. **§164.512(d)(3)** PHI may be disclosed to health oversight agencies for oversight activities authorized by law, including licensure or disciplinary actions. (p. 82814:2) **§164.512(a)** (a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law	under HIPAA without patient consent/authorization. All reports required by the Commissioner of OMH are authorized consistent with its health oversight responsibilities. Hence, State law applies.

(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 1 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.		
Residential treatment facilities for children & youth **MHL §9.51 (***also see 14 NYCRR Part 583)* (a) The director of a residential treatment facility for children & youth may receive as a patient a person in need of care and treatment in such a facility who has been certified as needing such care by the pre-admission certification committee serving	**§164.501: *Health oversight agency*** means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory…or a person or entity operating under a grant of authority from or contract with such public agency….that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or	**No preemption:** State law applies, as all disclosures without patient consent/authorization are permitted by HIPAA. The Pre-Admission certification are designated under law to implement the health oversight responsibilities of the Commissioner of the Office of Mental Health. Therefore, reports made to them are permitted consistent with their health oversight function. Other disclosures under this statute are required by law and are therefore

the facility…. (b) Persons admitted as inpatients to hospitals operated by the OMH upon the application of the director for the Division for Youth pursuant to section 509 of the Executive law or section 353.4 of the Family Court Act ….may, if appropriate.be transferred to a residential facility for children & youth. The director of the division for youth shall be notified of any such transfer…. (c) The commissioner of OMH shall designate pre-admission certification committees…to evaluate each person proposed for admission or transfer to a residential treatment facility for children & youth…Each pre-admission certification committee shall designate five persons…who shall serve as an advisory board to the committee. Such board shall have the right to visit residential treatment facilities for children & youth served by the committee and shall have the right to review clinical records obtained by the pre-admission certification committee and shall be bound by the confidentiality requirements of section 33.13 of this chapter. (d) All applications for admission or transfer…..shall be referred to a pre-admission certification committee for evaluation of the needs of the individual.. (g) Notwithstanding any other provision of law, pre-admission certification committees shall be	compliance, or to enforce civil rights laws for which health information is relevant. **§164.512(d)(3)** PHI may be disclosed to health oversight agencies for oversight activities authorized by law, including licensure or disciplinary actions. (p. 82814:2) **§164.512(a)** (a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law	permitted under HIPAA without patient consent/authorization. The provisions of State law which give additional confidentiality protections to medical portions of a clinical record are more stringent than HIPAA, and hence, State law prevails. Provisions of State law requiring production of information pursuant to the Family Court Act and/or Social Services Law are permitted under the "required by law" exceptions of HIPAA.

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 & youth. Any clinical records received by a pre-admission certification committee and all assessments submitted to the committee shall be kept confidential in accordance with the provisions of section 33.13 of the mental hygiene law, provided, however, that the commissioner may have access to and receive copies of such records for the purpose of evaluating the operation and effectiveness of the committee. Confidentiality of clinical records of treatment of a person in a residential treatment facility required in section 33.13 of this chapter. That portion of the clinical record maintained by a residential treatment facility for children & 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 372 of the social services law and shall not be discoverable in a proceeding under section 358-a of the social services law except upon order of the family court; provided, however that all other information required by a social services district or the state department of social services for purposes of sections 358-a, 392, 409-e and 409-f of the social services law shall be furnished on request, and the confidentiality		

of such information shall be safeguarded as provided in section 460-e of the social services law. for children & youth… .		
Emergency admissions for immediate observation, care, and treatment; powers of emergency room physicians **MHL §9.57** a) [Subd. designator expires and deemed repealed June 30, 2017, pursuant to L. 1999. c. 408 §18)] 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 mentally ill persons 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 mentally ill person, 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. (b) [Expires and deemed repealed June 30, 2017, pursuant to L. 1999. c. 408 §18)].] All directors	**§164.506(c):(1)** A covered entity may use/disclose PHI for its own treatment, payment, or health care operations. (2) A covered entity may disclose PHI for treatment activities of a health care provider. (3) A covered entity may disclose PHI to another covered entity or health care provider for the payment activities of the entity that receives the information…. **§164.512(j):** A covered entity may, consistent with applicable law and standards of ethical conduct, use/disclose PHI if it believes, in good faith, that the use/disclosure (i)(A) is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and (B) is to a person(s) reasonably able to prevent/lessen the threat.	**No preemption:** State law applies; the use/disclosure by health professionals pursuant to this section of law are authorized to lessen or prevent a serious threat to the health/safety of the person with mental illness, due to the "likelihood of serious harm to him/herself or others" criterion within the State statute. Hence, State law applies. Patient consent to use/disclose PHI for treatment, payment, or health care operations purposes, is not required under HIPAA.

