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I N S E N A T E

May 20, 2010

Introduced by Sens. HUNTLEY, MORAHAN, BRESLIN, LIBOUS, PADAVAN, ADAMS, DUANE, HANNON, McDONALD, MONTGOMERY, ONORATO, STAVISKY, VOLKER -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to changing the name of the office of mental retardation and developmental disabilities to the New York state office for people with developmental disabilities; to amend chapter 455 of the laws of 2007 relating to the use of certain language and terminology when dealing with certain issues, in relation to the language to be used in reference to persons with developmental disabilities; and to repeal subdivision 6 of section 29.29 of the mental hygiene law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 2, 11 and 28 of section 1.03 of the mental
2 hygiene law, subdivision 2 as amended by chapter 223 of the laws of
3 1992, subdivision 11 as added by chapter 978 of the laws of 1977 and
4 subdivision 28 as amended by chapter 1024 of the laws of 1981, are
5 amended to read as follows:
6 2. "Commissioner" means the commissioner of mental health, the commis-
7 sioner of [mental retardation and] developmental disabilities and the
8 commissioner of alcoholism and substance abuse services as used in this
9 chapter. Any power or duty heretofore assigned to the commissioner of
10 mental hygiene or to the department of mental hygiene pursuant to this
11 chapter shall hereafter be assigned to the commissioner of mental health
12 in the case of facilities, programs, or services for [the mentally ill]
13 INDIVIDUALS WITH MENTAL ILLNESS, to the commissioner of [mental retarda-
14 tion and] developmental disabilities in the case of facilities,
15 programs, or services for [the mentally retarded and developmentally
16 disabled] INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES, to the commis-
17 sioner of alcoholism and substance abuse services in the case of facili-
18 ties, programs, or services for alcoholism, alcohol abuse, substance

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 abuse, substance dependence, and chemical dependence in accordance with
2 the provisions of titles D and E of this chapter.

3 11. "School" means the in-patient service of a developmental center or
4 other residential facility for [the mentally retarded and develop-
5 mentally disabled] INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES under the
6 jurisdiction of the office [of mental retardation and] FOR PEOPLE WITH
7 developmental disabilities or a facility for the residential care,
8 treatment, training, or education of [the mentally retarded and develop-
9 mentally disabled] INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES which has
10 been issued an operating certificate by the commissioner of [mental
11 retardation and] developmental disabilities.

12 28. "Community residence" means any facility operated by or subject to
13 licensure by the office of mental health or the office [of mental retar-
14 dation and] FOR PEOPLE WITH developmental disabilities which provides a
15 supervised residence or residential respite services for [mentally disa-
16 bled persons] INDIVIDUALS WITH MENTAL DISABILITIES and a homelike envi-
17 ronment and room, board and responsible supervision for the habilitation
18 or rehabilitation of [mentally disabled persons] INDIVIDUALS WITH MENTAL
19 DISABILITIES as part of an overall service delivery system. A community
20 residence shall include an intermediate care facility with fourteen or
21 fewer residents that has been approved pursuant to law, and a community
22 residential facility as that term is used in section 41.36 of this chap-
23 ter. Such term does not include family care homes.

24 S 2. Section 5.01 of the mental hygiene law, as added by chapter 978
25 of the laws of 1977, is amended to read as follows:

26 S 5.01 Department of mental hygiene.

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

30 (1) office of mental health;

31 (2) office [of mental retardation and] FOR PEOPLE WITH developmental
32 disabilities;

33 (3) office of alcoholism and substance abuse.

34 S 3. Section 5.03 of the mental hygiene law, as amended by chapter 223
35 of the laws of 1992, is amended to read as follows:

36 S 5.03 Commissioners.

37 The head of the office of mental health shall be the commissioner of
38 mental health; the head of the office [of mental retardation and] FOR
39 PEOPLE WITH developmental disabilities shall be the commissioner of
40 [mental retardation and] developmental disabilities; and the head of the
41 office of alcoholism and substance abuse services shall be the commis-
42 sioner of alcoholism and substance abuse services. Each commissioner
43 shall be appointed by the governor, by and with the advice and consent
44 of the senate, to serve at the pleasure of the governor.

45 S 4. Subdivision (a) and paragraph 1 of subdivision (b) of section
46 5.05 of the mental hygiene law, subdivision (a) as added by chapter 978
47 of the laws of 1977 and paragraph 1 of subdivision (b) as amended by
48 chapter 294 of the laws of 2007, are amended to read as follows:

49 (a) The commissioners of the [offices] OFFICE of mental health and
50 [mental retardation and developmental disability of the department] THE
51 OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, as the [head] HEADS
52 of the department, shall jointly visit and inspect, or cause to be
53 visited and inspected, all facilities either public or private used for
54 the care, treatment and rehabilitation of [persons suffering from] INDI-
55 VIDUALS WITH mental illness[, mental retardation] and developmental

[disability] DISABILITIES in accordance with the requirements of section four of article seventeen of the New York state constitution.

(1) The commissioners of the [offices] OFFICE of mental health, [mental retardation and] THE OFFICE FOR PEOPLE WITH developmental disabilities and THE OFFICE OF alcoholism and substance abuse services shall constitute an inter-office coordinating council which, consistent with the autonomy of each office for matters within its jurisdiction, shall ensure that the state policy for the prevention, care, treatment and rehabilitation of INDIVIDUALS WITH mental illness[, mental retardation] and developmental [disability] DISABILITIES, alcoholism, alcohol abuse, substance abuse, substance dependence, and chemical dependence is planned, developed and implemented comprehensively; that gaps in services to [the multiply disabled] INDIVIDUALS WITH MULTIPLE DISABILITIES are eliminated and that no person is denied treatment and services because he or she [suffers from] HAS more than one disability; that procedures for the regulation of programs which offer care and treatment for more than one class of [mentally disabled] persons WITH MENTAL DISABILITIES be coordinated between the offices having jurisdiction over such programs; and that research projects of the institutes, as identified in section 7.17 or 13.17 of this chapter, are coordinated to maximize the success and cost effectiveness of such projects and to eliminate wasteful duplication.

S 5. The opening paragraph of paragraph 1 of subdivision (b) of section 5.07 of the mental hygiene law, as amended by chapter 223 of the laws of 1992, is amended to read as follows:

The [offices] OFFICE of mental health [and mental retardation and], THE OFFICE FOR PEOPLE WITH developmental disabilities and the office of alcoholism and substance abuse services shall each formulate a statewide comprehensive five-year plan for the provision of all state and local services for [the mentally ill, mentally retarded and developmentally disabled] PERSONS WITH MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES, and those suffering from alcoholism and substance abuse, respectively. Each plan shall be formulated from local comprehensive plans developed by each local governmental unit, with participation of consumers, consumer groups, providers of services and departmental facilities furnishing services to [the mentally disabled] INDIVIDUALS WITH MENTAL DISABILITIES of the area in conformance with statewide goals and objectives established by the advisory council of each office. Each plan shall:

S 6. Subdivisions (a), (b), (j) and (o) of section 10.03 of the mental hygiene law, as added by chapter 7 of the laws of 2007, are amended to read as follows:

(a) "Agency with jurisdiction" as to a person means that agency which, during the period in question, would be the agency responsible for supervising or releasing such person, and can include the department of correctional services, the office of mental health, the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, and the division of parole.

