

INVOLUNTARY CIVIL COMMITMENTS

RESOURCE BINDER



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FOREWORD

This document was prepared by:

Division of Mental Health Services
Department of Human Services

Division of Mental Health and Guardianship Advocacy
Office of the Public Advocate

Division of Law
Department of Law and Public Safety

Civil Practice Division
Administrative Office of the Courts

It is designed to be used as a research starting point regarding the law and practice of involuntary civil commitments in the State of New Jersey. Reliance upon this document should be limited accordingly. The document has not been reviewed or approved by the Supreme Court nor is it an official publication of any of the offices listed above.

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I. OVERVIEW OF MENTAL HEALTH SYSTEM

A. DIVISION OF MENTAL HEALTH SERVICES

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As the designated State mental health authority, the Division of Mental Health Services:

1. Operates
 - a. Two Specialized Psychiatric Facilities.
 - i. Ann Klein Forensic Center
(609) 633-0900.
 - ii. Senator Garrett W. Hagedorn Psychiatric Center
(908) 537-2141.
 - b. Three State Psychiatric Hospitals For Adult Patients.
 - i. Ancora Psychiatric Hospital
(609) 561-1700.
 - ii. Greystone Park Psychiatric Hospital
(201) 538-1800.
 - iii. Trenton Psychiatric Hospital
(609) 633-1500

See, N.J.S.A. 30:1-7; N.J.S.A. 30:4-160; and N.J.S.A. 30:4-27.2(u), (psychiatric facility).
2. Contracts with over 120 community mental health providers for direct services to clients, including: emergency services, outpatient services, partial care services, medication, family therapy, inpatient care, residential care, liaison services, etc.
3. Monitors the provision of services of State and County psychiatric hospitals and contracted community mental health providers in accordance with Department and national standards.
4. Designates screening centers in accordance with *N.J.S.A. 30:4:27.1 et seq.*

5. Establishes policy regarding the delivery of mental health services; where such policy affects the health care delivery system it will be developed in consultation with the Department of Health and the Statewide Health Coordinating Council (SHCC).
6. Conducts needs assessments for mental health services within specific geographic areas and allocates available funds and technical assistance to community providers of such services.
7. Recommends regulations for promulgation by the Department of Human Services within Title 10 of the New Jersey Administrative Code.
8. Provides technical assistance and recommendations to the Department of Health and the SHCC regarding Certificate of Need and licensure standards.
9. Reviews programs for Medicaid certification.

B. STATE HOSPITALS

The Division of Mental Health Services is responsible for the operation of three regional adult psychiatric hospitals (Ancora, Greystone and Trenton), one specialized facility for the elderly (Hagedorn), and one specialized facility providing maximum security (Ann Klein). The State bills the 21 counties for 12.5% of the cost for county residents who are receiving care in these facilities.

Regional Hospitals. The four regional adult psychiatric hospitals (Ancora, Greystone, Hagedorn and Trenton) are part of a comprehensive mental health service delivery system which is organized geographically by county. These hospitals service the following counties:

<u>Ancora:</u>	Atlantic, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem
<u>Greystone:</u>	Bergen, Essex, Hudson, Morris, Passaic, Sussex and Warren
<u>Hagedorn:</u>	Hunterdon and Somerset
<u>Trenton:</u>	Burlington, Mercer, Monmouth, Union and Middlesex

Specialty Hospitals. The two specialty hospitals provide distinct program services as follows:

Senator Garrett W. Hagedorn Psychiatric Center: Hagedorn is a geropsychiatric facility which provides inpatient care to individuals over the age of 55. It is a psychiatric facility as defined by *N.J.S.A. 30:4-27.2(u)* and, therefore, may treat involuntary committed individuals.

Ann Klein Forensic Center: The Forensic Center provides a highly structured, secure and supervised evaluative and treatment environment. It is a psychiatric facility as defined by *N.J.S.A. 30:4-27.2(u)* and, therefore, may treat involuntarily committed individuals.

C. COUNTY HOSPITALS

In addition to the six State-operated facilities, above, New Jersey has six county-operated hospitals providing psychiatric inpatient services. These facilities are operated by the county on a voluntary basis but while monitored by the State (*N.J.S.A. 30:1-14*), do not fall under the direct authority of the Division of Mental Health Services. These six facilities are:

- Bergen Regional Medical Center;
- Buttonwood Hospital, Burlington County;
- Camden County Health Services Center, Camden County;
- Runnells Hospital, Union County;
- Essex County Hospital Center, Essex County; and
- Meadowview Hospital, Hudson County.

These hospital units are psychiatric facilities as defined by *N.J.S.A. 30:4-27.2(u)* and, therefore, may treat involuntarily committed individuals. The State contributes to the operational funding of these hospitals by paying 90% of the costs of care for patients who are county residents.

D. PRIVATE PSYCHIATRIC HOSPITALS

Psychiatric patients in New Jersey may also be committed to private psychiatric hospitals in the State *i.e.*, Hampton Hospital, Carrier Foundation, Summit Hospital, St. Barnabas, and Ramapo Ridge.

E. PSYCHIATRIC UNITS LOCATED IN GENERAL MEDICAL HOSPITALS

General medical hospitals in the community may also provide for in-patient services for persons with psychiatric illness through either:

1. short term care facility
2. voluntary psychiatric unit
3. involuntary psychiatric beds

F. ENACTMENT OF SCREENING/COMMITMENT LEGISLATION

On May 7, 1987, New Jersey Governor Thomas H. Kean signed into law a major revision of the statutes concerning involuntary civil commitment to psychiatric facilities, *N.J.S.A. 30:4-27.1 et seq.* This "Mental Health Screening/Commitment" legislation became effective on June 7, 1989.

Among the Legislative findings and declarations in this act was the following statement:

It is the policy of this State to encourage each county or designated mental health service area to develop a screening service and a short-term care facility which will meet the needs for evaluation and acute care treatment of mentally ill persons in the county or service area. The State encourages the development of screening services as the public mental health system's entry point in order to provide accessible crisis intervention, evaluation and referral services to mentally ill persons in the community; to offer mentally ill persons clinically appropriate alternatives to inpatient care, if any; and, when necessary, to provide a means for involuntary commitment. Similarly, the State encourages the development of short-term care facilities to enable a mentally ill person

to receive acute, inpatient care in a facility near the person's community. Development and use of screening services and short-term care facilities throughout the State are necessary to strengthen the Statewide community mental health system, lessen inappropriate hospitalization and reliance on psychiatric institutions and enable State and County facilities to provide the rehabilitative care needed by some mentally ill persons following their receipt of acute care. *N.J.S.A. 30:4-27.1(d)*.

G. *DESIGNATED SCREENING CENTERS*

N.J.S.A. 30:4-27.4 provides that the Commissioner of Human Services shall designate one or more mental health agencies or facilities in each county or multi-county region in the State as a screening service. This screening service is a public or private ambulatory care service providing assessment, emergency and referral services to mentally ill persons in a specified geographic area.

Screening service evaluation is the preferred process for entry into short-term care facilities or psychiatric facilities so that appropriate consideration is given to less restrictive treatment alternatives. *N.J.S.A. 30:4-27.4*. A screening service shall serve as the facility in the public mental health care treatment system wherein a person believed to be in need of commitment to a short-term care, psychiatric facility or special psychiatric hospital undergoes an assessment to determine what mental health services are appropriate for the person and where those services may be most appropriately provided. *N.J.S.A. 30:4-27.5(a)*. Not all emergency service providers are designated screening centers.

A mental health screener shall make a screening outreach visit if the screener determines, based on clinically relevant information provided by an individual with personal knowledge of the person subject to screening, that the person may need involuntary commitment and the person is unwilling or unable to come to the screening service for an assessment. *N.J.S.A. 30:4-27.5(d)*. Police officers can be contacted by screeners to assist in taking custody of a patient; however, they can only take custody after a screener has made a screening outreach visit.

H. SHORT-TERM CARE FACILITIES (STCF)

N.J.S.A. 30:4-27.8 provides that the Commissioner of Human Services, in consultation with the Commissioner of Health, shall designate one or more mental health agencies or facilities in each county or multi-county region in the State as short-term care facilities. These are inpatient, community based facilities providing acute care and assessment services to a mentally ill person whose mental illness causes the person to be dangerous to self or dangerous to others or property. *N.J.S.A. 30:4-27.2(bb)*.

Individuals shall be admitted involuntarily to short-term care facilities only by referral from a screening service or temporary court order. *N.J.S.A. 30:4-27.9(b)*. STCF's are authorized to provide assessment, treatment and rehabilitation services and shall provide discharge planning services as required pursuant to *N.J.S.A. 30:4-27.18*.

I. COMMUNITY PROGRAMS

While the Division of Mental Health Services directly provides care in each of its five State facilities, the provision of community service is accomplished through the purchase of these services via contracts from a network of private nonprofit organizations.

There are over 120 private, nonprofit community mental health providers, supported in part, by State funds via the purchase of service contract mechanism. Specific program elements include: clinical case management, inpatient care, emergency/screening, outpatient, partial care, consultation and education, systems advocacy, residential care and liaison and other programs which relate directly to services to the Division's target populations and exclusive of the elements previously listed.

Among these agencies in New Jersey, there is a wide variety of community mental health programs. Many provide a complete array of community mental health services while others provide only one or two specific program elements which are complemented by services provided by other agencies within a specified geographic area.

II. ORDER OF TEMPORARY COMMITMENT

A. OVERVIEW

When it is alleged that an individual is in need of commitment, it is necessary to obtain an order of temporary commitment to detain 1) a person involuntarily confined to a short term care facility, psychiatric facility or special psychiatric hospital following an assessment at a screening service, or 2) a person not presently hospitalized or confined for treatment of mental illness, such as an independent (non-screening) alternate referral application. An order for temporary commitment is also required to recommit a patient who is under an order of conditional extension pending placement (CEPP) and to detain a voluntary patient requesting discharge or an inmate scheduled for release upon completion of a maximum term of incarceration.

B. COMMENCEMENT OF AN ACTION

An action for involuntary commitment shall be commenced by one of the following:

1. A Screening Service Referral – Most applications for an order of temporary commitment are brought by a short term care or psychiatric facility or special psychiatric hospital to which an individual has been involuntarily admitted from a screening service referral. Such a person will have recently (within the past 72 hours) undergone an assessment at a screening service. The person may have voluntarily entered the screening service or may have been taken there involuntarily by a family member or law enforcement officer. The law enforcement officer may have acted upon personal observation (*N.J.S.A. 30:4-27.6(a)*), the certification of a mental health screener who performed a screening outreach visit, (*N.J.S.A. 30:4-27.6(b)*) or a court order (*N.J.S.A. 30:4-27.6(c)*). At the screening service, a mental health screener would have first assessed the person and completed a screening document. *N.J.S.A. 30:4-27.5(b)*. The person would have been next assessed by a psychiatrist (or other physician¹) who will have completed a screening certificate, concluding that involuntary commitment was necessary.

