

New Jersey Legislature Revises Involuntary Commitment Law, Requiring Hospitals to Change Handling of Patients in Need of Involuntary Commitment

Greenbaum, Rowe, Smith & Davis LLP Client Alert
September 27, 2023

What You Need to Know

- Legislation recently signed into law in New Jersey addresses a key gap in the state's involuntary commitment law, as well as a lack of uniformity among hospitals when dealing with patients suspected of needing involuntary commitment for a psychiatric condition.
- The new law puts forth a specific process that must be followed if a hospital believes it needs to hold a patient suspected of needing involuntary commitment beyond 72 hours, and also contains several other important provisions including reporting requirements by hospitals and others regarding their efforts to locate beds and the frequency of needing additional time for placement.
- As impacted parties attempt to fully understand and develop a uniform approach to these new legal requirements, hospitals need to reexamine their internal processes in order to ensure compliance with the law going forward.

The New Jersey Legislature recently addressed a key gap in the state's involuntary commitment law, which has historically permitted a hospital to hold a patient in need of involuntary commitment for no more than 72 hours. The law's intent was to ensure that hospitals promptly transferred patients to an appropriate psychiatric facility and that the patient did not remain in the hospital indefinitely.

Attorneys

John W. Kaveney

Published Articles (Cont.)

The law, however, failed to address a key gap in the process. Specifically, what is a hospital to do if it cannot locate an available bed at an appropriate psychiatric facility within the 72-hour window? Should the hospital continue to hold the patient anyway, for the safety of the patient and public? Should the hospital release the patient despite being a potential danger to themselves or others?

Unfortunately, the law's silence on these issues resulted in a lack of uniformity among hospitals across the state. In response, each hospital attempted to address the problem and implement a workaround in their own way. Some hospitals turned to the courts and asked for an order to continue to hold the patient. Other hospitals chose to re-screen patients after each 72-hour period, thereby restarting the 72-hour window over and over again. Still others simply continued to hold patients – or utilized other methods to justify holding patients for longer than 72 hours. Arguably, none of these approaches were expressly permitted under the involuntary commitment law, thereby necessitating a change to the law.

To address both the silence in the law and the resulting lack of uniformity across the state, Governor Murphy signed into law Senate Bill 3929 (approved P.L. 2023, c. 139). The new law puts forth a specific process that must be followed if a hospital believes it needs to hold a patient beyond 72 hours. Moreover, the law states that the courts may only permit hospitals to hold a patient for an additional 72 hours, thereby allowing a total hold time for a patient of 144 hours.

Under the current involuntary commitment process, when a patient at a hospital is suspected of needing involuntary commitment for a psychiatric condition, the screening service is contacted, and the patient evaluated. Upon completion of the evaluation, a screening document is completed by the screener. If the screener believes the patient is in need of involuntary commitment, a psychiatrist at the hospital is contacted and required to evaluate the patient, and complete a screening certificate, within 24 hours of the completion of the screening document. If the psychiatrist also believes that the patient is in need of involuntary commitment, the hospital then has 72 hours from the completion of the screening certificate to locate a bed and transfer the patient to an appropriate psychiatric facility. However, given the limited number of beds at psychiatric facilities across the state, and the ever-increasing demand for these beds, hospitals have found themselves in situations where, despite their best efforts, a bed could not be located within the 72-hour window.

Under the new law, if a hospital cannot locate a bed for the patient, then the hospital may petition the court for a hold order allowing the hospital to hold the patient for an additional 72 hours. The application for a hold order must be submitted to the court with a copy to the Office of the Public Defender, who serves as counsel for the patient. Under the revised law, the court “may grant a temporary order granting the continued hold of a person” if the hospital has:

1. exhausted all reasonable efforts to place the individual in a short-term care or psychiatric facility, or special psychiatric hospital, depending on which facility is appropriate for the person's condition and is the least restrictive environment; and
2. demonstrate[d] that there is a substantial likelihood that, by reason of mental illness, the person will be dangerous to the person's own self or others based upon the certification of two

psychiatrists who have examined the patient and deemed the patient is in need of involuntary commitment.

Thus, the hospital should submit to the court: (1) the screening document; (2) the screening certificate; (3) the clinical certificate (second physician certification); and (4) a certification of due diligence to locate a bed.

The emergent hold order application “may be decided by the court on documentary presentations.” Moreover, while counsel for the Office of the Public Defender is permitted under the law to request a hearing, it is within the court’s discretion as to whether one is necessary, and if deemed necessary, what the format of such a hearing should be, including whether the argument of counsel along with the documentary record is sufficient versus the need for live testimony of witnesses.

There is much to consider in the new law. In addition to this new process, the law contains several other important provisions including reporting requirements by hospitals and others regarding their efforts to locate beds and the frequency of needing additional time for placement. The law also discusses the means by which more beds might be brought online by hospitals, among other things.

The new law has only been in place for approximately one month. All involved parties, including the courts, hospitals, Office of the Public Defender, screening services, and county adjusters, are attempting to understand the law and develop a uniform approach to implementing these critical changes.

Hospitals, therefore, need to take a critical look at their internal processes as they are almost certain to be inconsistent with the new law. Moreover, with increased scrutiny and involvement from the Office of the Public Defender, hospitals need to be sensitive to these new legal requirements and ensure compliance with the law going forward. Thus, close coordination between the crisis team and legal counsel is imperative to properly interpret and implement the necessary changes to hospital policies and procedures.

Please contact the author of this Alert with questions concerning New Jersey’s revised legal requirements related to involuntary commitment procedures, or to discuss your specific circumstances.

John W. Kaveney

Partner, Healthcare and Litigation Departments

jkaveney@greenbaumlaw.com

973.577.1796