(b) "Commissioner" means the commissioner of mental health or the commissioner of [mental retardation and] developmental disabilities.

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

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

11 S 7. Subdivision (a) of section 10.05 of the mental hygiene law, as
12 added by chapter 7 of the laws of 2007, is amended to read as follows:

13 (a) The commissioner of mental health, in consultation with the
14 commissioner of the department of correctional services and the commis-
15 sioner of [mental retardation and] developmental disabilities, shall
16 establish a case review panel consisting of at least fifteen members,
17 any three of whom may sit as a team to review a particular case. At
18 least two members of each team shall be professionals in the field of
19 mental health or the field of [mental retardation and] developmental
20 disabilities, as appropriate, with experience in the treatment, diagno-
21 sis, risk assessment or management of sex offenders. To the extent prac-
22 ticable, the workload of the case review panel should be evenly distrib-
23 uted among its members. Members of the case review panel and psychiatric
24 examiners should be free to exercise independent professional judgment
25 without pressure or retaliation for the exercise of that judgment from
26 any source.

27 S 8. The article heading of article 13 of the mental hygiene law, as
28 added by chapter 978 of the laws of 1977, is amended to read as follows:

29 OFFICE [OF MENTAL RETARDATION AND] FOR PEOPLE WITH
30 DEVELOPMENTAL DISABILITIES

31 S 9. The closing paragraph of section 13.01 of the mental hygiene law,
32 as amended by chapter 353 of the laws of 2004, is amended to read as
33 follows:

34 To accomplish these goals and meet the particular needs of [persons
35 with mental retardation and] INDIVIDUALS WITH developmental disabili-
36 ties, a new autonomous agency to be known as the office [of mental
37 retardation and] FOR PEOPLE WITH developmental disabilities has been
38 established. The office and its commissioner shall plan and work with
39 local governments and voluntary organizations and all providers of
40 services, and [persons with mental retardation and] INDIVIDUALS WITH
41 developmental disabilities and their families and representatives, to
42 develop an effective, integrated, comprehensive system for the delivery
43 of all necessary supports and services to all [persons with mental
44 retardation and] INDIVIDUALS WITH developmental disabilities and to
45 create financing procedures and mechanisms to support such a system of
46 supports and services to ensure that all individuals with [mental retar-
47 dation and] developmental disabilities in need of supports and services
48 receive appropriate and timely supports and services close to their
49 families and community. In carrying out these responsibilities, the
50 office and its commissioner shall make full use of existing services in
51 the community, including those provided by voluntary and other service
52 organizations, and within annual amounts made available shall add
53 in-home, residential and day service and support capacity, to address
54 the needs of [persons with mental retardation and] INDIVIDUALS WITH
55 developmental disabilities.

1 ANY PROVISIONS OF THIS ARTICLE WHICH EXPLICITLY OR IMPLICITLY APPLY
2 TO, OR REFERENCE, PERSONS WHO ARE MENTALLY RETARDED, SHALL BE DEEMED TO
3 APPLY TO, OR REFERENCE, PERSONS WITH DEVELOPMENTAL DISABILITIES.

4 S 10. Section 13.03 of the mental hygiene law, as added by chapter 978
5 of the laws of 1977, is amended to read as follows:

6 S 13.03 Definitions.

7 As used in this title:

8 1. "office" means the office [of mental retardation and] FOR PEOPLE
9 WITH developmental disabilities.

10 2. "commissioner" means the head of the office [of mental retardation
11 and] FOR PEOPLE WITH developmental disabilities.

12 S 11. The opening paragraph of subdivision (c) of section 13.05 of the
13 mental hygiene law, as amended by chapter 55 of the laws of 1992, is
14 amended to read as follows:

15 The mental retardation and developmental disabilities advisory council
16 shall have no executive, administrative or appointive duties. The coun-
17 cil shall have the duty to foster public understanding and acceptance of
18 [mental retardation and] developmental disabilities. It shall, in coop-
19 eration with the commissioner of [mental retardation and] developmental
20 disabilities, establish statewide goals and objectives for services for
21 [persons with mental retardation and] INDIVIDUALS WITH developmental
22 disabilities and shall advise the commissioner on matters related to
23 development and implementation of the [OMRDD's] OPWDD'S triennial state
24 developmental disabilities comprehensive plan as required under para-
25 graph two of subdivision (b) of section 5.07 of this chapter. The advi-
26 sory council shall have the power to consider any matter relating to the
27 improvement of the state [mental retardation and] developmental disabil-
28 ities program and shall advise the commissioner of [mental retardation
29 and] developmental disabilities thereon and on any matter relating to
30 the performance of their duties with relation to [persons with mental
31 retardation and] INDIVIDUALS WITH developmental disabilities and on
32 policies, goals, budget and operation of developmental disabilities
33 services.

34 S 12. The section heading and subdivision (a) of section 13.07 of the
35 mental hygiene law, the section heading as added by chapter 978 of the
36 laws of 1977 and subdivision (a) as amended by chapter 676 of the laws
37 of 1994, are amended to read as follows:

38 Office [of mental retardation and] FOR PEOPLE WITH developmental disa-
39 bilities; scope of responsibilities.

40 (a) The office [of mental retardation and] FOR PEOPLE WITH develop-
41 mental disabilities shall assure the development of comprehensive plans,
42 programs, and services in the areas of research, prevention, and care,
43 treatment, habilitation, rehabilitation, vocational and other education,
44 and training of [persons with mental retardation and] INDIVIDUALS WITH
45 developmental disabilities. Such plans, programs, and services shall be
46 developed by the cooperation of the office, other offices of the depart-
47 ment where appropriate, other state departments and agencies, local
48 governments, community organizations and agencies providing services to
49 [persons with mental retardation and] INDIVIDUALS WITH developmental
50 disabilities, [and persons with mental retardation and developmental
51 disabilities,] their families and representatives. It shall provide
52 appropriate facilities, programs, supports and services and encourage
53 the provision of facilities, programs, supports and services by local
54 government and community organizations and agencies.

1 S 13. Subdivision (f) of section 13.09 of the mental hygiene law, as
2 added by chapter 491 of the laws of 2008, is relettered subdivision (g)
3 and amended to read as follows:

4 (g) The commissioner, in cooperation with other applicable state agen-
5 cies, shall be authorized to collect, retain or modify data or records,
6 or to transmit such data or records to the division of criminal justice
7 services, or to the criminal justice information services division of
8 the federal bureau of investigation, for the purposes of responding to
9 queries to the national instant criminal background check system regard-
10 ing attempts to purchase or otherwise take possession of firearms, as
11 defined in 18 USC 921(a)(3), in accordance with applicable federal laws
12 or regulations. Such records shall include only names and other non-
13 clinical identifying information of persons who have had a guardian
14 appointed for them pursuant to any provision of state law, based on a
15 determination that as a result of marked subnormal intelligence, mental
16 illness, incapacity, condition or disease, they lack the mental capacity
17 to contract or manage their own affairs, and persons who have been
18 involuntarily committed to a facility pursuant to article fifteen of
19 this chapter, or article seven hundred thirty or section 330.20 of the
20 criminal procedure law or sections 322.2 or 353.4 of the family court
21 act. The commissioner shall establish within the office [of mental
22 retardation and] FOR PEOPLE WITH developmental disabilities an adminis-
23 trative process to permit a person who has been or may be disqualified
24 from possessing such a firearm pursuant to 18 USC 922(4)(d) to petition
25 for relief from that disability where such person's record and reputa-
26 tion are such that such person will not be likely to act in a manner
27 dangerous to public safety and where the granting of the relief would
28 not be contrary to public safety. The commissioner shall promulgate
29 regulations to establish the relief from disabilities program, which
30 shall include, but not be limited to, provisions providing for: (i) an
31 opportunity for a disqualified person to petition for relief in writing;
32 (ii) the authority for the agency to require that the petitioner undergo
33 a clinical evaluation and risk assessment; and (iii) a requirement that
34 the agency issue a decision in writing explaining the reasons for a
35 denial or grant of relief. The denial of a petition for relief from
36 disabilities may be reviewed de novo pursuant to the proceedings under
37 article seventy-eight of the civil practice law and rules.