¹ *N.J.S.A. 30:4:27.5 (b)* provides that a physician other than a psychiatrist may execute a screening certificate if the contract between the Division of Mental Health Services and the screening service so allows. The judge should be satisfied that the

Upon completion of the screening certificate, the person would have been involuntarily admitted to a short-term care facility, psychiatric facility or special psychiatric hospital, determined to be appropriate by the screening service. A second screening certificate will be completed by a psychiatrist or physician at the facility. If continued involuntary commitment is deemed necessary by the patient's treatment team, the facility or hospital shall initiate court proceedings. A person cannot be detained at a short term care facility for more than 72 hours from the time the screening certificate was completed. Accordingly, the facility must obtain an order of temporary commitment within 72 hours or the individual must be discharged. *R. 4:74-7(b)(1)*. **Note:** This 72-hour requirement does **not** apply to the initial screening document.

2. Alternate Application – If a screening service procedure is not used, proceedings for involuntary commitment may be initiated by filing an application supported by two clinical certificates, at least one of which is prepared by a psychiatrist, stating that the individual is in need of involuntary commitment. The originals must be filed with the court with copies sent to the office of the county adjuster. If proceedings are instituted by independent application, there shall be no involuntary commitment prior to the entry of an order of temporary commitment by the court. *R. 4:74-7 (b) (2)*.

- a. Voluntary Patients Requesting Discharge — If a voluntary patient at a short-term care facility, a psychiatric facility, or a special psychiatric hospital requests to be discharged and the patient's treatment team is of the opinion that involuntary commitment is necessary, a court order for temporary involuntary commitment must be obtained. This situation may occur at the hearing for voluntary patients, *i.e.*, the patient states s/he wants to leave or the judge ascertains that the patient is either not truly at the hospital on a voluntary basis or lacks the competency to understand what "voluntary" means. (For a greater explanation of voluntary hearings, see Section X).

Without a temporary or final court order, the patient must be discharged within 48 hours of the discharge request or at the end of the next working day following the request, whichever is longer. *N.J.S.A. 30:4-27.20*.

relevant contract includes this provisions before signing a temporary order of commitment based in part upon a screening certificate executed by a physician other than a psychiatrist.

In support of a petition for an order of temporary commitment, the hospital or facility must submit an application for commitment and two clinical certifications prepared and executed by physicians, at least one of whom must be a psychiatrist. In the event the patient's treatment team includes a psychiatrist, that psychiatrist should prepare and execute one of the certificates. If the order for temporary commitment is signed by a judge, a final hearing should be scheduled within 20 days.

b. Patients Under an Order of Conditional Extension Pending Placement (CEPP) — If it is determined that a patient under a CEPP order (See Section VI B, *infra*) needs to be involuntarily committed, it is necessary to obtain an order for temporary commitment. All the procedures of *N.J.S.A. 30:4-27.1 et seq.* and *R. 4:74-7* must be followed just as if it were an initial commitment.

c. Commitment of Inmates Scheduled for Release — If it is determined that an inmate scheduled for release upon the expiration of a maximum term of incarceration is in need of involuntary commitment, the Attorney General or county prosecutor may initiate the commitment process by the submission to the court of an application for an order of temporary commitment supported by two clinical certificates, at least one of which must be prepared by a psychiatrist. *N.J.S.A. 30:4-27.10(c)*. If the court finds that there is probable cause to believe that the inmate is in need of involuntary commitment, it shall issue an order setting a date for a final hearing and authorizing the Commissioner of the Department of Corrections to arrange for temporary commitment to the Forensic Psychiatric Hospital in Trenton or other facility designated for the criminally insane pending the final hearing and prior to the expiration of the inmate's term. *N.J.S.A. 30:4-27.10(c)*; *N.J.S.A. 30:4-27.10(h)*.

3. The Attorney General – The Attorney General, in the exercise of the State's authority as *parens patriae*, may initiate a court proceeding for the involuntary commitment of any person. *N.J.S.A. 30:4-27.10(d)*. When the Attorney General determines that the public safety requires initiation of a court proceeding, the Attorney General may apply to the court for an order compelling the psychiatric evaluation of the person. The court shall grant the application if it determines that there is probable cause to believe that the person may be in need of involuntary commitment. The Attorney General may delegate authority under *N.J.S.A. 30:4-27.10(d)*, on a case-by-case basis, to the county prosecutor.

C. CONTENTS OF THE CERTIFICATES

In support of a petition for an order of temporary involuntary commitment, the facility or hospital must submit:

- a. a screening document prescribed by the Division of Mental Health Services executed by the screener providing information on the patient's history and available alternative facilities and services deemed inappropriate;
- b. a screening certificate executed by a psychiatrist² affiliated with a screening service; and
- c. a clinical certificate completed by a psychiatrist who is a member of the patient's treatment team at the short term care facility.³

The two certificates required for commencement of an action must state with particularity the facts upon which the psychiatrist, physician or mental health screener relies in concluding that (1) the patient is mentally ill, (2) the mental illness causes the patient to be dangerous to self or others or property as defined by *N.J.S.A.* 30:4-27.2(h) and -27.2(i), and (3) appropriate facilities or services are not otherwise available. *R.* 4:74-7 (b) (3)(A). Two clinical certificates must be submitted and at least one of them must be prepared by a psychiatrist. *N.J.S.A.* 30:4-27.10.

D. PERSONS DISQUALIFIED

No certificate may be executed by a person who is a relative by blood or marriage of the person being examined. If a screening service referral is used, the same psychiatrist may not sign both the screening certificate and the clinical certificate unless that psychiatrist has made a reasonable but unsuccessful attempt to have another psychiatrist conduct the evaluation and execute the certificate. *R.* 4:74-7 (b) (3)(B).

² See *infra*, form of screening/clinical certificate approved by the Administrative Office of the Courts.

³ See *supra*, note 2 and accompanying text.

E. STANDARD OF REVIEW

N.J.S.A. 30:4-27.10(f) requires immediate court (Superior Court judge or Municipal Court judge) review of the papers presented and a determination of whether there exists the statutory basis for issuance of a temporary order of commitment.⁴ Before signing an order of temporary commitment, the judge must find "probable cause to believe that the person is in need of involuntary commitment." *N.J.S.A.* 30:4-27.10(g). *R.* 4:74-7 (c).

"In need of involuntary commitment" is defined by the statute as:⁵

...an adult who is mentally ill, whose mental illness causes the person to be dangerous to self or dangerous to others or property and who is unwilling to be admitted to a facility voluntarily for care, and who needs care at the short-term care, psychiatric facility or special psychiatric hospital because other services are not appropriate or available to meet the person's mental health care needs. *N.J.S.A.* 30:4-27.2(m).

See Section V.C. "Standard of Commitment," below.

F. REQUIRED ELEMENTS OF CERTIFICATES

1. Clinical Certificate: *N.J.S.A.* 30:4-27.2(b).

- must be in prescribed form;⁶
- must be prepared and executed by a psychiatrist or physician having conducted an examination of the person within three days of presenting the person for admission to a facility (other than the screening service);

⁴ In non-emergent situations, the court may consider giving the person alleged to be in need of commitment or that individual's counsel an opportunity to respond to the commitment allegations. *In re Commitment of MG.*, 331 *N.J.Super.* 365 (App. Div. 2000). *See also Brehm v. Pine Acres Nursing Home, Inc.* 190 *N.J.Super* 10 3 (App. Div. 1983).

⁵ *See also, N.J.S.A.* 30:4-27.2(h) for definition of "Dangerous to Self;" *N.J.S.A.* 30:4-27.2(i) for definition of "Dangerous to Others or Property;" and *N.J.S.A.* 30:4-27.2(r) for definition of "Mental Illness."

⁶ *See, infra*, screening/clinical certificate.

- must include the psychiatrist's/physician's conclusion that involuntary commitment is needed;
 - must include specific facts upon which conclusion is based;
 - must not be completed/executed by a relative (by blood or marriage) of the person subject to commitment;⁷ and
 - must be certified in accordance with *R. 1:4-4(b)*.
2. Screening Certificate: *N.J.S.A. 30:4-27.2(y)*.
- must comply with all required elements of clinical certificate, set forth above; and
 - the psychiatrist/physician⁸ must be affiliated with a screening service.

G. CONTENTS OF ORDER OF TEMPORARY COMMITMENT

R. 4:74-7(c) requires that a temporary order of commitment include:

1. A place and date certain for the initial commitment hearing, which shall be within 20 days of the initial in-patient admission to the facility or hospital;
2. Assignment of county counsel to present the case for involuntary commitment;
3. Assignment of counsel to an unrepresented patient;
4. The persons to be notified by the county adjuster of the admitting county of the time and place of the hearing, *N.J.S.A. 30:4-27.13(a)*;
5. The mode of service of the hearing notice;
6. The date by which the hearing notice must be served, at least 10 days prior to the court hearing, *N.J.S.A. 30:4-27.13(a)*; and

⁷ See also *N.J.S.A. 30:4-27.10(e)*.

⁸ See, *supra*, note 1.

7. The directive that copies of the clinical and screening certificates, as well as any other supporting documents, the temporary court order and a statement of patient's rights at the court hearing be served upon the patient and the patient's attorney, *N.J.S.A. 30:4-27.13(a)*.

H. REVIEW OF REQUIREMENTS FOR ENTRY OF ORDER OF TEMPORARY COMMITMENT

Referral from a Screening Service:

- Has the individual been detained in a facility for more than 72 hours from the time the screening document was completed? If yes, the order of temporary commitment cannot be entered.
- Has the screening document been completed? If no, the application is not complete and the order should not be entered.
- Has a clinical certificate been completed by a psychiatrist or physician affiliated with the screening service?
- Has another clinical certificate been completed by a psychiatrist or physician on the patient's treatment team?
- Was at least one of the two submitted certificates completed by a psychiatrist? If not, the application is not complete and the order should not be entered.
- Were the screening document and the clinical certificate completed by the same psychiatrist? If yes, has the psychiatrist made a reasonable but unsuccessful attempt to have another psychiatrist conduct an evaluation and execute the certificate.
- Is any person completing a screening document or certificate related by blood or marriage to the person being examined? If yes, the document may not be accepted.
- Were copies of the three documents filed with the office of the county adjuster?