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. (c) [Expires and deemed repealed June 30, 2017, pursuant to L. 1999, ch. 408 §18.] 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.		
Transport for evaluation; powers of approved mobile crisis outreach teams **MHL §9.58** (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 to a hospital…..pursuant to subdivision (a) of section 9.39 or section 31.27 of this chapter for purpose of evaluation for admission if such person appears to be mentally ill and is conducting him/herself in a manner which is likely to result in serious harm to the person or others. (b) If the team physician or qualified mental health professional determines that it is necessary to effectuate transport, he or shall shall direct peace officers, ….or police officers….to take into custody and transport any such person. Upon the request of such physician or qualified mental health professional……an ambulance service…is authorized to transport any such person. Such person may then be evaluated for admission in accordance with the provisions of section 9.27, 9.39,	**§164.512(j):** A covered entity may, consistent with applicable law and standards of ethical conduct, use/disclose PHI if it believes, in good faith, that the use/disclosure (i)(A) is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and (B) is to a person(s) reasonably able to prevent/lessen the threat.	**No preemption:** State law applies; the use/disclosure by health professionals pursuant to this section of law are authorized to lessen or prevent a serious threat to the health/safety of the person with mental illness, due to the "likely to result in serious harm to the person or others" criterion within the State statute. Hence, State law applies

9.40, or other sections of this article….		
"Kendra's Law" - Assisted Outpatient Treatment **. § 9.60 Assisted outpatient treatment** [Expires and deemed repealed June 30, 2017, pursuant to L. 1999, c 408, §18]]> (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	**§164.506(c):(1)** A covered entity may use/disclose PHI for its own treatment, payment, or health care operations. (2) A covered entity may disclose PHI for treatment activities of a health care provider. (3) A covered entity may disclose PHI to another covered entity or health care provider for the payment activities of the entity that receives the information…. **§164.512(a)** (a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law **§164.512(e)**: PHI can be released w/out patient consent in the	**No preemption:** State law applies to all of the uses/disclosures of PHI provided for in this statute ***(but see note below*)*:** 1. Because the uses/disclosures required to develop a petition for AOT are necessary in order to become the foundation for a court order (or dismissal of the petition),such uses/disclosures without patient consent or authorization are permitted by HIPAA under the "required by law" and "in the course of a judicial proceeding" exceptions to consent/authorization. 2. Uses/disclosures by physicians in the course of providing required testimony are authorized by "in the course of a judicial proceeding" exception to consent/authorization. The requirements set forth to notify and involve the subject of the petition in the hearing are consistent with the requirements set forth in §164.512(e)(1)(ii) which mandate satisfactory assurances of the individual's notification of the request for the use/disclosure of his/her PHI in the course of the judicial proceeding. 3. Under the original final HIPAA rule, uses/disclosures back to the court or between and among providers of court ordered services are permitted without patient consent/authorization under the "treament required by law," and "use/disclosure of PHI required by law" exceptions to

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. (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) 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) 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	course of any judicial or administrative proceeding(1)in response to an order of a court or administrative tribunal, provided release is limited to that PHI expressly authorized in the order; or(2) in response to a subpoena, discovery request, or other lawful process if the covered entity has received satisfactory assurances from the party making the request that reasonable efforts have been made to give the patient notice of the request or the covered entity is assured that reasonable efforts have been made to secure a qualified protective order. **§164.512(j)**:A covered entity may use/disclose PHI (consistent with law & professional conduct) if it believes in good faith that the disclosure is necessary to prevent or lessen a serious & imminent threat to the health or safety of a person (per preamble, consistent with Tarasoff) or the public and is being made to a person or persons reasonably able to prevent or lessen the threat or is necessary for law enforcement authorities to identify/apprehend an individual. If disclosure is to be made to one other than the target, the information cannot have been obtained in the course of treatment to affect the propensity to commit the criminal conduct or through a request by the person to initiate or be referred to treatment.	HIPAA; furthermore, patient consent is not be required to use/disclose PHI for treatment purposes under HIPAA. 4. Because of the essential criteria required to initiate and sustain an AOT petition, uses/disclosures by health professionals pursuant to this section of law are authorized to lessen or prevent a serious threat to the health/safety of the person with mental illness, due to the "likely to result in serious harm to the person or others" criterion within the State statute. Hence, State law applies *Note: A 2011 decision of the NYS Court of Appeals (In the Matter of Miguel M. v. Charles Barron)has impacted the procedures for obtaining an AOT order. The decision holds that "the Privacy Rule adopted by the federal government pursuant to the Health Insurance Portability and Accountability Act (HIPAA) prohibits the disclosure of a patient's medical records to a State agency that requests them for use in a proceeding to compel the patient to accept mental health treatment, where the patient has neither authorized the disclosure nor received notice of the agency's request for the records." As a result of this decision, in order for a county director of community services or AOT coordinator to obtain clinical records in order to support an AOT petition, either: (1) the AOT subject has consented to the

months, not including any current period, or period ending within the last six months, in which the person was or is hospitalized or incarcerated; and (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. …(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, sibling eighteen years of age or older, or child eighteen years of age or older of the subject of the		release of records, (2) a court has ordered the release of the records, (3) the records can be released under a HIPAA exception or (4) the records can be subpoenaed in the context of a court proceeding. Per Miguel M, neither the HIPAA exception for treatment or for public health apply. The HIPAA exceptions for obtaining PHI without patient authorization for "health oversight activities;" "in the course of judicial or administrative proceedings; or for specialized government functions" remain untested. Generally, however continued implementation of the AOT program may require that a court proceeding be initiated at an earlier time in the AOT investigation so that appropriate records may either be subpoenaed or obtained by court order.

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 seventy-five 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. (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 at the hearing. 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.. (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 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.		