

1109--C

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. MAZIARZ, GALLIVAN, GRISANTI, KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the mental hygiene law, in relation to enacting the "people first act of 2013"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "people first act of 2013".
3 S 2. Legislative findings. It is the intent of the legislature to
4 ensure that individuals with developmental disabilities who utilize
5 long-term care services under the medical assistance program and other
6 long-term care related benefit programs administered by the state have
7 meaningful access to a reasonable array of community-based and institu-
8 tional program options and to ensure the well-being of individuals with
9 developmental disabilities, taking into account their informed and
10 expressed choices. Furthermore, the legislature declares that it is the
11 policy of the state to ensure that the clinical, habilitative, and
12 social needs of individuals with developmental disabilities who choose
13 to reside in integrated community-based settings can have those needs
14 met in integrated community-based settings. In order to meaningfully
15 comply with this policy, the state must have an understanding of the
16 existing capacity in integrated-community based settings, including
17 direct support professionals and licensed professionals, such as physi-

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

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1 cians, dentists, nurse practitioners, nurses, and psychiatrists, as well
2 as residential capacity to provide for these needs.

3 It is further the intent of the legislature to support the satisfac-
4 tion and success of consumers through the delivery of quality services
5 and supports. Evaluation of the services that consumers receive is a key
6 aspect to the service system. Utilizing the information that consumers
7 and their families provide about such services in a reliable and mean-
8 ingful way is also critical to enable the commissioner of developmental
9 disabilities to assess the performance of the state's developmental
10 services system and to improve services for consumers in the future. To
11 that end, the commissioner of developmental disabilities shall conduct a
12 geographic analysis of supports and services in community settings and
13 implement an improved, unified quality assessment system, in accordance
14 with this act.

15 S 3. Section 13.15 of the mental hygiene law is amended by adding a
16 new subdivision (d) to read as follows:

17 (D) (1) FOR PURPOSES OF THIS SUBDIVISION, THE FOLLOWING TERMS SHALL
18 HAVE THE FOLLOWING MEANINGS:

19 (I) "DIRECT SUPPORT PROFESSIONALS" MEANS DIRECT SUPPORT WORKERS,
20 DIRECT CARE WORKERS, PERSONAL ASSISTANTS, PERSONAL ATTENDANTS, AND PARA-
21 PROFESSIONALS THAT PROVIDE ASSISTANCE TO INDIVIDUALS WITH DEVELOPMENTAL
22 DISABILITIES IN THE FORM OF DAILY LIVING, AND PROVIDE THE HABILITATION,
23 REHABILITATION, AND TRAINING NEEDS OF THESE INDIVIDUALS.

24 (II) "LICENSED PROFESSIONALS" MEANS, BUT IS NOT LIMITED TO, PHYSI-
25 CIANS, DENTISTS, DENTAL HYGIENISTS, DENTAL ASSISTANTS, NURSE PRACTITION-
26 ERS, LICENSED PRACTICAL NURSES, REGISTERED NURSES, PSYCHIATRISTS,
27 PSYCHOLOGISTS, LICENSED MASTER SOCIAL WORKERS, OR LICENSED CLINICAL
28 SOCIAL WORKERS, LICENSED TO PRACTICE PURSUANT TO THE EDUCATION LAW AND
29 OTHER QUALIFIED MENTAL HEALTH PROFESSIONALS.

30 (III) "SUPPORTS AND SERVICES" MEANS DIRECT SUPPORT PROFESSIONALS,
31 LICENSED PROFESSIONALS, AND RESIDENTIAL SERVICES, INCLUDING, BUT NOT
32 LIMITED TO, PRIVATE RESIDENCES, COMMUNITY-INTEGRATED LIVING ARRANGE-
33 MENTS, SUPPORTED RESIDENTIAL PROGRAMS, SUPERVISED RESIDENTIAL PROGRAMS,
34 OR SUPPORTIVE HOUSING PROGRAMS.

35 (2) SUBJECT TO AVAILABLE APPROPRIATIONS THEREFOR, THE COMMISSIONER
36 SHALL CONDUCT A GEOGRAPHIC ANALYSIS OF SUPPORTS AND SERVICES IN COMMUNI-
37 TY SETTINGS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES. THIS ANALY-
38 SIS SHALL ALSO IDENTIFY GAPS BETWEEN REQUIRED SUPPORTS AND SERVICES BY
39 REGION OF THE STATE.