Contents of the Clinical Certificates:

- Are the certificates in the prescribed form (see screening document and clinical/screening certificate for involuntary commitment)?
- Do the certificates state the conclusion that involuntary commitment is needed, *i.e.* that the person is mentally ill, that the mental illness causes the person to be a danger to self, others or property, that the individual is unwilling to be admitted voluntarily for care, and that there are no other appropriate facilities or services available?
- Are there specific facts supporting the conclusion that commitment is needed?
- Are they properly certified in accordance with *R.* 1:4-4(b)?

Standard of Review

- Is there probable cause to believe that the person is in need of involuntary commitment, *i.e.* is there probable cause to believe that the person is mentally ill, that the mental illness causes the person to be a danger to self, others or property, and that there are no other appropriate facilities or services available? If yes, the judge may enter an order of temporary commitment authorizing the admission to or retention of custody by a facility pending a final hearing.

Contents of Order of Temporary Commitment

- Is there a place and date certain for the initial commitment hearing?
- Is the initial commitment hearing scheduled within 20 days of the in-patient admission to the facility or hospital?
- Is there an assignment of county counsel to present the case for involuntary commitment?
- Is there assignment of counsel for an unrepresented patient?
- Does the order contain a list of persons to be notified by the county adjuster of the time and place of the hearing?
- Is the mode of service of the hearing notice specified?
- Does the order contain the date by which the hearing notice must be served, at least 10 days prior to the court hearing
- Does the order specify that copies of the clinical and screening certificates, as well as any other supporting documents, the order for temporary commitment, and statements of patient's rights at the court hearing be served on the patient and the patient's attorney?

Alternate Referral (not from screening service)

- Are there two clinical certificates completed by physicians, one of whom must be a psychiatrist? There will be no screening certificate.
- Are the certificates prepared and executed by a psychiatrist or physician who has conducted an examination of the person within three days of presenting the person for admission to a facility. If no, the application must be rejected. The required contents of the certificates and order are the same as for a screening service referral.
- If the application is made for a voluntary patient who is seeking to be discharged, but whose treatment team believes is in need of involuntary commitment, has the patient been detained for more than 48 hours after the request or until the end of the next working day, whichever is later? If yes, the order of temporary civil commitment cannot be entered.
- If the application is made for an inmate scheduled for release upon expiration of the maximum term of incarceration and the court finds that there is probably cause to believe the individual is in need of involuntary commitment, is the final hearing date scheduled and has the Commissioner of the Department of Corrections been authorized to arrange for temporary commitment to the Forensic Psychiatric Hospital in Trenton or other facility designed for the criminally insane pending the final hearing and prior to the expiration of the prison term? Does the order specifically provide for the transfer of custody to the Forensic Psychiatric Hospital in Trenton or other facility designed for the criminally insane if the maximum term will expire prior to the hearing?
- If the application is made for an individual on CEPP status, have all the procedural requirements of *R. 4:74-7* been met?

III. PRE-HEARING EVENTS

A. *DISCOVERY*

Patient's attorney or guardian *ad litem* has the right to inspect and copy all records relating to the patient's mental condition, including the patient's clinical chart, notwithstanding any rule, regulation or policy of confidentiality. *R. 4:74-7(d); N.J.S.A. 30:4-27.11(c)*. The court may also order testing or examination of the patient by an independent psychiatrist, psychologist, or other expert. *R. 4:74-7(d)*. Any expert witness who is to testify shall prepare a written report and shall make it available to the court and all counsel no later than one business day prior to the hearing. *R. 4:74-7(e)*. The report shall be in a form prescribed by the Department of Human Services and approved by the Administrative Director of the Courts.

B. *ADJOURNMENTS*

1. Although the initial hearing can be adjourned for up to fourteen days, *R. 4:74-7(c)(1)*, this should be done only in "exceptional circumstances and for good cause shown in open court."⁹

Efforts to avoid the necessity for an adjournment could include, for example, the court asking the hospital to designate an alternate psychiatrist to examine the patient and review the patient's records, in order to testify where the treating psychiatrist is unavailable due to vacation or illness.

⁹ See *In re Matter of Z. O.*, 197 *N.J. Super.* 330, 339 (App. Div. 1984), holding that although an untimely hearing would not result in the dismissal of the commitment case, "statutory time limits on restricting the liberty of person should not be casually disregarded." See also *In the Matter of the Commitment of M.M.*, 384 *N.J. Super.* 313 (App. Div. 2006), holding that, in the absence of a request by the patient, the circumstances authorizing the extension of the statutory deadline must be atypical rather than routine and reasonably unforeseen or unavoidable, rather than within the reasonable control of the state or the court; holding further that "good cause" exists when the state's interest in extending the time for a hearing due to exceptional circumstances substantially outweighs the patient's interest in terminating a confinement that is not supported by clear and convincing evidence of the existence of grounds for commitment.

2. Where an adjournment is sought because of the recent transfer of the individual from a short-term care facility or special psychiatric hospital to a state or county psychiatric hospital, the court should consider as background the provisions of *N.J.S.A. 30:4-27.10(i)*.

That section provides that such transfer is prohibited within five days prior to the hearing unless an unexpected change in the person's clinical conditions occurs, necessitating the transfer. Moreover, the patient, patient's family and attorney must be given 24 hours advance notice of the pending transfer and the transfer is to be accomplished in a manner which will give the receiving facility adequate time to examine the patient, become familiar with the patient and prepare for the hearing.

IV. INITIAL COMMITMENT HEARING — PROCEDURAL

A. *TIMING AND LOCATION OF HEARING*

1. Initial hearing must be held within 20 days from initial inpatient admission to the short-term care facility, psychiatric facility or special psychiatric hospital. *N.J.S.A.* 30:4-27.12. Pursuant to the Civil Commitment Court Rule, commitment hearings for minors are to be scheduled within 14 days after the initial inpatient admission. *R.* 4:74-7A(c) (6). See Section VI for more information about the commitment of minors.
2. The hearing, if possible, takes place at the hospital.

B. *CONDUCTING THE HEARING*

1. Because involuntary commitment to a mental hospital deprives the committee of important liberty interests, the procedural and substantive safeguards established by statute and Court Rules "...must be scrupulously followed," even when 76 hearings are scheduled for one day.¹⁰ *In the Matter of Commitment of Raymond S.*, 263 *N.J. Super.* 428, 432 (App. Div. 1993).
2. The vicinage responsibility for conducting the commitment hearing must assign a Sheriff's Officer to provide security at the hearing.
3. All witnesses must be sworn.
4. The entire proceeding is on the record. The testimony must be either stenographically recorded or tape recorded. (If tape recorded, guidelines contained in AOC Manual on Sound Recording should be followed.)
5. The patient "has the right to a hearing *in camera*." *N.J.S.A.* 30:4-27.14(e).¹¹

¹⁰ The Appellate Division indicated that while a trial judge presented with long hearing calendars is placed under considerable time constraints, "...those in charge of calendaring must be sensitive to the rights of patients and the requirements of due process." *In the Matter of Commitment of Raymond S.*, *supra.*, 263 *N.J. Super.* at 432.

¹¹ The hearings are *in camera* except for *Krol* hearings, *Matter of Edward S.*, 118 *N.J.* 118 (1990); *Matter of the Commitment of Calu*, 301 *N.J. Super.* 20 (App. Div. 1997) (holding that there is a presumption that the hearing for a person civilly committed after acquitted of murder by reason of insanity who is seeking release from a mental hospital should be held in open court. *R.* 3:19-2.)

6. Although the hearing is *in camera*, the patient's family may attend and testify at the court hearing "if the court so determines." *N.J.S.A. 30:4-27.13(c)*.
7. The case for involuntary commitment must be presented by county counsel or county adjuster. *N.J.S.A. 30:427.12(b)*. It is inappropriate for the judge to advance the case for commitment "...because it places the judge in the role of an adversary rather than that of a neutral decision maker." *Matter of the Commitment of Raymond S., supra, 263 N.J. Super. at 432*.
8. The Attorney General may assume responsibility for presenting any case for involuntary commitment or may participate with county counsel in presenting any such case. *N.J.S.A. 30:4-27.12(c)(1)*. The Attorney General may apply to the court for an order compelling the psychiatric evaluation of a person where public safety requires initiation of commitment proceeding. *N.J.S.A. 30:4-27.10(d)*. The county prosecutor may assume responsibility for or participate in presenting a case for involuntary commitment at the request of the Attorney General or in any case initiated by the prosecutor and may initiate an application by involuntary commitment of an inmate who is scheduled for release upon expiration of a maximum term of incarceration. *N.J.S.A. 30:4:27.12(c) (1) and (2)*. *In re Civil Commitment of J.G., 322 N.J. Super. 309 (App. Div. 1999)*.
9. The case for involuntary commitment must be supported by the oral testimony of a psychiatrist on the patient's treatment team. *R. 4:74-7 (e)*. At an initial hearing, testimony of a non-psychiatrist physician is not a permissible substitute. *See, Matter of Commitment of P.D., 381 N.J. Super. 389, 394(App. Div. 2005); Matter of Commitment of Raymond S., supra, 263 N.J. Super. at 432*.
 - a. Testimony must be based on personal examination, not review of written medical record alone. *N.J.S.A. 30:4-27.13(b)*.
 - b. The personal examination which forms the basis of the testimony must be no more than five days prior to the court hearing. *R. 4:74-7(e); Matter of Commitment of P.D., supra, 381 N.J. Super. at 394*.
10. Other members of the treatment team may also testify. *N.J.S.A. 30:4-27.13(b); R. 4:74-7(e)*. Other witnesses with relevant

information may be offered by the patient or the attorney presenting the case for civil commitment. *N.J.S.A.* 30:4-27.12(b). They may be permitted to provide testimony in the form of opinion only if the requirement of *N.J. Evid. R.* 701 are met.¹² The patient's next-of-kin may also testify, if the court permits. *R.* 4:74-7 (e).