38 S 14. The section heading of section 13.11 of the mental hygiene law,
39 as added by chapter 978 of the laws of 1977, is amended to read as
40 follows:

41 Organization and administration of the office [of mental retardation
42 and] FOR PEOPLE WITH developmental disabilities and its facilities.

43 S 15. The section heading of section 13.15 of the mental hygiene law,
44 as added by chapter 978 of the laws of 1977, is amended to read as
45 follows:

46 Programs of the office [of mental retardation and] FOR PEOPLE WITH
47 developmental disabilities.

48 S 16. The section heading of section 13.17 of the mental hygiene law,
49 as added by chapter 978 of the laws of 1977, is amended to read as
50 follows:

51 Programs, services, and operations of facilities in the office [of
52 mental retardation and] FOR PEOPLE WITH developmental disabilities.

53 S 17. Subdivisions (a) and (d) of section 13.19 of the mental hygiene
54 law, subdivision (a) as amended by chapter 307 of the laws of 1979 and
55 subdivision (d) as added by chapter 978 of the laws of 1977, are amended
56 to read as follows:

1 (a) The commissioner may, within the amounts appropriated therefor,
2 appoint and remove in accordance with law and applicable rules of the
3 state civil service commission, such officers and employees of the
4 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
5 bilities and school and facility officers and employees who are desig-
6 nated managerial or confidential pursuant to article fourteen of the
7 civil service law as are necessary for efficient administration.

8 (d) The use of volunteers at facilities in the office [of mental
9 retardation and] FOR PEOPLE WITH developmental disabilities shall be
10 encouraged. The commissioner may establish regulations governing such
11 volunteer services.

12 S 18. The section heading and subdivisions (a) and (c) of section
13 13.21 of the mental hygiene law, the section heading and subdivision (c)
14 as added by chapter 978 of the laws of 1977 and subdivision (a) as
15 amended by chapter 538 of the laws of 1987, are amended to read as
16 follows:

17 Directors of schools in the office [of mental retardation and] FOR
18 PEOPLE WITH developmental disabilities.

19 (a) The director of a school in the office [of mental retardation and]
20 FOR PEOPLE WITH developmental disabilities shall be appointed by the
21 commissioner and shall be its chief executive officer. The director of a
22 school shall be the director of the developmental disabilities services
23 office serving the areas designated by the commissioner in regulation,
24 and in such context, the term facility shall also refer to such develop-
25 mental disabilities services office. Each such director shall be in the
26 non-competitive class and designated as confidential as defined by
27 subdivision two-a of section forty-two of the civil service law and
28 shall serve at the pleasure of the commissioner. Except for school and
29 facility officers and employees for which subdivision (a) of section
30 13.19 of this article makes the commissioner the appointing and removing
31 authority, the director of a school shall have the power, within amounts
32 appropriated therefor, to appoint and remove in accordance with law and
33 applicable rules of the state civil service commission such officers and
34 employees of the facility of which he OR SHE is director as are neces-
35 sary for its efficient administration. He OR SHE shall in exercising his
36 OR HER appointing authority take, consistent with article twenty-three-A
37 of the correction law, all reasonable and necessary steps to insure that
38 any such person so appointed has not previously engaged in any act in
39 violation of any law which could compromise the health and safety of
40 patients in the facility of which he OR SHE is director. He OR SHE
41 shall manage the facility, and administer its personnel system, subject
42 to applicable law, the regulations of the commissioner, and the rules of
43 the state civil service commission. Before the commissioner shall issue
44 any such regulation or any amendment or revision thereof, he OR SHE
45 shall consult with the directors of schools in the office regarding its
46 suitability. The director shall maintain effective supervision of all
47 parts of the facility and over all persons employed therein or coming
48 thereon and shall generally direct the care and treatment of patients.
49 Directors presently serving at facilities of the office shall continue
50 to serve under the terms of their original appointment.

51 (c) In any investigation into the treatment and care of patients or
52 the conduct, performance, or neglect of duty of officers or employees,
53 the director of a school in the office [of mental retardation and] FOR
54 PEOPLE WITH developmental disabilities shall be authorized to subpoena
55 witnesses, compel their attendance, administer oaths to witnesses, exam-
56 ine witnesses under oath, and require the production of any books or

papers deemed relevant to the inquiry or investigation. A subpoena issued under this section shall be regulated by the civil practice law and rules.

S 19. Subdivisions (b) and (d) of section 13.27 of the mental hygiene law, as added by chapter 978 of the laws of 1977, are amended to read as follows:

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

(d) Laboratory services. Subject to the commissioner's regulations, the director may agree to make the laboratory service of a facility in the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities available to adjacent local governments and may receive, apply, and spend money for the extension of laboratory service according to the terms of the agreement as approved by the commissioner.

S 20. Subdivisions (a) and (c) of section 13.29 of the mental hygiene law, as added by chapter 978 of the laws of 1977, are amended to read as follows:

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

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

S 21. The opening paragraph and paragraph 1 of subdivision (a) of section 13.31 of the mental hygiene law, as added by chapter 978 of the laws of 1977, are amended to read as follows:

The commissioner, or the officer or employee of the office designated by him OR HER, shall:

1. Receive and turn over to the comptroller for liquidation all bonds, notes, mortgages, trust funds, and other securities and obligations belonging to the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities or any subdivision thereof, except such as may have come into the possession of the said office or any subdivision thereof on account of or for the payment of charges for the care, maintenance, and treatment after January first, nineteen hundred sixty-four of patients at those mental hygiene facilities as defined in section three of the facilities development corporation act which are under his OR HER jurisdiction, in which case the same shall be turned over to the

1 commissioner of taxation and finance as agent for the facilities devel-
2 opment corporation for liquidation, and he OR SHE shall have the author-
3 ity to transfer all such securities and evidences of indebtedness and to
4 execute on behalf of the office [of mental retardation and] FOR PEOPLE
5 WITH developmental disabilities or any of its facilities or the facili-
6 ties development corporation a satisfaction and release thereof.