40 (3) IN ORDER TO PERFORM THE GEOGRAPHIC ANALYSIS OR TO GATHER DATA FOR
41 PURPOSES OF PERFORMING THE GEOGRAPHIC ANALYSIS, THE COMMISSIONER MAY
42 WORK IN COOPERATION AND AGREEMENT WITH OTHER OFFICES, DEPARTMENTS OR
43 AGENCIES OF THE STATE, LOCAL OR FEDERAL GOVERNMENT, OR OTHER ORGANIZA-
44 TIONS AND INDIVIDUALS, WHICH MAY INCLUDE PROVIDERS OF SERVICES FOR
45 PERSONS WITH DEVELOPMENTAL DISABILITIES, REPRESENTATIVES FROM EMPLOYEE
46 ORGANIZATIONS REPRESENTING DIRECT CARE WORKERS, CONSUMER REPRESENTATIVES
47 INCLUDING PERSONS WITH DEVELOPMENTAL DISABILITIES, OR THEIR PARENTS OR
48 GUARDIANS.

49 (4) IN CONDUCTING THIS ACTIVITY, THE COMMISSIONER, SUBJECT TO AVAIL-
50 ABLE APPROPRIATIONS THEREFOR, SHALL DEVELOP AND UTILIZE A WEB-BASED
51 DATA-BASE WHICH PRIORITIZES THE URGENCY OF NEED FOR SUPPORTS AND
52 SERVICES. THE INFORMATION COLLECTED SHOULD ALLOW THE COMMISSIONER TO
53 CATEGORIZE NEEDS FOR DEVELOPMENTAL DISABILITY SERVICES WITHIN A FRAME-
54 WORK THAT ENCOMPASSES THREE LEVELS OF URGENCY OF NEEDS. THESE LEVEL OF
55 SUPPORT NEEDS SHOULD INCLUDE: EMERGENCY NEED, FOR THOSE PERSONS WITH
56 DEVELOPMENTAL DISABILITIES IN NEED OF IMMEDIATE SUPPORT EITHER DAY

1 SUPPORT OR IN-HOME OR OUT-OF-HOME PLACEMENT; CRITICAL NEED FOR THOSE
2 INDIVIDUALS WHO WILL HAVE A NEED FOR SUPPORTS OR SERVICES WITHIN ONE
3 YEAR; AND PLANNING FOR NEED, FOR THOSE INDIVIDUALS WHOSE SUPPORT NEEDS
4 ARE ONE TO FIVE YEARS AWAY, OR WHERE THE CAREGIVER IS AGE SIXTY OR
5 OLDER.

6 (5) SUCH AN ANALYSIS SHOULD INCLUDE THE STATEWIDE NUMBER OF INDIVID-
7 UALS SEEKING SERVICES, INCLUDING AWAITING PLACEMENT BROKEN DOWN INTO THE
8 TOTAL NUMBER OF INDIVIDUALS FROM WITHIN EACH REGIONAL SERVICES OFFICE'S
9 GEOGRAPHIC AREA WHO AWAIT RESIDENTIAL PLACEMENT, DAY SERVICE SUPPORT,
10 HOME AND COMMUNITY-BASED WAIVER SUPPORT, EMPLOYMENT SUPPORT, BEHAVIORAL
11 HEALTH SERVICES AND SUPPORTS, OR OTHER COMMUNITY-BASED SUPPORT. SUCH
12 INFORMATION SHOULD BE GROUPED BY THE AGE OF THE INDIVIDUAL AWAITING
13 COMMUNITY SERVICES AND SUPPORTS AND THE AGE OF THEIR CAREGIVER, IF ANY.
14 SUCH INFORMATION SHOULD ALSO INCLUDE WAITLIST AND PLACEMENT INFORMATION
15 SUCH AS:

16 (I) THE TYPE OF SUPPORTS AND SERVICES SUCH INDIVIDUALS ARE EXPECTED TO
17 REQUIRE DIVIDED INTO CERTIFIED OUT-OF-HOME, SUPERVISED, SUPPORTIVE
18 PLACEMENT NEEDS AND OTHER NON-PLACEMENT NEEDS AND THE NUMBER OF SUCH
19 PERSONS WHO ARE MEDICALLY FRAIL REQUIRING INTENSIVE MEDICAL CARE;

20 (II) NON-CERTIFIED RESIDENTIAL PLACEMENTS OUTSIDE THE PARENT'S OR
21 PARENTS' OR OTHER CAREGIVER'S HOME;

22 (III) THE NUMBER OF INDIVIDUALS EXPECTED TO REQUIRE HOME AND COMMUNITY
23 SERVICES WAIVER-FUNDED HABILITATION SERVICES AT HOME;