11. The patient may not appear at the hearing *pro se*. *N.J.S.A.* 30:4-27.12(d); *R.* 4:74-7(e). Counsel is always necessary. Caution should be exercised where family retains counsel for the patient, in order to ensure that counsel's loyalty is solely to the patient.
12. The patient has the right, through counsel, to present evidence and cross-examine witnesses. *N.J.S.A.* 30:4-27.14; *R.* 4:74-7(e). *See, Matter of Commitment of Raymond S., supra*, 263 *N.J. Super.* at 432; *Matter of the Commitment of D.M.*, 313 *N.J. Super.* 449, 453 (App. Div. 1998); *Matter of Commitment of P.D., supra*.
13. Rules of evidence apply to medical and business records. "Court needs sufficient information to consider the trustworthiness of the sources of information or the method, purpose or circumstances of preparation." *Matter of Commitment of J.B.*, 295 *N.J. Super.* 75, 78-79 (App. Div. 1996) citing to *N.J.R.E.* 803 (c) (6): *Records of regularly conducted activity*. A statement contained in a writing or other records of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.
14. The patient has the right to be present at the hearing. A court can suspend this right only where "the court determines that because of the person's conduct at the hearing the proceeding cannot reasonably continue while the person is present." *N.J.S.A.* 30:4-27.14(b).¹³ *R.* 4:74-7 (e). *See In the Matter of the Commitment of K.F.*, 244 *N.J.*

¹² *N.J. Evid. Rule* 701 provides:

Opinion Testimony of Lay Witness

If a witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences may be admitted if it (a) is rationally based on the perception of the witness and (b) will assist in understanding the witness' testimony or in determining a fact in issue.

¹³ Compare prior practice: *R.* 4:74-7(e) had previously allowed the Court to exclude the patient from the courtroom during all or part of the testimony for "good cause."

Super. 550 (App. Div. 1990), which held that an involuntary patient has a right to be present at his/her hearing even though listening to the treating doctor's testimony may adversely affect future treatment of the patient.

15. The patient has the right to testify at the hearing. *R. 4:74-7(e)*.
16. Patient's counsel is entitled to seek an order requiring the committing county to pay for cost of an independent examination by a psychiatrist, psychologist or other expert. *R. 4:74-7(d)*.
17. Court must make findings of fact and conclusions of law to support commitment. *R. 1:7-4. Matter of Commitment of D.M., supra*, 313 *N.J. Super.* at 454.
18. An order should be signed at the conclusion of each case before proceeding to the hearing of the next matter (see Form of Order, *infra*).
19. The time frame for the next scheduled review hearing should be specified (three months, six months, etc.). For discussion of how to determine the interval of review, see Section IX. A. (1), below.

C. REVIEW OF PROCEDURAL ASPECTS OF HEARING

Discovery

- Have all records, including the patient's clinical chart, been provided to patient's counsel or guardian *ad litem*?
- Has written report of expert witness been provided to court and counsel at least one day prior to the hearing? Is the report in the form prescribed by the Department of Human Services and approved by the Administrative Office of the Courts?

Notice

- Did the appropriate individuals (Patient, patient's guardian if any, patient's next-of-kin, patient's attorney, patient's custodian, county adjuster, etc.) receive notice of the hearing at least ten days prior to the court date?
- Did the notice specify the date, time and location of the hearing?
- Did the patient and the patient's attorney receive copies of the clinical certificates and supporting documents, the temporary court order and a statement of the patient's rights at the court hearing?

Timing and Location of Hearing

- Is hearing scheduled within 20 days from initial inpatient admission to the short-term care facility, psychiatric facility or special psychiatric hospital?
- If an adjournment has been sought, has it been based on exceptional circumstances and for good cause shown?
- Is the hearing scheduled to take place at the hospital where the patient is admitted?

Conducting the Hearing

- Has the vicinage responsible for holding the hearing arranged for security at the hearing?
- Have all witnesses been sworn in?
- Is the proceeding being recorded either stenographically or on tape?
- If the patient has requested an in camera hearing, has that request been honored?
- Has the patient's family been permitted to attend the hearing? If a family member wishes to testify, has the court made a ruling?
- Is the case for involuntary commitment being presented by either county counsel, county adjuster or county prosecutor?
- Has the psychiatrist on the patient's treatment team examined the patient personally within five days of the court date prior to giving testimony?
- Is the patient represented by counsel? If not, the hearing cannot go forward.
- Is the patient present at the hearing? If not, has the judge made a determination regarding the patient's conduct?
- If the patient requests to testify, has the judge permitted the testimony?
- Has the court provided findings of fact and conclusions of law to support the decision on voluntary commitment?
- If involuntary commitment is ordered, does the court order contain the time frame for the review hearing?
- Is the order signed by the judge?

V. INITIAL COMMITMENT HEARING – SUBSTANTIVE LAW

A. BURDEN OF PROOF

Burden of proof rests with the State. *In re S.L.*, 94 N.J. 128, 137 (1983).

B. STANDARD OF PROOF

1. The State must demonstrate by clear and convincing evidence that the patient needs continued involuntary commitment. *N.J.S.A.* 30:4-27.15(a); *Addington v. Texas*, 441 U.S. 418 (1979); *In re S.L.*, *supra*. Note, however, that the continued involuntary commitment of a defendant found not guilty by reason of insanity is established by a preponderance of the evidence, during the maximum period of imprisonment that could have been imposed. *N.J.S.A.* 2C:4-8b(3); *I/M/O Commitment of M.M.*, 377 N.J. Super. 71 (App. Div. 2005), *aff'd* 186 N.J. 430 (2006) (holding that a trial court is not to consider statutory aggravating and mitigating factors in determining the length of the civil commitment for a defendant found not guilty by reason of insanity).
2. Evidence is “clear and convincing” when it produce(s) in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable (the fact finder) to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *Matter of Commitment of Robert S.*, 263 N.J. Super. 307, 312 (App. Div. 1992), citing *In re Jobes*, 108 N.J. 394 (1987).

C. STANDARD OF COMMITMENT

Pursuant to *N.J.S.A.* 30:4-27.2(m), "in need of involuntary commitment" means an adult:

- who is mentally ill;
- whose mental illness causes the person to be dangerous to self or dangerous to others or property;

- who is unwilling to be admitted to a facility voluntarily for care; and
- who needs in-patient care at a short-term care, psychiatric facility or special psychiatric hospital because other services are not appropriate or available to meet the person's mental health care needs. *See Matter of Commitment of P.D., supra; R. 4:74-7(f).*

1. "Who is mentally ill...?"

- a. Finding of mental illness is a prerequisite for involuntary commitment. *Matter of Commitment of N.N.* 146 N.J. 112, 124 (1996); *Matter of Commitment of P.D., supra.*
- b. It must be established that a person to be committed suffers from a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior or capacity to recognize reality. The term mental illness is not limited to "psychosis" or "active psychosis" but shall include all conditions that result in the severity of impairment described above. *N.J.S.A. 30:4-27.2(r).*
- c. Medical terminology cannot substitute for statutory standard, *i.e.* substantial disturbance of thought, mood, perception or orientation. *Matter of Commitment of D.M. supra*, 313 N.J. Super. at 450
- d. Mental illness alone cannot serve as the basis for involuntary commitment. *In re S.L., supra*, 94 N.J. at 137-138, *Boesch v. Kirk*, 97 N.J.L 92,95(1922).
- e. Mental illness does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability unless it results in the severity of impairment described in paragraph (b) above. *N.J.S.A. 30-4:27.2(r).*

2. "...whose mental illness causes the person to be dangerous to self or dangerous to others or property..."

- a. "Dangerous to self" means that by reason of mental illness the person has threatened or attempted suicide or serious bodily

harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his need for nourishment, essential medical care or shelter [see paragraphs (i), (ii) and (iii) below], so that it is probable that substantial bodily injury, serious physical debilitation or death will result within the reasonably foreseeable future; however, no person shall be deemed to be unable to satisfy his need for nourishment, essential medical care or shelter if he is able to satisfy such needs with the supervision and assistance of others who are willing and available. *N.J.S.A.* 30:427.2(h).

- (i) Persons able to satisfy needs for nourishment, essential medical care or shelter with the assistance and supervision of others who are willing and available are not to be deemed unable to satisfy their needs. *See, In re S.L., supra*, 94 *N.J.* at 138, citing *O'Connor v. Donaldson*, 422 *U.S.* 583 (1975). *See also Matter of Commitment of Raymond S., supra*, 263 *N.J. Super.* at 433-34 (failure to take medication prior to commitment, refusal to talk to psychiatrist do not constitute clear and convincing evidence of dangerousness)..
 - (ii) Court must find that it is probable that substantial bodily injury, serious physical debilitation or death will result in the reasonably foreseeable future from patient's inability to satisfy his/her needs. *In re Matter of Newsome*, 176 *N.J. Super.* 511 (App. Div. 1980)(concern about the potential ill effects of a failure to take medication is insufficient to support a commitment).
 - (iii) Court declined to expand judicial standards of commitment to include "an individual who by reason of mental illness is unable to care for himself without some level of aid or supervision". *In re S.L., supra*, 94 *N.J.* at 139. *See also, In re Matter of S.D.*, 212 *N.J. Super.* 211 (App. Div. 1986) (discussing implications of *In re S.L.*).
- b. "Dangerous to others and property" means that by reason of mental illness, there is a substantial likelihood that the person will inflict serious bodily harm upon another person or cause

serious property damage within the reasonably foreseeable future. The determination shall take into account a person's history, recent behavior and any recent act or threat. *N.J.S.A.* 30:4-27.2(i). See discussion in *State v. Krol, supra*, 68 *N.J.* at 259-262 and in *State v. Fields*, 77 *N.J.* 282 (1978)¹⁴ noting the following:

- Dangerous conduct is not identical with criminal conduct.
- Dangerous conduct involves not merely violation of social norms but significant injury to person or substantial destruction of property.
- Persons are not to be confined because they present a risk of future conduct which is merely socially undesirable, even if conduct is odd, disagreeable or offensive or a public nuisance.
- Evaluation of the magnitude of the risk involves consideration both of the likelihood of dangerous conduct and the seriousness of the harm which may ensue if such conduct takes place.
- It is not sufficient that the state establish a possibility that a person might commit some dangerous acts at some time in the indefinite future. The risk of danger must be substantial and within the reasonably foreseeable future. *State v. Krol, supra*; *Matter of Robert S., supra*.
- Certainty of prediction of conduct is not required and cannot reasonably be expected.
- A person may be dangerous in only certain types of situations or in connection with relationships with certain individuals. An evaluation of dangerousness in such cases must take into account the likelihood that

¹⁴ See also, *In the Matter of R.B.*, 158 *N.J. Super.* 542 (App. Div. 1978); *In re Matter of J.L.J.*, 196 *N.J. Super.* 34 (App. Div. 1984), *certif. denied* 101 *N.J.* 210 (1985); *In re Matter of B.S.*, 213 *N.J. Super.* 243 (App. Div. 1986); *Matter of Commitment of Raymond S., supra*.

the person will be exposed to such situations or come into contact with such individuals.

