

# STATE OF NEW YORK

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549

2017-2018 Regular Sessions

## IN ASSEMBLY

January 9, 2017

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Introduced by M. of A. GUNTHER, LUPARDO, BRINDISI, MAGEE, SKARTADOS, GALEF, STECK, SANTABARBARA, TITONE, DiPIETRO, PALMESANO, GOODELL, CROUCH, RAIA, PALUMBO, RA, GARBARINO -- Multi-Sponsored by -- M. of A. HOOPER, McDONOUGH, MURRAY, THIELE -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to directing the commissioner of developmental disabilities to establish a procedure through which persons with developmental disabilities may choose to remain in a nonintegrated setting

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 "employment first choice act".

3 § 2. Legislative intent. The legislature hereby supports increasing  
4 access to integrated employment settings for individuals with develop-  
5 mental disabilities. The legislature additionally finds, however, that  
6 the policy to increase integrated employment opportunities shall not  
7 preclude an individual's right to choose either an integrated or nonin-  
8 tegrated setting in accordance with such individual's personal wishes.  
9 Furthermore, the legislature supports an individual's wish to remain in  
10 a nonintegrated setting in order to, among other personal priorities,  
11 retain friendships, continue their participation in their community as  
12 they so choose, and, in some instances, maintain their ability to earn a  
13 paycheck.

14 The legislature, therefore, finds that individuals with developmental  
15 disabilities, who currently participate in a nonintegrated setting,  
16 should be allowed to choose to remain in such a setting. To require such  
17 individuals to transition out of this chosen environment undermines the  
18 guiding Supreme Court decision in *Olmstead v. L.C.*, which held that the  
19 Americans with Disabilities Act of 1990 requires placement of individ-  
20 uals with developmental disabilities in integrated settings rather than

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

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1 nonintegrated settings, but only when such a transfer is not opposed by  
2 the affected individual. The legislature, therefore, declares this act  
3 to be a priority of the state's actions affecting individuals with  
4 developmental disabilities.

5 § 3. The mental hygiene law is amended by adding a new section 16.02  
6 to read as follows:

7 § 16.02 Individual's right of choice.

8 Any individual with a developmental disability who is participating in  
9 a nonintegrated setting including, but not limited to, a sheltered work-  
10 shop, and who chooses to remain in a nonintegrated setting may seek  
11 accommodation from the commissioner to allow such placement, provided  
12 that pending such request the individual may remain in the nonintegrated  
13 setting.

14 (a) Accommodations shall be granted at the discretion of the commis-  
15 sioner, who may also require that the individual has completed at least  
16 one of the following:

17 (1) Participation in at least one vocational assessment every five  
18 years in accordance with regulations promulgated by the commissioner.  
19 The primary purpose of a vocational assessment shall be to determine an  
20 individual's interests, strengths and abilities, in order to identify a  
21 suitable match between the individual and a competitive integrated  
22 employment setting;

23 (2) Completion of one trial integrated work experience every five  
24 years, which can include any work experience with or without pay in  
25 which the individual works alongside non-disabled coworkers, customers  
26 or peers, with the appropriate services and supports for a sufficient  
27 period of time to establish whether an individual's interests, skills  
28 and abilities are well-suited for the particular job. The trial inte-  
29 grated work experience shall be selected through a person-centered plan-  
30 ning process and shall be individually tailored to each person. Alterna-  
31 tively, the commissioner may consider the individual's demonstration of  
32 an inability to participate in an integrated work setting due to a docu-  
33 mented medical condition that poses an immediate and serious threat to  
34 the individual's health or safety, or the health or safety of others in  
35 an integrated work setting;

36 (3) Receipt of outreach, education and support services in accordance  
37 with regulations promulgated by the commissioner. Outreach, education  
38 and support services are services designed to explain the benefits of  
39 supported employment, as defined in subdivision eleven of section one  
40 thousand two of the education law, that address concerns of families and  
41 perceived obstacles to participation, and are designed to encourage  
42 individuals in day activity service programs, including in sheltered  
43 workshops and facility-based day programs, and their families to seek  
44 supported employment services, as defined under subdivision twelve of  
45 section one thousand two of the education law; or

46 (4) Involvement in a benefits counseling consultation in accordance  
47 with regulations promulgated by the commissioner. A benefit counseling  
48 consultation shall provide information to the individual and his or her  
49 family or guardian about the impact of earned income on the individual's  
50 public benefits.

51 (b) The office shall ensure that individuals who are granted accommo-  
52 dation to participate in a nonintegrated setting shall continue to  
53 receive services and any additional services the office determines are  
54 necessary to enable the individual's meaningful participation in the  
55 chosen setting.

1 (c) The procedures for obtaining accommodation to remain in a noninte-  
2 grated setting shall not supersede nor bar the individual's choice to  
3 remain in a nonintegrated setting.

4 (d) The accommodation to remain in a nonintegrated setting shall not  
5 diminish the individual's eligibility for receipt of services under  
6 title eleven of article five of the social services law, and such indi-  
7 vidual's eligibility to receive such services shall be substantially  
8 similar to benefits that would have been received had the individual  
9 chosen to participate in an integrated setting.

10 (e) The commissioner is authorized to issue, amend or repeal any regu-  
11 lations as he or she shall deem necessary to implement the provisions of  
12 this section.

13 § 4. The commissioner of developmental disabilities shall amend and  
14 resubmit to the Federal Centers for Medicare and Medicaid Services the  
15 final New York plan to increase competitive employment opportunities for  
16 people with developmental disabilities, as approved on May 1, 2014, in  
17 order to secure the continued federal financial participation for prevocational services and any other necessary federal funds for those individuals choosing a sheltered workshop setting pursuant to section 16.02 of the mental hygiene law. The plan, as amended according to this section, shall stipulate that facility-based prevocational services shall continue to be eligible for federal funding, as allowed by such centers' stated policy that its regulations do not prohibit individuals from receiving prevocational services in a facility-based setting, such as a sheltered workshop, as referenced in its Informational Bulletin on Employment Services dated September 16, 2011, and its related document titled "HCBS Final Regulations 42 C.F.R. Part 441: Questions and Answers Regarding Home and Community-Based Settings; Public Notice and Comments".

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30 § 5. This act shall take effect immediately.