7 S 22. Paragraph 2 of subdivision (i) and subdivision (m) of section
8 13.33 of the mental hygiene law, paragraph 2 of subdivision (i) as
9 amended by chapter 14 of the laws of 1990 and subdivision (m) as amended
10 by chapter 118 of the laws of 1991, are amended to read as follows:

11 (2) Any member or members of the board may visit and inspect a commu-
12 nity residence operated by the office [of mental retardation and] FOR
13 PEOPLE WITH developmental disabilities, which is within the catchment
14 area of the school on the board of which such member or members serve.
15 Such member or members shall be granted access to such facility and to
16 all books, records and data pertaining to such facility deemed necessary
17 for carrying out the purposes of such visit and inspection. Information,
18 books, records or data which are confidential as provided by law shall
19 be kept confidential and any limitations on the release thereof imposed
20 by law upon the party furnishing the information, books, records or data
21 shall apply to such member or members of the board. After any such
22 visits or inspection, a report containing findings and recommendations
23 shall be submitted promptly to the commissioner and to the chairman of
24 the state commission on quality of care [for the mentally disabled] AND
25 ADVOCACY FOR PERSONS WITH DISABILITIES.

26 (m) Members of the boards of visitors shall be considered officers of
27 the office [of mental retardation and] FOR PEOPLE WITH developmental
28 disabilities for the purposes of sections seventy-three, to the extent
29 provided therein, and seventy-four of the public officers law relating
30 to business or professional activities by state officers and employees
31 and the code of ethics.

32 S 23. Subdivision (a) of section 13.39 of the mental hygiene law, as
33 added by chapter 800 of the laws of 1986, is amended to read as follows:

34 (a) Notwithstanding any other law, rule or regulation, the executive
35 director, chairperson or president of a voluntary, not-for-profit corpo-
36 ration or facility which is subject to the jurisdiction of the office
37 [of mental retardation and] FOR PEOPLE WITH developmental disabilities
38 shall furnish annually to the commissioner a list of the names and
39 addresses of the current members of the board of directors or trustees
40 of such facility or corporation. Failure to furnish such annual list
41 shall remove such facility or corporation from consideration for recer-
42 tification.

43 S 24. Paragraph 3 of subdivision (b) of section 15.07 of the mental
44 hygiene law, as amended by chapter 789 of the laws of 1985, is amended
45 to read as follows:

46 3. the right of the resident to communicate with the director, the
47 board of visitors, the commissioner of [mental retardation and] develop-
48 mental disabilities, and the mental hygiene legal service.

49 S 25. Section 16.00 of the mental hygiene law, as added by chapter 786
50 of the laws of 1983, is amended to read as follows:

51 S 16.00 Regulation and quality control of services for [the mentally
52 retarded and developmentally disabled] INDIVIDUALS WITH DEVEL-
53 OPMENTAL DISABILITIES.

54 This article sets forth provisions enabling the commissioner of the
55 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
56 bilities to regulate and assure the consistent high quality of services

provided within the state to its [mentally retarded and developmentally disabled citizens] CITIZENS WITH DEVELOPMENTAL DISABILITIES. The commissioner may adopt and promulgate any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by this article. This article shall govern the operation of programs, provision of services and the facilities hereinafter described and the commissioner's powers and authority with respect thereto, and shall supersede, as to such matters, sections of article thirty-one that are inconsistent with the provisions of this chapter.

ANY PROVISIONS OF THIS ARTICLE WHICH EXPLICITLY OR IMPLICITLY APPLY TO, OR REFERENCE, PERSONS WHO ARE MENTALLY RETARDED, SHALL BE DEEMED TO APPLY TO, OR REFERENCE, PERSONS WITH DEVELOPMENTAL DISABILITIES.

S 26. Paragraph 4 of subdivision (b) of section 16.17 of the mental hygiene law, as amended by chapter 169 of the laws of 1992, is amended to read as follows:

(4) The facility operator, within ten days of the date when the emergency suspension or limitation pursuant to paragraph one of this subdivision is first imposed, may request an evidentiary hearing to contest the validity of the emergency suspension or limitation. Such an evidentiary hearing shall commence within ten days of the facility operator's request and no request for an adjournment shall be granted without the concurrence of the facility operator, office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, and the hearing officer. The evidentiary hearing shall be limited to those violations of federal and state law and regulations that existed at the time of the emergency suspension or limitation and which gave rise to the emergency suspension or limitation. The emergency suspension or limitation shall be upheld upon a determination that the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities had reasonable cause to believe that a client's health or safety was in imminent danger. A record of such hearing shall be made available to the facility operator upon request. Should the commissioner determine to revoke, suspend or limit the facility's operating certificate pursuant to subdivision (a) of this section, no administrative hearing on that action shall commence prior to the conclusion of the evidentiary hearing. The commissioner shall issue a ruling within ten days after the receipt of the hearing officer's report.

S 27. Subdivision (d) of section 16.27 of the mental hygiene law, as added by chapter 611 of the laws of 1981 and such section as renumbered by chapter 786 of the laws of 1983, is amended to read as follows:

(d) This section shall apply only to the facilities under the jurisdiction of the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities. Reference to the commissioner in this section shall mean the commissioner of [the office of mental retardation and] developmental disabilities.

S 28. Subparagraphs (I) and (II) of paragraph 2 of subdivision (i) of section 29.15 of the mental hygiene law, as amended by chapter 534 of the laws of 2006, are amended to read as follows:

(I) A patient about to be discharged or conditionally released from a department facility licensed or operated by the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities or from an inpatient facility operated or licensed by the office of [alcohol] ALCOHOLISM and substance abuse services or the office of mental health to an adult home or residence for adults, as defined in section two of the social services law, shall be referred only to such home or residence that is consistent with that patient's needs and that operates pursuant

1 to section four hundred sixty of the social services law, provided
2 further that: (A) for a department facility licensed or operated by the
3 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
4 bilities or for an inpatient facility operated by the office of [alco-
5 hol] ALCOHOLISM and substance abuse services or the office of mental
6 health, the facility director retains authority to determine whether the
7 home, program or residence is consistent with that patient's needs and
8 (B) such referral shall be made to the patient's home county whenever
9 possible or appropriate.

10 (II) No patient about to be discharged or conditionally released from
11 a department facility licensed or operated by the office [of mental
12 retardation and] FOR PEOPLE WITH developmental disabilities or from an
13 inpatient facility operated or licensed by the office of [alcohol] ALCO-
14 HOLISM and substance abuse services or the office of mental health shall
15 be referred to any adult home or residence for adults, as defined in
16 section two of the social services law, which has received an official
17 written notice from the department of health of: (A) the proposed revo-
18 cation, suspension or denial of its operating certificate; (B) the limi-
19 tation of its operating certificate with respect to new admissions; (C)
20 the issuance of a department of health order or commissioner of health's
21 order or the seeking of equitable relief pursuant to section four
22 hundred sixty-d of the social services law; (D) the proposed assessment
23 of civil penalties for violations of the provisions of subparagraph two
24 of paragraph (b) of subdivision seven of section four hundred sixty-d of
25 the social services law; or placement on the "do not refer list" pursu-
26 ant to subdivision fifteen of section four hundred sixty-d of the social
27 services law. Referrals may resume when such enforcement actions are
28 resolved.