- Past conduct is important evidence and may be given substantial weight in evaluation of patient's present mental condition and predicting future conduct.
- The determination of dangerousness involves a delicate balancing of society's interest in protection from harmful conduct against the individual's interest in personal liberty and autonomy.
- Determination of dangerousness is one to be made by the judge and not medical experts.

c. Psychological harm (*e.g.* abusive speech, hollering, and erratic behavior) to family not considered serious bodily harm upon another person absent testimony by a psychiatrist, psychologist, or other qualified professional. *Matter of Commitment of A.A.*, 252 N.J. Super. 170, 179 (1991).

3. "...who is unwilling to be admitted to a facility voluntarily for care..."

Even if the State is able to meet the requisite proofs of mental illness and dangerousness required for involuntary civil commitment, and the patient does not refuse the prescribed care on a voluntary basis, he/she should be admitted as a voluntary patient. *In re M.D.*, 251 N.J. Super. 19 (Ch. Div. 1991); N.J.S.A. 30:4-27.2(m); *See also In the Matter of the Commitment of A.A.*, *supra*, 252 N.J. Super. at 177-178.

4. "...who needs in-patient care at a short-term care, psychiatric facility or special psychiatric hospital because other services are not appropriate or available to meet the person's mental health care needs."

- a. Statute requires consideration of whether the person's mental health care needs and danger presented can be alleviated by some means short of involuntary commitment. *Matter of Commitment of D.M.*, *supra*, 313 N.J. Super. at 456.
- b. State must present evidence concerning alternative disposition. *Matter of Commitment of J.B.*, *supra*, 295 N.J.

Super. at 80, citing *R.* 4:74-7(f); *N.J.S.A.* 30:4-27.15(a); and *N.J.S.A.* 30:4-27.9(d).

- c. Screening document must include information concerning consideration of available alternative facilities which were considered and deemed inappropriate at the time of initial admission. *N.J.S.A.* 30:4-27.5(b).
- d. Under the New Jersey Patients Bill of Rights, each patient has a right to treatment in the least restrictive conditions necessary to achieve the purpose of treatment. *N.J.S.A.* 30:4-24.2(e) (2).

D. LEGAL REFERENCES

Statute:

*N.J.S.A.*30:4-27.1 *et seq.* (See appendix)

Court Rule:

Rule 4:74-7 (See appendix)

Relevant Case Law:

Addington v. Texas, 441 *U.S.* 418, 99 *S.Ct.* 1804, 60 *L.Ed.2d* 323(1979)

Boesch v. Kirk, 97 *N.J.L.* 92 (1922)

Brehm v. Pine Acres Nursing Home Inc., 190 *N.J. Super.* 103 (App. Div. 1983).

I/M/O Commitment of M.M., 377 *N.J.Super.* 71 (App. Div. 2005), *aff'd* 186 *N.J.* 430 (2006)

In the Matter of the Commitment of K.F., 244 *N.J. Super.* 550 (App. Div. 1990)

In the Matter of the Commitment of M.M., 384 *N.J.Super* 313 (App. Div. 2006).

In the Matter of Commitment of Raymond S., 263 *N.J. Super.* 428 (App. Div. 1993).

In the Matter of the Commitment of T.J., 401 N.J.Super. 111(App. Div. 2008)

In re Civil Commitment of J.G., 322 N.J. Super. 309 (App. Div. 1999).

In re Commitment of M.G. 331 N.J. Super. 365 (App. Div. 2000).

In re Matter of B.S., 213 N.J. Super. 243 (App. Div. 1986);

In re Matter of J.L.J., 196 N.J. Super. 34 (App. Div. 1984), *certif. denied* 101 N.J. 210 (1985)

In re Matter of Newsome, 176 N.J.Super. 511 (App. Div. 1980)

In the Matter of R.B., 158 N.J. Super. 542 (App. Div. 1978

In re Matter of S.D., 212 N.J. Super. 211 (App. Div. 1986

In re Matter of Z. O., 197 N.J. Super. 330 (App. Div. 1984),

In re M.D., 251 N.J. Super. 19 (Ch. Div. 1991)

Matter of Commitment of A.A., 252 N.J. Super. 170 (1991).

Matter of the Commitment of Calu, 301 N.J. Super. 20 (App. Div. 1997)

Matter of the Commitment of D.M., 313 N.J. Super. 449 (App. Div. 1998), *certif.. denied* 144 N.J. 377(1996);

Matter of Commitment of J.B., 295 N.J. Super. 75 (App. Div. 1996)

Matter of Commitment of N.N. 146 N.J. 112 (1996)

Matter of Commitment of P.D., 381 N.J. Super. 389(App. Div. 2005);

Matter of Commitment of Robert S., 263 N.J. Super. 307(App. Div. 1992

Matter of Edward S., 118 N.J. 118 (1990)

State v. Fields, 77 N.J. 282 (1978)

State v. Krol, 68 N.J. 236 (1975)

VI. DECISION BY THE COURT

Upon the conclusion of an initial hearing for an involuntarily committed patient, the court shall issue an order¹⁵ from among the following four options:

1. Continuing involuntary commitment. *N.J.S.A. 30:4-27.15(a)*.
2. Finding the patient does not need continued involuntary commitment and entering an order of discharge. *N.J.S.A. 30:4-27.15(b)*. See Section A., below.
3. Discharging the patient subject to conditions recommended by the facility and mental health agency staff and developed with the participation of the patient (usually regarding medication or continued treatment). See Section B., below.
4. Authorizing the Conditional Extension Pending Placement (CEPP) of the patient's hospitalization when a patient, otherwise entitled to discharge, cannot be immediately discharged due to the unavailability of an appropriate placement. *R. 4:74-7(g) (2)*; *In re S.L., supra*. See Section C., below.

A. DISCHARGE

If the court concludes that the evidence does not warrant continued commitment, an order of discharge shall be entered.

The facility shall discharge the patient as soon as practicable but no later than 48 hours after the court's verbal order or by the end of the next working day, whichever is later. *N.J.S.A. 30:4:27.15(b)*; *R. 4:74-7(h)(1)*.

B. CONDITIONAL DISCHARGE

1. An Order of Conditional Discharge discharges the patient subject to conditions recommended by the facility and mental health agency staff and developed with the participation of the patient. *N.J.S.A. 30:4-27.15(c)*; *R. 4:74-7(h) (1)*; *Cf. State v. Carter, 64 N.J. 382 (1974)*.

¹⁵ See form of Order, *infra*.

2. Conditions may only be imposed by the court if it finds pursuant to *N.J.S.A. 30:4-27.15(c)* (1) that:
 - a. the patient's history indicates a high risk of rehospitalization because of the patient's failure to comply with discharge plans, or
 - b. there is a substantial likelihood that due to mental illness, the patient will be dangerous to self, others, or property if the patient does not receive the services that render involuntary commitment unnecessary.
3. Conditions must be specific and may not exceed 90 days. Conditions may be imposed for a longer period of time in a case in which the Attorney General or county prosecutor participated. If the court imposes conditions for a period exceeding six months, the court shall provide for a review hearing not later than six months from entry of the order. *N.J.S.A. 30:4-27.15(c)* (2); *R. 4:74-7(h)* (1).
4. An order of conditional discharge may only be revoked and the patient recommitted only if the standard for initial commitment is satisfied. *Matter of Commitment of B.L. & M.W.*, 346 *N.J. Super.* 285, 309 (App. Div. 2002).
 - a. According to procedures established by the court in *Matter of Commitment of B.H.*, 212 *N.J. Super.* 145 (App. Div. 1986), if a patient is not complying with the conditions of his/her conditional discharge, then:

The designated mental health agency staff person must notify the court when a patient has violated the conditions. This notification does not have to be in writing. The court shall order the patient to be screened. The screening service shall conduct an assessment, the results of which shall be in a written certification. The certification shall provide: (1) the name of the hospital that conditionally released the patient; (2) the date of that release; (3) the designated mental health agency and the designated contact or staff person for the patient; (4) the violation of the condition or conditions committed by the patient; (5) the name of the screening service and the name of the person who performed the screening; and (6) the results of the screening, setting forth facts, observations and the basis for recommending the

patient be rehospitalized. This certification provides a written, factual basis for the court's resolution of the recommitment issue.

The certified screening document shall be transmitted to the court. If it is not practical to transmit the writing to the court, the finding of the assessment may be transmitted by telephone and shall be memorialized in writing by the judge upon receipt. As soon as possible, the written certification shall then be sent to the court. The court shall determine, in connection with the certified findings of the screening service, whether to rehospitalize the patient. A patient can be rehospitalized only when the standard for initial commitment is satisfied. The court shall issue an order with its finding of fact and conclusion as required by *R. 1:7-4(a)*.

- b. *N.J.S.A. 30:4-27.5(c)(3)* provides: the designated mental health agency staff person shall notify the court if the patient fails to meet the conditions of the discharge plan, and the court shall issue an order directing that the person be taken to a screening service for an assessment. The court shall determine, in conjunction with the findings of a screening service, if the patient needs to be rehospitalized and, if so, the patient shall be returned to the facility. The court shall hold a hearing within 20 days of the day the patient was returned to the facility to determine if the order of conditional discharge should be vacated.

***C. CONDITIONAL EXTENSION PENDING PLACEMENT (CEPP)
PURSUANT TO RULE 4:74-7(h) (2)***

1. The Court may enter an order of CEPP when a patient no longer satisfies the standard for involuntary commitment, but cannot be discharged to live on his/her own or with family and there is no appropriate placement immediately available, an order of conditional extension pending placement (CEPP) should be entered.¹⁶ The intent of this order is to discharge the patient as soon as an appropriate placement is found. When a CEPP Order is entered, the patient is no longer committed.