24 (IV) THE TOTAL NUMBER OF INDIVIDUALS, WHO HAVE BEEN IDENTIFIED AS IN
25 NEED OF SUPPORTS AND SERVICES WHO HAVE RECEIVED THESE SUPPORTS AND
26 SERVICES AND ANY GAP BETWEEN REQUIRED SUPPORTS AND SERVICES AND THE
27 SUPPORTS AND SERVICES PROVIDED;

28 (V) THE NUMBER OF EMERGENCY NEED RESIDENTIAL PLACEMENTS FOR THE PAST
29 YEAR AND OTHER SUPPORTS AND SERVICES PROVIDED ON AN EMERGENCY BASIS;

30 (VI) THE NUMBER OF INDIVIDUALS WHO ARE CURRENTLY RECEIVING SUPPORTS
31 AND SERVICES, INCLUDING RESIDENTIAL SERVICES, WHOSE CURRENT LIVING SITU-
32 ATION IS NOT ADEQUATE TO MEET THEIR NEEDS AND WHO ARE AWAITING AN ALTER-
33 NATIVE PLACEMENT OR ALTERNATIVE SUPPORT AND SERVICE DELIVERY OPTIONS;

34 (VII) PROJECTED FUNDING REQUIREMENTS FOR INDIVIDUALS IDENTIFIED AS IN
35 NEED OF SERVICES PURSUANT TO PARAGRAPH FOUR OF THIS SUBDIVISION;

36 (VIII) AN UPDATED FIVE YEAR PROJECTION OF INDIVIDUALS WHO WILL REQUIRE
37 EITHER ADDITIONAL IN-HOME SUPPORTS AND SERVICES AND/OR OUT-OF-HOME RESI-
38 DENTIAL PLACEMENTS; AND

39 (IX) ANY OTHER INFORMATION DEEMED NECESSARY BY THE COMMISSIONER.

40 (6) THE COMMISSIONER SHALL PREPARE ANNUALLY FOR THE GOVERNOR, THE
41 LEGISLATURE AND THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH
42 SPECIAL NEEDS A WRITTEN EVALUATION REPORT CONCERNING THE DELIVERY OF
43 SUPPORTS AND SERVICES IN THE COMMUNITY. ON OR BEFORE MARCH FIRST, IN
44 EACH YEAR, THE COMMISSIONER SHALL SUBMIT A COPY OF SUCH REPORT, AND SUCH
45 RECOMMENDATION AS HE OR SHE DEEMS APPROPRIATE, TO THE GOVERNOR, THE
46 TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE
47 RESPECTIVE MINORITY LEADERS OF EACH SUCH HOUSE, AND THE CHAIR OF THE
48 STATE COMMISSION ON QUALITY OF CARE FOR THE MENTALLY DISABLED. THE FIRST
49 SUCH REPORT SHALL BE DUE BY NO LATER THAN MARCH FIRST, TWO THOUSAND
50 FIFTEEN. THE REPORT SHALL ALSO BE MADE AVAILABLE TO THE PUBLIC AND SHALL
51 BE PUBLISHED ON THE OFFICE'S WEBSITE IN AN APPROPRIATE LOCATION AT THE
52 SAME TIME AS ITS SUBMISSION TO STATE OFFICIALS.

53 S 4. Subdivision (c) of section 16.01 of the mental hygiene law, as
54 added by chapter 234 of the laws of 1998, paragraph 1 as amended by
55 chapter 37 of the laws of 2011, is amended to read as follows:

1 (c) (1) Notwithstanding any other provision of law, the commissioner,
2 or his OR HER designee, may require from any hospital, as defined under
3 article twenty-eight of the public health law, any information, report,
4 or record necessary for the purpose of carrying out the functions,
5 powers and duties of the commissioner related to the investigation of
6 deaths and complaints of abuse, mistreatment, or neglect concerning
7 persons with developmental disabilities who receive services, or had
8 prior to death received services, in a facility as defined in section
9 1.03 of this chapter, or are receiving medicaid waiver services from the
10 office for people with developmental disabilities in a non-certified
11 setting, and have been treated at such hospitals.

12 (2) Any information, report, or record requested by the commissioner
13 or his OR HER designee pursuant to this subdivision shall be limited to
14 that information that the commissioner determines necessary for the
15 completion of this investigation.

16 (3) The information, report or record received by the commissioner or
17 his OR HER designee pursuant to this subdivision shall be subject to
18 section two thousand eight hundred five-m, section eighteen, as added by
19 chapter four hundred ninety-seven of the laws of nineteen hundred eight-
20 y-six, and article twenty-seven-F of the public health law, section
21 33.13 of this chapter, and any applicable federal statute or regulation.

22 S 5. This act shall take effect immediately.