29 S 29. Section 29.20 of the mental hygiene law, as added by chapter 425
30 of the laws of 1991, is amended to read as follows:

31 S 29.20 In-patient nasogastric feeding procedures.

32 The commissioners of the [offices] OFFICE of mental health and [mental
33 retardation and] THE OFFICE FOR PEOPLE WITH developmental disabilities
34 of the department shall each promulgate and administer regulations and
35 policies governing the maximum size of nasogastric feeding tubes with
36 the principal purposes of protecting patients from undue discomfort, for
37 the benefit of any patient in a facility subject to the jurisdiction of
38 the commissioners.

39 S 30. The opening paragraph and subdivision 4 of section 29.29 of the
40 mental hygiene law, as amended by chapter 24 of the laws of 2007, are
41 amended to read as follows:

42 The commissioners of the [offices] OFFICE of mental health and [mental
43 retardation and] THE OFFICE FOR PEOPLE WITH developmental disabilities
44 of the department shall establish policies and uniform procedures for
45 their respective offices for the reporting, compilation, and analysis of
46 incident reports. Incident reports shall, for the purposes of this chap-
47 ter, mean reports of accidents and injuries affecting patient health and
48 welfare at facilities. These policies and procedures shall include but
49 shall not be limited to:

50 4. Each facility shall aggregate its data monthly for the director and
51 that aggregated information shall be submitted, at least semi-annually
52 to the commissioner of the office of mental health and to the commis-
53 sioner of the office [of mental retardation and] FOR PEOPLE WITH devel-
54 opmental disabilities.

55 S 31. Subdivision 6 of section 29.29 of the mental hygiene law is
56 REPEALED.

1 S 32. The section heading, the opening paragraph of subdivision (a)
2 and subdivisions (b) and (c) of section 33.02 of the mental hygiene law,
3 the section heading as added by chapter 325 of the laws of 1985, the
4 opening paragraph of subdivision (a) as amended by chapter 401 of the
5 laws of 2006 and subdivisions (b) and (c) as amended by chapter 306 of
6 the laws of 1995, are amended to read as follows:

7 Notice of rights of [the mentally disabled] INDIVIDUALS WITH MENTAL
8 DISABILITIES.

9 In order to ensure that residents of facilities or programs operated
10 or licensed by the office of mental health and facilities or programs
11 operated or certified by the office [of mental retardation and] FOR
12 PEOPLE WITH developmental disabilities are treated consistently with the
13 laws and regulations assuring quality care, the commissioner of the
14 office of mental health and the commissioner of the office [of mental
15 retardation and] FOR PEOPLE WITH developmental disabilities shall
16 promulgate regulations informing residents of their rights under law.
17 Such regulations shall include, but not be limited to, informing resi-
18 dents that they have the right to:

19 (b) The foregoing rights may not be limited as a punishment or for the
20 convenience of staff. Any limitation on the rights enumerated shall be
21 permitted for an individual resident of a hospital operated or licensed
22 by the office of mental health or developmental center operated by the
23 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
24 bilities only upon written order of a physician in the resident's clin-
25 ical record stating the clinical justification for such limitation and
26 the specific period of time such limitation shall remain in effect. Any
27 limitation on the rights enumerated shall be permitted for an individual
28 resident of any other residential facility or program operated or
29 licensed by the office of mental health or operated or certified by the
30 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
31 bilities only upon written order by the director or chief executive
32 officer of such facility or program upon receipt of a recommendation by
33 the treating practitioner as defined by paragraph seven of subdivision
34 (a) of section 33.16 of this article with such order to be placed in the
35 resident's clinical record stating the clinical justification for such
36 limitation and the specific period of time such limitation shall remain
37 in effect.

38 (c) The commissioners and the facility director shall ensure that a
39 notice of the rights included in regulations promulgated pursuant to
40 this section is posted in each ward or living area of every hospital
41 operated or licensed by the office of mental health and every develop-
42 mental center operated by the office [of mental retardation and] FOR
43 PEOPLE WITH developmental disabilities, and that such notice is provided
44 to every individual resident of any other residential facility or
45 program operated or licensed by the respective offices upon admission to
46 such facility or program, upon limitation on any right, or at the indi-
47 vidual's request. The notice shall include the address and telephone
48 numbers of the office of the facility director or such person's designee
49 responsible for receiving questions or complaints, the board of visitors
50 if applicable, the mental hygiene legal service and the commission on
51 quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS
52 WITH DISABILITIES.

53 S 33. Subdivision (e) of section 33.07 of the mental hygiene law, as
54 added by chapter 709 of the laws of 1986, is amended to read as follows:

55 (e) A mental hygiene facility which is a representative payee for a
56 patient pursuant to designation by the social security administration or

1 which assumes management responsibility over the funds of a patient,
2 shall maintain such funds in a fiduciary capacity to the patient. The
3 commissioners of mental health and [mental retardation and] develop-
4 mental disabilities shall develop standards regarding the management of
5 patient funds.

6 S 34. Subdivision (c) of section 33.09 of the mental hygiene law, as
7 amended by chapter 690 of the laws of 1989, is amended to read as
8 follows:

9 (c) The provisions of the workers' compensation law, the unemployment
10 insurance law, and articles thirteen, nineteen, and twenty of the labor
11 law shall not apply to any patient in a facility with respect to his
12 participation in a sheltered workshop program, provided, however, that
13 participants in sheltered workshop programs operated by the office of
14 mental health, the office [of mental retardation and] FOR PEOPLE WITH
15 developmental disabilities or voluntary agencies or institutional worker
16 programs operated by the office of mental health shall be eligible for
17 workers' compensation benefits (excluding benefits provided pursuant to
18 article nine of the workers' compensation law) if such offices or agen-
19 cies elect to provide such benefits. Sheltered workshops operated at
20 department facilities shall be subject to the laws and regulations
21 applicable to sheltered workshops operated by voluntary agencies.

22 S 35. Section 33.11 of the mental hygiene law, as amended by chapter
23 345 of the laws of 1985, is amended to read as follows:

24 S 33.11 Education for [mentally disabled] children WITH MENTAL DISABILI-
25 TIES.

26 The office of mental health and the office [of mental retardation and]
27 FOR PEOPLE WITH developmental disabilities shall provide the same educa-
28 tion for patients in office of mental health hospitals and residents in
29 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
30 bilities schools who are between the ages of five and twenty-one which
31 they would otherwise be entitled to receive in their local school
32 districts pursuant to article eighty-nine of the education law. The cost
33 of such education shall be a charge upon and shall be paid by the office
34 of mental health or the office [of mental retardation and] FOR PEOPLE
35 WITH developmental disabilities when received within such a hospital or
36 school by a patient or resident therein. Such education shall be adapted
37 to the mental attainments of such children. Provided, however, that such
38 children as can benefit therefrom shall be admitted to the schools of
39 the school district in which such hospital or school is located in
40 accordance with regulations of the commissioner of education developed
41 in consultation with the commissioners of mental health and [mental
42 retardation and] developmental disabilities. The cost of such instruc-
43 tion less the [State] STATE aid attributed to such child, shall be a
44 charge upon the school district in which the child resided at the time
45 of admission to the [State] STATE hospital or school, except in those
46 cases as provided in paragraph c of subdivision five of section thirty-
47 two hundred two of the education law.