¹⁶ CEPP was formerly known as DPP (Discharged Pending Placement). The DPP status originated by administrative order of Chief Justice Hughes, dated July 28, 1978, and its concept was not incorporated

2. CEPP is not appropriate for patients who have a place to live but for whom the hospital has not yet made arrangements for follow-up care in the community. *Matter of Commitment of G.G.*, 272 N.J. Super. 597 (App. Div. 1994); *see also Matter of Commitment of B.L.*, *supra*, 346 N.J. Super. at 308; *In re Commitment of M.C.*, 385 N.J. Super. 151,162 (App. Div. 2006). The Court should not order CEPP where there is no evidence presented of "the unavailability of an appropriate placement." *Matter of Commitment of G.G.*, *supra*, 272 N.J. Super. at 605. The term "appropriate placement" as used in R. 4:74-(h)(2) refers to a facility that will provide continuing support and assistance through the day to people who are incapable of survival on their own *e.g.*, elderly patients who have lost their personal capacity to survive due to the effects of prolonged hospitalization. *In re S.L.*, *supra.*, 94 N.J. at 139-140. The phrase "appropriate placement" must be based on the justification for the CEPP exception to the general rule requiring release of those who are not dangerous within the meaning of N.J.S.A. 30:4-27.2h, i. Justification is based on the patient's incapacity to survive. *In re S.L.*, *supra.*, 94 N.J. at 140; *In re Commitment of M.C.*, *supra*, 385 N.J. Super. at 163. CEPP is not a fallback option when the state cannot implement a discharge plan within 48 hours. Nor is it a means through which the judge may delay a conditional release. *In re Commitment of M.C.*, *supra.* Fear of potential relapse and recidivism is not legally sufficient to maintain an individual on CEPP status. *I/M/O Commitment of T.J.*, 401 N.J. Super. 111 (App. Div. 2008).
3. Once an order of CEPP has been entered, the individual can be recommitted only if the procedures of N.J.S.A. 30:4-27.1 *et seq.* and R. 4:74-7 are met. A CEPP Order cannot be summarily revoked. *In re S.L.*, *supra*, 94 N.J. at 143, fn. 11. (*See also* Section II above.)
4. When a judgment of CEPP is entered, the court "shall inquire into the needs of the individual for custodial and supportive care, the desires of the individual regarding placement, the type of facility the would provide the needed level of care in the least restrictive manner, the availability of such placement, the efforts of the state to locate such placement and any other matters it deems pertinent. *In re: S.L.*, *supra.*

5. If DDD is involved the court should inquire into whether eligibility has been established for DDD, and what efforts are being made by hospital to facilitate placement. *See In re Matter of B.R.*, 202 *N.J.Super.* 182 (App. Div. 1985) (In most cases the commitment court cannot require DDD to provide services before DDD has made a determination of eligibility).
6. As long as the patient remains physically in the hospital under a CEPP Order, his/her case must receive periodic review. Such a review is known as a "CEPP review hearing" or "placement review hearing" to differentiate it from periodic review of a patient still under an order of involuntary commitment.
7. The first such placement review hearing is held within 60 days from the entry of the CEPP judgment. Prior to the review hearing, the hospital employee who has primary responsibility for placing the patient shall prepare a written report and shall make it available to the court and all counsel no later than one business day prior to the hearing. *R. 4:74-7(h)(2)*. At the placement review hearing, the Court:
 - a. reviews the needs and desires of the patient regarding placement and the recommendations of the hospital regarding placement.
 - b. reviews the efforts made by the hospital to locate a suitable placement. The court "must determine whether the State has undertaken all good faith efforts necessary to place the individual in an appropriate setting outside the mental institution." *In re S.L., supra.* 94 *N.J.* at 141. If the court is advised that an appropriate placement is available, it shall order such placement. *R. 4:74-7 (h) (2)*.
 - c. determines whether in the interim the hospital has placed the individual in the least restrictive setting in the institution.
 - d. determines whether "all reasonable efforts within available resources (are being) made to improve the individual's ability to function in a placement outside the hospital." *In re S.L., supra*, 94 *N.J.* at 141.
 - e. reviews the written report prepared by the employee who has primary responsibility for placing the patient. This report

shall be made available to the court and to counsel at least one business day prior to the hearing. *R. 4:74-7 (h) (2)*.

8. If the court is not satisfied as to the sufficiency of the hospital's efforts, an appropriate Order may be entered.
9. If placement has not been accomplished by the time of the first placement review hearing, the court should set the matter down for a second placement review hearing no later than six months after the initial CEPP hearing. Subsequent placement review hearings shall occur at least every six months until the individual is physically discharged. The court shall inquire into the same factors as in the initial placement review hearing. *R. 4:74-7 (h) (2)*.
10. The patient has the right to counsel in all placement review hearings. *R. 4:74-7 (h) (2)*
11. Notice of the date, time and place of all such hearings shall be given to the patient and his/her counsel no later than ten days prior to the hearing. At the placement review hearing, counsel has the right to introduce evidence and cross-examine. Counsel is also entitled to inspect and copy all records relating to the patient's condition (including clinical chart and records relating to placement) in advance of the hearing. *R. 4:74-7 (h) (2)*.
12. If an appropriate placement becomes available in the interval between hearings, the patient must be administratively discharged to such placement. *R. 4:74-7 (h) (2)*.
13. Court has discretion to require that a report be submitted by the parties within a six-month period following placement as to the overall adequacy of the placement. *In re S.L., supra, 94 N.J. at 141-42.*
14. At any time thereafter, any party or the court on its own motion may reinstitute proceedings concerning the individual's placement. *In re S.L., supra, 94 N.J. at 142.*

VII. DURATION AND EFFECT OF COMMITMENT ORDERS

Any court order of involuntary commitment, including a temporary order, authorizes but does not compel a hospital or facility to detain a patient. The patient shall be administratively discharged if the treatment team determines that involuntary commitment is no longer necessary. *N.J.S.A. 30:4-27.17.*

A judgment of involuntary commitment does not act as an adjudication of incompetency. *N.J.S.A. 30:4-24.2(c)* expressly states: "No patient may be presumed to be incompetent because he has been examined or treated for mental illness, regardless of whether such evaluation or treatment was voluntarily or involuntarily received." *See also In re Commitment of S.W.*, 158 *N.J. Super.* 22 (App. Div. 1978).

VIII. REVIEW HEARINGS

A. ***PROCEDURE — SEE DISCUSSION ABOVE AT IV. INITIAL COMMITMENT HEARING - PROCEDURAL***

N.J.S.A. 30:4-27.15(a) requires that the court, upon ordering the continuance of involuntary commitment or entering a judgment of conditional extension pending placement, shall, at that time, schedule a date for a subsequent court review hearing.

1. Scheduling

Periodic review hearings regarding the issue of continuing need for involuntary commitment are required at three, nine and twelve months post initial court hearing and annually (from the date of the initial hearing) thereafter. Additional review hearings may be scheduled at the court's discretion so long as at least 30 days separates hearings or there exist "extraordinary circumstances." *N.J.S.A.* 30:4-27.16; *Matter of Commitment of P.D., supra*, 381 *N.J. Super.* at 394; *R.* 4:74-7(f)(2).

2. Notice Requirements

The notice requirements contained in *N.J.S.A.* 30:4-27.13(a) apply to review hearings.

3. Court Order

Following any review hearing, the court shall execute a new order:¹⁷ (a) continuing the involuntary commitment; (b) discharging the patient; (c) discharging the patient subject to conditions; or (d) entering a judgment of conditional extension pending placement. *N.J.S.A.* 30:4-27.15 and *R.* 4:74-7(h). Therefore, with respect to any involuntarily committed patient, there should always be a court order no less recent than twelve months.

¹⁷ See Form of Order, *infra*.

B. SUBSTANTIVE

1. Burden of Proof

- a. State continues to have the burden of proof at periodic review hearings. *State v. Fields*, 77 N.J. 282 (1978).
- b. State must also establish its proofs by "clear and convincing evidence" at the periodic review hearing. N.J.S.A. 30:4-27.15(G). See Section V.B. *supra*.
- c. The State must meet the same substantive standard of commitment at the periodic review hearing as it met at the initial hearing. N.J.S.A. 30:4-27.16(a). See Section V. C. *supra*.

2. When Testimony of a Psychiatrist is Not Required.

The testimony of a psychiatrist is not necessary in certain review hearings. Advanced age of the patient or the cause or nature of the mental illness may render it appropriate to rely on the testimony of a non-psychiatrist physician to support the court's findings, if it is impractical to obtain the testimony of a psychiatrist. N.J.S.A. 30:4-27.16(b). The physician must have examined the individual no more than five days prior to the hearing. N.J.S.A. 30:4-27.16(b).

IX. VOLUNTARY COMMITMENT

A. HEARINGS REQUIRED

Rule 4:74-7(g) requires hearings for voluntary adult patients in the following two situations:

1. When a patient wishes to convert to a voluntary status after being involuntarily committed to one of the following:
 - a. a short-term care facility (a facility so designated by the Commissioner of the Department of Human Services, *N.J.S.A. 30:4-27.b*);
 - b. a psychiatric facility (a State hospital, a county psychiatric hospital, *N.J.S.A. 30:4-27.2(u)*); or
 - c. a special psychiatric hospital (a public or private hospital licensed by the Department of Health to provide voluntary and involuntary mental health services, *N.J.S.A. 30:4-27.2(c)*).

These hearings are to be held within 20 days of the date of conversion from involuntary to voluntary.

2. When a patient has been evaluated by a screening service and is thereafter admitted as a voluntary patient (no court order of temporary commitment) to one of the following:
 - a. a short-term care facility; or
 - b. a psychiatric facility.

These hearings are to be held within 20 days of the date of voluntary admission to the short-term care facility or psychiatric facility.

- N.B.** Patients must be represented by an attorney at hearings in both instances.

B. ISSUES DETERMINED

The purpose of a voluntary hearing is to determine (1) whether the patient had the capacity to make an informed decision, and (2) whether the decision was made knowingly and voluntarily. *R. 4:74-7(g)(1) and (2)*. See *Matter of Commitment of A.A.*, 252 *N.J. Super.* 170 (App. Div. 1991); *In re M.D.*, 251 *N.J. Super.* 19 (Ch. Div. 1991)

C. RATIONALE

The rationale for these hearings is set forth in the provisions of the *1990 Civil Practice Committee Report* (Section K.K.) and the *1989 Mental Commitments Subcommittee Report*. See also *In re G.M.*, 217 *N.J. Super* 629 (1987) where the court ordered judicial review of voluntary psychiatric patients although not required by statute or court rule at that time. *Zinermon v. Burch*, 494 *U.S.* 113, 110 *S.Ct.* 975, 108 *L.Ed.* 2d. 100(1990) where U.S. Supreme Court held that the allegations in the patient's complaint were sufficient to state a §1983 claim in that employees at a state mental treatment facility admitted him as a voluntary patient without ascertaining if he was mentally competent to sign admission forms.

D. PROCEDURES

R. 4:74-7(g) (1) and (2) provide that a voluntary patient must attend the hearing to ascertain that he/she is truly voluntary unless the court is satisfied that the patient does not wish to attend. Hearing notices are to be issued as with involuntary hearings except that the notices for patients voluntarily admitted to a facility (as opposed to those who were involuntarily committed but then converted to voluntary status) are not to be sent to the relatives of such patients unless the patients request so in writing. See *1992 Mental Commitments Subcommittee Report*.

E. COURT ORDER

Following the voluntary hearing of an adult, the court shall execute an order stating that (1) the voluntary admission/conversion is approved, or (2) the patient is not voluntary and is thus discharged, or (3) that the patient is not voluntary but meets the standard for involuntary commitment.

F. DISCHARGE OF VOLUNTARY PATIENTS

If a voluntary patient requests discharge, the facility shall discharge the patient as soon as possible but in every case within 48 hours or the end of the next working day from the request, whichever is longer. However, if the treatment team determines that the patient needs involuntary commitment, they shall initiate proceedings for commitment. No patient may be detained more than the 48 hour period unless the court issues a temporary order of commitment. *N.J.S.A. 30:4-27.20.*

X. PATIENTS' RIGHTS

A. AN ORDERLY AND DIGNIFIED COMMITMENT HEARING

1. The purpose of the commitment hearing is to determine whether the individual before the Court meets the legal standard for commitment. An order of commitment should be entered only after a careful weighing of the facts and application of the "dangerous to self" or "dangerous to others" standard. Strict adherence to that standard is required.
2. The decision to commit an individual, if made, deprives the patient of his/her most fundamental legal right—liberty. Accordingly, maintaining a solemn and dignified judicial atmosphere is essential. If the patient does lose his/her liberty, he/she should feel that he/she had a full and fair hearing, and that it was a court proceeding. Utmost care should be taken to ensure that the atmosphere remains judicial and that the participants do not view the proceeding as akin to a medical review or a treatment team meeting.
3. Because involuntary commitment to a mental hospital deprives the committee of important liberty interests, the procedural and substantive safeguards established by statute and Court Rules "...must be scrupulously followed." *Matter of Commitment of Raymond S., supra*, 263 N.J. Super. at 432. It is inappropriate for the judge to advance the case for commitment "...because it places the judge in the role of an adversary rather than that of a neutral decision maker." *Ibid.*
4. The judge presiding at the hearing should:
 - a. Wear judicial robes.
 - b. Have all witnesses sworn.
 - c. Insist that those in the courtroom not interject or raise their hands to "add something" they think may be "helpful" or "background". All witnesses should testify in turn, and all testimony should be elicited by counsel.

- d. Remind court personnel, if necessary, that the dignity of the individual patient must be respected at all times. Odd or unorthodox statements by a patient are not justification for laughter or snickering.
- e. Refrain from lecturing the patient.

B. THE PATIENT'S BILL OF RIGHTS — N.J.S.A. 30:4-24.2¹⁸

- 1. This comprehensive set of rights — while not directly related to the question of whether the patient is mentally ill and dangerous to self or dangerous to others — may be raised at a "treatment hearing" (see Section XIII, *infra.*) and commitment judges should be generally familiar with the bill's provisions.
- 2. Key features include:
 - a. Commitment in and of itself is not a basis for depriving a patient of basic civil rights such as voting, driver's license, and other licenses, permits or privileges of citizenship.
 - b. The right to be presumed competent. Commitment for mental illness does not of itself give rise to a finding of incompetence.
 - c. The right to be free from unnecessary or excessive medication. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program. Voluntarily committed patients have the right to refuse medication.

¹⁸ See N.J.S.A. 30:4-27.11 amended and enlarged by legislation signed into law July 31, 1991 to give mentally ill adults involuntarily at screening centers and short-term care facilities the same rights as such patients at County and State psychiatric hospitals.

- d. The right to be free of shock treatment, psychosurgery, experimental research or sterilization¹⁹ unless the patient gives express and informed consent after consultation with counsel. Exception: if a patient has been adjudicated incompetent, a court of competent jurisdiction can order these procedures. The patient, however, has the right to counsel, and right to plenary hearing before any of these can be administered. *N.J.S.A. 30:4-24.2 (d) (2)*.
- e. The right to communicate with an attorney, physician or the courts.

Rights a. through e. above may never be abridged, suspended or denied. *N.J.S.A. 30:4-24.2(g) (1)*.

- 3. Other rights include the right to privacy and dignity, to treatment in the least restrictive conditions necessary; to keep and use personal possessions; to see visitors each day; to have access to telephones and letter writing material; to regular physical exercise; to be outdoors at frequent intervals; to practice the religion of the patient's choice; to receive prompt and adequate medical care. *N.J.S.A. 30:4-24.2(e)*. These rights can only be denied when the director of the program determines it is imperative to do so and a notice of denial filed in the patient's treatment record contains an explanation of the reason for the denial. *N.J.S.A. 30:4-24.2(g) (1)*.
 - a. Rights denials shall not exceed 30 days unless renewed.
 - b. Notice of rights denial must be given to patient's attorney.
- 4. Every individual who is mentally ill is entitled to medical care and other professional services in accordance with accepted standards. *N.J.S.A. 30:4-24-1* "It is the policy of this state that persons in the public mental health system receive inpatient treatment and rehabilitation service in accordance with the highest professional standards and which will enable those hospitalized persons to return to their community as soon as it is clinically appropriate: *N.J.S.A. 30:4-27.1(c)*.
- 5. The right to have examinations and services provided in the patient's primary means of communication including, as soon as possible, the aid of an interpreter if needed because the patient is of limited

¹⁹ Additional substantive criteria apply and are set forth in *In re Matter of Grady*, 85 N.J. 235 (1981).

English-speaking ability or suffers from a speech or hearing impairment.

C. A QUALIFIED INTERPRETER

1. For deaf or hearing impaired.
2. For individuals who do not speak English as their primary language.

D. THE "DUALY-DIAGNOSED" PATIENT

1. Patients who are "dually diagnosed" (mentally ill and developmentally disabled) may petition the commitment judge to order the Division of Developmental Disabilities (DDD) in the Department of Human Services joined as a party to the commitment hearing for the purposes set forth in paragraph 3 below.
2. This joinder is generally an order to show cause and is most frequently sought by patients who have been ordered CEPP (judgment of conditional extension pending placement) and are awaiting placement by DDD.
3. The commitment court may enter orders overseeing DDD's performance of its ministerial obligations for the dually diagnosed, but it may not order DDD to accept an individual who does not meet the statutory and regulatory criteria for DDD eligibility. *In re Matter of B.R.*, 202 N.J. Super. 182, 187 (App. Div. 1985), *certif. denied* 102 N.J. 354 (1986).

XI. RAISING "TREATMENT ISSUES" AT COMMITMENT HEARING

A. STANDARD OF TREATMENT

All psychiatric patients are entitled to receive medical treatment in accordance with accepted standards. *N.J.S.A. 30:4-24.1; In re D.J.M.*, 158 *N.J. Super.* 497 (App. Div. 1978). Those in the public mental health system are entitled to receive inpatient treatment and rehabilitation services in accordance with the highest professional standard and which will enable them to return to their community as soon as it is clinically appropriate. *N.J.S.A. 30:4-27.1(c)*.

B. NOTICE REQUIRED

Patients may challenge whether the medical or psychiatric care they are receiving is in accordance with the standards stated in the preceding paragraph so long as they give adequate notice to the Court, county counsel, and the hospital of their intention to do so. *In re D.J.M., supra*, 158 *N.J. Super.* at 502. If funding is involved, the officials overseeing it should also be notified. *In re D.J.M., supra*, 158 *N.J. Super.* at 502, n. 1.

C. SCHEDULING

Such challenges are generally heard at the time of the patient's regularly scheduled review hearing.

D. SEPARATE PLEADINGS

The Appellate Division did not decide whether it is necessary to file a separate pleading or complaint in lieu of prerogative writ to review treatment issues. *In re D.J.M., supra*.

E. POSSIBLE ISSUES

Among the treatment issues which can be raised are whether the treatment plan effectively addresses the need to eradicate behavior which prevents discharge, whether proper medical care for a specific physical ailment is being provided and the adequacy of treatment for drug or alcohol abuse.

XII. COMMITMENT OF MINORS

A. STANDARD OF COMMITMENT

Pursuant to R. 4:74-7A and the Supreme Court in *In the Matter of the Commitment of N.N.*, 146 N.J. 112 (1996), a minor in need of involuntary commitment:

1. Is under the age of eighteen, R. 4:74-7A(a)(1).
2. Suffers from childhood mental illness, defined as a “current substantial disturbance of thought, mood, perception, or orientation which differs from that which is typical of children of a similar developmental stage, and which significantly impairs judgment, behavior, or capacity to recognize reality when also compared with children of a similar developmental stage. R. 4:74-7A(a)(2).
 - a. A seizure disorder, a developmental disability, organic brain syndrome, a physical or sensory handicap, or brief period or periods of intoxication caused by alcohol or other substances is not sufficient by itself to meet the criteria for childhood mental illness. *Ibid.*
3. Is dangerous to self, others or property as a result of the childhood mental illness. The same standards that apply to adults apply to children. See Section V.C.3, *supra*.
 - a. If a minor is under 14 years of age, dangerous to self also means that there is a substantial likelihood that the failure to provide immediate, intensive, institutional, psychiatric therapy will create in the reasonably foreseeable future a genuine risk of irreversible or significant harm to the child arising from the interference with or arrest of the child’s growth and development and, ultimately, the child’s capacity to adapt and socialize as an adult. R. 4:74-7A(a)(3). *In the Matter of the Commitment of N.N.*, *supra*.

4. Is in need of intensive psychiatric treatment that can be provided at a psychiatric hospital, special psychiatric hospital or children's crisis intervention service and which cannot be provided in the home, the community or on an outpatient basis. *R. 4:74-7A(b)(1)*.

B. COMMENCEMENT OF AN ACTION

1. Screening Service Referral — Most applications for an order of temporary commitment are brought by a short term care or psychiatric facility or special psychiatric hospital to which a minor has been involuntarily admitted from a screening service referral. The minor will have been assessed and a screening document will have been completed. The minor would have then been evaluated by a psychiatrist or other physician who will have completed a screening certificate indicating that the person is in need of involuntary commitment. Upon completion of the screening certificate, screening service staff will have determined the appropriate facility into which the person will be placed. A second screening certificate will be completed by a psychiatrist or physician at the facility. A minor cannot be detained at a short term care facility for more than 72 hours from the time the screening document was completed. Accordingly, the facility must obtain an order of temporary commitment within 72 hours or the minor must be discharged. *R. 4:74-7(b)(1)*.
- 2.. Alternate Referral — If a screening service procedure is not used, the application for an order of temporary commitment must be supported by two clinical certificates, one of which must be prepared by a psychiatrist, stating that the minor is in need of involuntary commitment. If the application is made after a voluntary patient requests discharge from a facility or hospital, the minor may be detained for not more than 48 hours after the request or until the end of the next working day, whichever is later. If proceedings are instituted by independent application, there shall be no involuntary commitment prior to the entry of a temporary commitment order by the court. *R. 4:74-7(b)(2)*.