48 S 36. Section 33.12 of the mental hygiene law, as added by chapter 345
49 of the laws of 1985, is amended to read as follows:

50 S 33.12 Hearing evaluation.

51 The office [of mental retardation and] FOR PEOPLE WITH developmental
52 disabilities shall provide suitable hearing evaluations periodically for
53 the residents in state schools. Upon the ascertainment that any resident
54 so evaluated is deaf or hard of hearing, it shall be the duty of the
55 office to provide suitable remedial efforts, to include, but not be
56 limited to, hearing aids, alternative forms of communication and audito-

1 ry training to overcome this handicap and to ascertain the true level of
2 intelligence of such residents.

3 S 37. Subdivision (a) and paragraph 10 of subdivision (c) of section
4 33.13 of the mental hygiene law, subdivision (a) as amended by chapter
5 571 of the laws of 2005 and paragraph 10 of subdivision (c) as amended
6 by chapter 230 of the laws of 2008, are amended to read as follows:

7 (a) A clinical record for each patient or client shall be maintained
8 at each facility licensed or operated by the office of mental health or
9 the office [of mental retardation and] FOR PEOPLE WITH developmental
10 disabilities, hereinafter referred to as the offices. For the purposes
11 of this section, the term "facility" shall mean "facility" as such term
12 is defined in section 1.03 of this chapter, provided, however, such term
13 shall also include any provider of services for [persons] INDIVIDUALS
14 with mental illness[, mental retardation] or developmental disabilities
15 which is operated by, under contract with, receives funding from, or is
16 otherwise approved to render services by, a director of community
17 services pursuant to article forty-one of this chapter or one or both of
18 the offices, including any such provider which is exempt from the
19 requirement for an operating certificate under article sixteen or arti-
20 cle thirty-one of this chapter. The record shall contain information on
21 all matters relating to the admission, legal status, care, and treatment
22 of the patient or client and shall include all pertinent documents
23 relating to the patient or client. The commissioners of such offices, by
24 regulation, each shall determine the scope and method of recording
25 information, including data pertaining to admission, legal matters
26 affecting the patient or client, records and notation of course of care
27 and treatment, therapies, restrictions on patient's or client's rights,
28 periodic examinations, and such other information as he or she may
29 require.

30 10. to a correctional facility, when the chief administrative officer
31 has requested such information with respect to a named inmate of such
32 correctional facility as defined by subdivision three of section forty
33 of the correction law or to the division of parole, when the division
34 has requested such information with respect to a person under its juris-
35 diction or an inmate of a state correctional facility, when such inmate
36 is within four weeks of release from such institution to the jurisdic-
37 tion of the division of parole. Information released pursuant to this
38 paragraph may be limited to a summary of the record, including but not
39 limited to: the basis for referral to the facility; the diagnosis upon
40 admission and discharge; a diagnosis and description of the patient's or
41 client's current mental condition; the current course of treatment,
42 medication and therapies; and the facility's recommendation for future
43 mental hygiene services, if any. Such information may be forwarded to
44 the department of correctional services staff in need of such informa-
45 tion for the purpose of making a determination regarding an inmate's
46 health care, security, safety or ability to participate in programs. In
47 the event an inmate is transferred, the sending correctional facility
48 shall forward, upon request, such summaries to the chief administrative
49 officer of any correctional facility to which the inmate is subsequently
50 incarcerated. The office of mental health and the office [of mental
51 retardation and] FOR PEOPLE WITH developmental disabilities, in consul-
52 tation with the commission of correction and the division of parole,
53 shall promulgate rules and regulations to implement the provisions of
54 this paragraph.

1 S 38. Subdivision (d) of section 33.16 of the mental hygiene law, as
2 amended by chapter 223 of the laws of 1992, is amended to read as
3 follows:

4 (d) Clinical records access review committees. The commissioner of
5 mental health, the commissioner of [mental retardation and] develop-
6 mental disabilities and the commissioner of alcoholism and substance
7 abuse services shall appoint clinical record access review committees to
8 hear appeals of the denial of access to patient or client records as
9 provided in paragraph four of subdivision (c) of this section. Members
10 of such committees shall be appointed by the respective commissioners.
11 Such clinical record access review committees shall consist of no less
12 than three nor more than five persons. The commissioners shall promul-
13 gate rules and regulations necessary to effectuate the provisions of
14 this subdivision.

15 S 39. Paragraph 1 of subdivision (a) and paragraph 2 of subdivision
16 (e) of section 41.34 of the mental hygiene law, paragraph 1 of subdivi-
17 sion (a) as amended by chapter 1025 of the laws of 1981 and paragraph 2
18 of subdivision (e) as added by chapter 823 of the laws of 1992, are
19 amended to read as follows:

20 (1) "Community residential facility for the disabled" means a support-
21 ive living facility with four to fourteen residents or a supervised
22 living facility subject to licensure by the office of mental health or
23 the office [of mental retardation and] FOR PEOPLE WITH developmental
24 disabilities which provides a residence for up to fourteen [mentally
25 disabled persons] INDIVIDUALS WITH MENTAL DISABILITIES, including resi-
26 dential treatment facilities for children and youth.

27 (2) The office of mental health and the office [of mental retardation
28 and] FOR PEOPLE WITH developmental disabilities shall not issue an oper-
29 ating certificate for the operation of a supportive living facility or a
30 supervised living facility of more than fourteen residents if the agency
31 or unit of government, voluntary agency or any other person or organiza-
32 tion which intends to establish or operate such a facility does not
33 notify the chief executive officer of the municipality in which that
34 facility is to be established in writing of the intention to establish
35 such facility and include in such notice the specific address of the
36 site, the type of residence, the number of residents and the community
37 support requirements of the program; provided, however, that nothing
38 contained in this paragraph shall either be construed to require facili-
39 ties of more than fourteen beds to meet any other requirement of this
40 section, or to deem such facilities family units for the purposes of
41 local laws and ordinances.

42 S 40. Paragraphs 1, 2 and 5 of subdivision (a) of section 41.36 of the
43 mental hygiene law, paragraphs 1 and 5 as added by chapter 809 of the
44 laws of 1980 and paragraph 2 as amended by chapter 262 of the laws of
45 1992, are amended to read as follows:

46 1. "Community residential facility" means any facility subject to
47 licensure by the office [of mental retardation and] FOR PEOPLE WITH
48 developmental disabilities which provides a supervised residence or
49 residential respite services for [mentally disabled persons] INDIVIDUALS
50 WITH MENTAL DISABILITIES. Such term does not include family care homes.

51 2. "Reimbursable services" means services, other than intermediate
52 care services, comprehensive medicaid case management and personal care
53 services for which funding is available under Title XIX of the federal
54 social security act, provided at a community residential facility
55 described by regulations of the commissioner of [mental retardation and]

developmental disabilities for which fees or rates may be paid to a provider of services pursuant to this section.

5. "Commissioner" means the commissioner of [mental retardation and] developmental disabilities.

S 41. The opening paragraph of subdivision (a) of section 41.39 of the mental hygiene law, as added by chapter 515 of the laws of 1992, is amended to read as follows:

The commissioner of mental health and the commissioner of [mental retardation and] developmental disabilities shall, consistent with the state integrated employment implementation plan developed pursuant to subdivision two of section one thousand four-b of the education law, and subject to appropriations made therefor, to develop and support services that provide individuals with mental disabilities the opportunity to learn and develop employment related skills and work experience, including but not limited to sheltered workshops and integrated employment opportunities, including supported employment, as provided pursuant to sections one thousand four-a and one thousand four-b of the education law. Such programs shall, to the extent possible:

S 42. Subdivisions (a) and (c) of section 41.43 of the mental hygiene law, as amended by chapter 552 of the laws of 1992, are amended to read as follows:

(a) The commissioner of the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, directly or through contract, and within amounts made available therefor, shall establish a family-directed, statewide system of comprehensive family support services. The purpose of family support services will be to enhance a family's ability to provide in-home care to their family members with a developmental disability.

(c) For purposes of this section, family supports are goods, services, and subsidies, determined by the family and the commissioner of the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, which are provided to meet the goals of: (i) providing a quality of life comparable, to the extent practicable, to that of similarly situated families without a family member having a developmental disability; (ii) maintaining family unity; (iii) preventing premature or inappropriate out-of-home placement; (iv) reuniting families; (v) enhancing parenting skills; and (vi) maximizing the potential of the family member with a developmental disability.

S 43. Section 41.46 of the mental hygiene law, as amended by chapter 669 of the laws of 1995, is amended to read as follows:

S 41.46 Disclosure by members, officers and employees.

In the event that an agency licensed by the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, the office of mental health or the office of alcoholism and substance abuse services enters into an agreement or has entered into an agreement for the purchase, lease, rehabilitation or improvement of real property or a cooperative share in real property, any employee who receives an annual salary in excess of thirty thousand dollars, or any board member, or officer of such agency who has a direct or indirect interest either financial or beneficial in such property including the interest of any person for whom he or she is related by consanguinity or affinity, shall disclose such interest prior to the making of such agreement or at the time of acquisition of such interest. Disclosure pursuant to this section shall be made in writing to the board of directors of such agency and shall indicate the material facts as to the member's, officer's, employee's or relative's interest in such property or cooperative share.

Such disclosure shall be filed with the secretary of the corporation and entered on the minutes of a meeting of the board. Such disclosure shall also be forwarded in writing to the appropriate commissioner and to the director of community services of the local governmental unit within which the property or cooperative share is located prior to the approval of public funding related to the property or cooperative share which is the subject of disclosure made pursuant to this section or at the time of the acquisition of such interest, whichever occurs later.

S 44. Subdivisions (a) and (c) of section 41.48 of the mental hygiene law, as added by chapter 365 of the laws of 1987, are amended to read as follows:

(a) Notwithstanding any inconsistent provision of this article and within appropriations made therefor, the commissioners of the [offices] OFFICE of mental health and [mental retardation and] THE OFFICE FOR PEOPLE WITH developmental disabilities are authorized upon the application of voluntary agencies, to make payments for the reasonable price of options to acquire an interest in real property, for the purpose of establishing a community mental hygiene facility. Such applications shall be made in the manner and on forms prescribed by the appropriate commissioner. Sellers of real property who are required to disclose financial or other beneficial interests in such property under section 41.46 of this article shall not be eligible to receive payments under this section.

(c) As used in this section the term "reasonable price" shall mean an amount that is not in excess of guidelines developed by the commissioner of the office of mental health or [mental retardation and] THE COMMISSIONER OF THE OFFICE FOR PEOPLE WITH developmental disabilities and approved by the director of the budget and the state comptroller.

S 45. Section 43.02 of the mental hygiene law, as amended by chapter 558 of the laws of 1999, is amended to read as follows:

S 43.02 Rates or methods of payment for services at facilities subject to licensure or certification by the office of mental health, the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities or the office of alcoholism and substance abuse services.

(a) Notwithstanding any inconsistent provision of law, payment made by government agencies pursuant to title eleven of article five of the social services law for services provided by any facility licensed by the office of mental health pursuant to article thirty-one of this chapter or licensed or operated by the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities pursuant to article sixteen of this chapter or certified by the office of alcoholism and substance abuse services pursuant to this chapter to provide inpatient chemical dependence services, as defined in section 1.03 of this chapter, shall be at rates or fees certified by the commissioner of the respective office and approved by the director of the division of the budget, provided, however, the commissioner of mental health shall annually certify such rates or fees which may vary for distinct geographical areas of the state and, provided, further, that rates or fees for service for inpatient psychiatric services or inpatient chemical dependence services, at hospitals otherwise licensed pursuant to article twenty-eight of the public health law shall be established in accordance with section two thousand eight hundred seven of the public health law.

(b) Operators of facilities licensed by the office of mental health pursuant to article thirty-one of this chapter, licensed by the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities

1 pursuant to article sixteen of this chapter or certified by the office
2 of alcoholism and substance abuse services pursuant to this chapter to
3 provide inpatient chemical dependence services shall provide to the
4 commissioner of the respective office such financial, statistical and
5 program information as the commissioner may determine to be necessary.
6 The commissioner of the appropriate office shall have the power to
7 conduct on-site audits of books and records of such facilities.

8 (c) The commissioner of the office of mental health, the commissioner
9 of the office [of mental retardation and] FOR PEOPLE WITH developmental
10 disabilities and the commissioner of the office of alcoholism and
11 substance abuse services shall adopt rules and regulations to effectuate
12 the provisions of this section. Such rules and regulations shall
13 include, but not be limited to, provisions relating to:

14 (i) the establishment of a uniform statewide system of reports and
15 audits relating to the quality of care provided, facility utilization
16 and costs of providing services; such a uniform statewide system may
17 provide for appropriate variation in the application of the system to
18 different classes or subclasses of facilities licensed by the office of
19 mental health pursuant to article thirty-one of this chapter or licensed
20 or operated by the office [of mental retardation and] FOR PEOPLE WITH
21 developmental disabilities pursuant to article sixteen of this chapter,
22 or certified by the office of alcoholism and substance abuse services
23 pursuant to this chapter to provide inpatient chemical dependence
24 services; and

25 (ii) methodologies used in the establishment of the schedules of rates
26 or fees pursuant to this section.

27 S 46. Subdivision 1 and paragraph (c) of subdivision 2 of section
28 43.04 of the mental hygiene law, subdivision 1 as amended by section 187
29 of part A of chapter 389 of the laws of 1997, paragraph (c) of subdivi-
30 sion 2 as amended by section 108 of part A of chapter 56 of the laws of
31 1998 and subparagraph (iii) of paragraph (c) of subdivision 2 as added
32 by section 3 of part D of chapter 58 of the laws of 2007, are amended to
33 read as follows:

34 1. For purposes of this section, provider of services shall refer to
35 (i) those providers as defined by subdivision five of section 1.03 of
36 this chapter which are licensed by the office [of mental retardation
37 and] FOR PEOPLE WITH developmental disabilities pursuant to article
38 sixteen of this chapter as intermediate care facilities for [persons who
39 are developmentally disabled] INDIVIDUALS WITH DEVELOPMENTAL DISABILI-
40 TIES, providers of day treatment services or specialty hospitals, except
41 that on and after December first, nineteen hundred ninety-seven, provid-
42 er of services shall not include specialty hospitals, and (ii), for
43 purposes of paragraph (c) of subdivision two of this section only, the
44 term provider of services, shall mean, and for purposes of this subdivi-
45 sion shall include, the office [of mental retardation and] FOR PEOPLE
46 WITH developmental disabilities as the operator of intermediate care
47 facilities for [persons who are developmentally disabled] INDIVIDUALS
48 WITH DEVELOPMENTAL DISABILITIES. Providers of services are charged
49 assessments on their gross receipts received from services and care
50 related to intermediate care facilities, day treatment services, or
51 specialty hospitals until November thirtieth, nineteen hundred ninety-
52 seven, for [persons who are developmentally disabled] INDIVIDUALS WITH
53 DEVELOPMENTAL DISABILITIES and other operating income, less personal
54 needs allowances and refunds, on a cash basis in the percentage amounts
55 and for the periods specified in subdivision two of this section. Such
56 assessments shall be submitted by or on behalf of such providers of

1 services to the commissioner of the office [of mental retardation and]
2 FOR PEOPLE WITH developmental disabilities or HIS OR her designee.