C. CONTENTS OF CERTIFICATES FOR MINORS

The certificates must state with particularity the facts on which the psychiatrist, physician or mental health screener relies in concluding that:

- The minor suffers from a childhood mental illness;
- The childhood mental illness causes the patient to be dangerous to self or others or property as defined by *R. 4:74-7A(a)(3)*; and
- The minor is in need of intensive psychiatric treatment that can be provided at a psychiatric hospital, special psychiatric hospital or children's crisis intervention service and which cannot be provided in the home, the community or on an outpatient basis. *R. 4:74-7A(b)(1)*.

A person who is a relative by blood or marriage of the person being examined shall not execute any required certificate. *R. 4:74-7(b)3(B)*.

If a screening service referral is used, the same psychiatrist shall not sign both the screening certificate and the clinical certificate unless that psychiatrist has made a reasonable but unsuccessful attempt to have another psychiatrist conduct the evaluation and execute the certificate. *Ibid.*

D. ORDER OF TEMPORARY COMMITMENT FOR A MINOR

The court may enter an order of temporary commitment authorizing the admission to or retention of custody by a facility pending the final hearing if it finds probable cause, based on the certificates filed that the person is in need of involuntary commitment. The order of temporary commitment must include the following:

- A place and day certain for the commitment hearing, which shall be within 14 days after the initial inpatient admission to the facility, which date shall not be subject to adjournment except that in exceptional circumstances and for good cause shown in open court and on the record, the hearing may be adjourned for a period of not more than seven days. *R. 4:74-7A(b)(2)*.
- Assignment of counsel to present the case for involuntary commitment.
- Appointment of a guardian *ad litem* to represent the minor and, if the guardian is not an attorney, shall appoint counsel for the guardian *ad litem* as well. *R. 4:74-7A(b)(3)*.
- The persons to be notified by the county adjuster of the time and place of hearing, the mode of service of the notice, and the time within which the notice must be served.
- The notice shall be served not less than five days prior to the date of the hearing. *R. 4:74-7A(b)(2)*.

- The form of notice served upon the patient and patient's counsel shall include a copy of the temporary court order, a statement of the patient's rights at the hearing and the screening or clinical certificates and supporting documents. *R. 4:74-7(c)*.

E. REVIEW OF ORDER OF TEMPORARY COMMITMENT FOR MINORS

Referral from a Screening Service:

- Is the individual under the age of 18? If the person is eighteen years or older, the procedure for the involuntary commitment of an adult must be followed.
- Has the minor been detained in a facility for more than 72 hours from the time the screening document was completed? If yes, the minor must be discharged.
- Has the screening document been completed? If no, the application is not complete and the order should not be entered.
- Has a clinical certificate been completed by a psychiatrist or physician affiliated with the screening service?
- Has another clinical certificate been completed by a psychiatrist or physician on the patient's treatment team?
- Was at least one of the two submitted certificates completed by a psychiatrist? If not, the application is not complete and the order should not be entered.
- Were the screening document and the clinical certificate completed by the same psychiatrist? If yes, has the psychiatrist made a reasonable but unsuccessful attempt to have another psychiatrist conduct an evaluation and execute the certificate.
- Is any person completing a document or certificate related by blood or marriage to the person being examined? If yes, the document may not be accepted?
- Were copies of the three documents filed with the office of the county adjuster?

Contents of the Clinical Certificates:

- Are the certificates in the prescribed form (see screening document and clinical/screening certificate for involuntary commitment)?
- Do the certificates state the conclusion that involuntary commitment is needed, *i.e.* that the minor suffers from childhood mental illness, that the childhood mental illness causes the minor to be dangerous to self or others or property, and that the minor is in need of intensive psychiatric treatment that can be provided at a psychiatric hospital, special psychiatric hospital or children's crisis intervention service and which cannot be provided in the home, the community or on an outpatient basis?
- Are there specific facts supporting the conclusion that commitment is needed?
- Are they properly certified in accordance with *R.* 1:4-4(b)?

Standard of Review

- Is there probable cause to believe that the minor is in need of involuntary commitment, *i.e.* is there probable cause to believe that the minor suffers from childhood mental illness, that the childhood mental illness causes the minor to be dangerous to self or others or property, and that the minor is in need of intensive psychiatric treatment that can be provided at a psychiatric hospital, special psychiatric hospital or children's crisis intervention service and which cannot be provided in the home, the community or on an outpatient basis.

Contents of Order of Temporary Commitment

- Is there a place and date certain for the initial commitment hearing?
- Is the initial commitment hearing scheduled within 14 days of the in-patient admission to the facility or hospital?
- Is there assignment of a guardian *ad litem* to represent the minor? (N.B. the guardian *ad litem* cannot be the applicant for commitment)
- If the guardian *ad litem* is not an attorney, has counsel been appointed to represent the guardian *ad litem*?
- Does the order contain a list of persons to be notified by the county adjuster of the time and place of the hearing?

- Is the mode of service of the hearing notice specified?
- Does the order contain the date by which the hearing notice must be served, at least five days prior to the court hearing
- Does the order specify that copies of the clinical and screening certificates, as well as any other supporting documents, the order for temporary commitment, and statements of patient's rights at the court hearing be served on the patient and the patient's attorney?

Alternate Referral (not from screening service)

- Are there two clinical certificates completed by physicians, one of whom must be a psychiatrist? There will be no screening certificate.
- Are the certificates prepared and executed by a psychiatrist or physician who has conducted an examination of the person within three days of presenting the person for admission to a facility. If no, the application must be rejected. The required contents of the certificates and order are the same as for a screening service referral.
- If the application is made for a voluntary patient who is seeking to be discharged, but whose treatment team believes is in need of involuntary commitment, has the patient been detained for more than 48 hours after the request or until the end of the next working day, whichever is later? If yes, the minor must be discharged.

F. INITIAL HEARING

1. Discovery

The patient's counsel or guardian *ad litem* shall have the right to inspect and copy all records relating to the patient's mental condition, including the patient's clinical chart. The court may also order testing or examination of the patient by an independent psychiatrist, psychologist or other expert. The cost of such examination and the expert's fee for testifying, if any, shall be borne by the person or public body charged with the patient's legal settlement. *R. 4:74-7(d)*.

2. Hearing

- The application for involuntary commitment shall be supported by the oral testimony of a psychiatrist on the patient's treatment team who has conducted a personal examination of the patient as close to

the court hearing date as possible, but in no event more than five calendar days prior to the court hearing. R. 4:74-7(e)

- If a licensed psychologist has examined the patient, the court may also require the psychologist to appear and testify in the matter. *Ibid.*
- Any expert witness who is to testify shall prepare a written report and shall make it available to the court and all counsel no later than one business day prior to the hearing. *Ibid.*
- The report shall be in a form prescribed by the Department of Human Services and subject to approval by the Administrative Director of the Courts. *Ibid.*
- Other members of the patient's treatment team may also testify at the hearing. *Ibid.*
- Members of the minor's family may testify if the court so determines. *Ibid.*
- The minor has the right to be present at the hearing, but may be excused from the courtroom during all or any portion of the hearing if the court determines that the because of the patient's conduct at the hearing, it cannot reasonably continue while the patient is present. *Ibid.*
- In no case shall the patient appear *pro se*. *Ibid.*
- The patient, through counsel, shall have the right to present evidence and to cross-examine witnesses. *Ibid.*
- The hearing shall be held in camera, except as otherwise provided by R. 3:1902 (acquittal by reason of insanity). *Ibid.*

G. ORDER OF COMMITMENT FOLLOWING INITIAL HEARING

1. For a minor fourteen years of age or older

The court may enter an order of commitment for a minor fourteen years of age or older if it finds that:

- (a) the minor suffers from a childhood mental illness,
- (b) the childhood mental illness causes the minor to be dangerous to self or others or property as defined by *N.J.S.A. 30: 4-27.2h* and *-27.2i*, and
- (c) the minor is in need of intensive psychiatric treatment that can be provided at a psychiatric facility, special psychiatric hospital, or children's crisis intervention service and which cannot be provided in the home, the community or on a outpatient basis;

2. For a minor under fourteen years of age

The court may enter an order of commitment for a minor fourteen years of age or older if it finds that:

- (a) the minor suffers from childhood mental illness,
 - (b) the childhood mental illness causes the minor to be dangerous to self or others or property as defined by R. 4:74-7A(a)(3), and
 - (c) the minor is in need of intensive psychiatric treatment that can be provided at a psychiatric facility, special psychiatric hospital, or children's crisis intervention service and which cannot be provided in the home, the community or on an outpatient basis.
3. The commitment shall be judicially reviewed no later than every 3 months from the date of its last entry until the minor is discharged or reaches the age of 18. R. 4:74-7A(b)(5).
 4. The hearings on an application to convert to voluntary status pursuant to R. 4:74-7(g) shall be held within 14 days rather than the 20 days for adults. R. 4:74-7A(b)(6).

H. VOLUNTARY ADMISSION

Any minor 14 years of age or older may request admission to a psychiatric facility, special psychiatric hospital, or children's crisis intervention service provided that the court finds that the minor's request is informed and voluntary and enters an order approving the admission. If voluntarily admitted, a minor may discharge himself or herself from the facility in the same manner as an adult who has voluntarily admitted himself or herself. An order approving a voluntary admission shall be reviewed judicially in summary manner no later than every 3 months from the date of its last entry. R. 4:74-7A(c).

I. PARENTAL ADMISSION AND DISCHARGE

1. Admission – No court approval is needed for the admission of a minor by the minor's parent, parents, or other person *in loco parentis* to a psychiatric facility, special psychiatric hospital, or children's crisis intervention service for the evaluation or diagnosis of a

childhood mental illness provided the admission is independently approved by a physician on the staff of the facility and does not exceed 7 days. If further hospitalization is needed, a hearing must be conducted, in accordance with R. 4:74-7(e). If an application for commitment is made during the admission, the final hearing should be held within 14 days of the initial inpatient admission to the facility. No adjournments will be granted unless the application meets the requirements of R. 4:74-7A(b)(2). R. 4:74-7A(d)(1).

2. Discharge – The admitting parent or other person *in loco parentis* may have the minor discharged upon oral or written request. Discharge shall take place as soon as practicable, but no later than 48 hours after the request unless the facility obtains a temporary order of commitment. R. 4:74-7A(d)(2).