3 (c) (i) For the provider of services as set forth in clause (ii) of
4 subdivision one of this section in the category of intermediate care
5 facilities for [persons who are developmentally disabled] INDIVIDUALS
6 WITH DEVELOPMENTAL DISABILITIES operated by the office [of mental retar-
7 dation and] FOR PEOPLE WITH developmental disabilities, the assessment
8 shall be six-tenths of one percent of the gross receipts received for
9 all services rendered within such service category on a cash basis
10 beginning April first, nineteen hundred ninety-five and ending March
11 thirty-first, two thousand one.

12 (ii) For the provider of services as set forth in clause (ii) of
13 subdivision one of this section in the category of intermediate care
14 facilities for [persons who are developmentally disabled] INDIVIDUALS
15 WITH DEVELOPMENTAL DISABILITIES operated by the office [of mental retar-
16 dation and] FOR PEOPLE WITH developmental disabilities, an additional
17 assessment shall be two and four-tenths percent of the gross receipts
18 for all services rendered within such service category on a cash basis
19 beginning April first, nineteen hundred ninety-five; provided, however,
20 such additional assessment shall be five and four-tenths percent of the
21 gross receipts received for all services rendered within such service
22 category on a cash basis beginning April first, nineteen hundred nine-
23 ty-six and ending March thirty-first, two thousand one.

24 (iii) For each provider of services as set forth in clause (ii) of
25 subdivision one of this section in the category of intermediate care
26 facilities for [persons who are developmentally disabled] INDIVIDUALS
27 WITH DEVELOPMENTAL DISABILITIES operated by the office [of mental retar-
28 dation and] FOR PEOPLE WITH developmental disabilities, notwithstanding
29 any other provision of this paragraph, the total assessment shall be six
30 percent of the provider's gross receipts received on a cash basis for
31 all services rendered, beginning April first, two thousand one, and five
32 and five-tenths percent of the provider's gross receipts received on a
33 cash basis for all services rendered, beginning January first, two thou-
34 sand eight.

35 S 47. Section 43.12 of the mental hygiene law, as added by chapter 305
36 of the laws of 2007, is amended to read as follows:

37 S 43.12 Electronic submission of periodic cost reports to the office [of
38 mental retardation and] FOR PEOPLE WITH developmental disabil-
39 ities.

40 Notwithstanding any provision of law, rule or regulation to the
41 contrary, every operator of a facility which is licensed by the office
42 [of mental retardation and] FOR PEOPLE WITH developmental disabilities
43 (hereinafter "office") and every provider of services which is subject
44 to the regulation or control of the office shall submit electronically,
45 via the internet, any annual cost report which is required to be submit-
46 ted to the office pursuant to the provisions of section 43.02 of this
47 article and any rules and regulations promulgated thereunder and any
48 other required periodic cost report or accounting which may be
49 prescribed by the commissioner of [mental retardation and] developmental
50 disabilities as subject to such electronic submission. The office shall
51 publish and make available at all times on its website instructions for
52 the submission of such reports or accountings via the internet, includ-
53 ing instructions relating to the use of an electronic signature as may
54 be required by the commissioner of [mental retardation and] develop-
55 mental disabilities which signature shall be subject to, and submitted
56 in accordance with, the provisions of the state technology law and any

1 rules and regulations promulgated thereunder. Any operator or provider
2 of services that is unable to submit such cost report or accounting in
3 accordance with this section may apply for a waiver of such required
4 submission from the commissioner of [mental retardation and] develop-
5 mental disabilities. The commissioner of [mental retardation and] devel-
6 opmental disabilities may grant a waiver for any given submission to
7 such operator or provider of services for good cause shown and may grant
8 a general waiver to all operators or providers of services with respect
9 to any required submission. On and after the effective date of this
10 section, any contract entered into between the office and a provider of
11 services which involves the provision of services to persons with
12 [mental retardation and] developmental disabilities and which contains
13 provisions that require the submission of any periodic report or
14 accounting may also contain provisions that require the submission of
15 any periodic cost report or accounting required under such contract to
16 be submitted electronically as set forth in this section.

17 S 48. Paragraphs (a) and (b) of subdivision 2 of section 1 of chapter
18 455 of the laws of 2007 relating to the use of certain language and
19 terminology when dealing with certain issues, are amended to read as
20 follows:

21 (a) avoid language that (i) implies that a person as a whole is disa-
22 bled (e.g., the mentally ill or the learning disabled), (ii) equates
23 persons with their condition (e.g., epileptics, autistics or quadrapleg-
24 ics, (iii) has negative overtones (e.g., afflicted with cerebral palsy,
25 suffering from multiple sclerosis, confined to a wheelchair or wheel-
26 chair bound) or (iv) is regarded as derogatory or demeaning (e.g., hand-
27 icapped [or], mentally deficient, MENTAL RETARDATION OR MENTALLY
28 RETARDED, UNLESS SUCH TERM IS USED FOR CLINICAL PURPOSES AS DEFINED IN
29 SECTION 1.03 OF THE MENTAL HYGIENE LAW); and

30 (b) replace non-respectful language by referring to persons with disa-
31 bilities as persons first (e.g., individuals with disabilities, individ-
32 uals with developmental disabilities, individuals with mental illness,
33 OR individuals with autism [or individuals with mental retardation]).

34 S 49. Terms occurring in laws, contracts and other documents. Whenev-
35 er the functions, powers, obligations, duties and officials relating to
36 the office of mental retardation and development disabilities or the
37 commissioner of the office of mental retardation and development disa-
38 bilities is referred to or designated in any other law, regulation,
39 contract or document, such reference or designation shall be deemed to
40 refer to the appropriate functions, powers, obligations, duties, offi-
41 cials and commissioner of the office for people with developmental disa-
42 bilities, as designated by this act.

43 S 50. Existing rights and remedies preserved. No existing right or
44 remedy of any character shall be lost, impaired or affected by reason of
45 this act.

46 S 51. Severability. If any clause, sentence, paragraph, subdivision,
47 section or part contained in any part of this act shall be adjudged by
48 any court of competent jurisdiction to be invalid, such judgment shall
49 not affect, impair, or invalidate the remainder thereof, but shall be
50 confined in its operation to the clause, sentence, paragraph, subdivi-
51 sion, section or part contained in any part thereof directly involved in
52 the controversy in which such judgment shall have been rendered. It is
53 hereby declared to be the intent of the legislature that this act would
54 have been enacted even if such invalid provisions had not been included
55 herein.

56 S 52. This act shall take effect immediately.