

STATE OF NEW YORK

5028

2023-2024 Regular Sessions

IN SENATE

February 22, 2023

Introduced by Sen. MANNION -- read twice and ordered printed, and when printed to be committed to the Committee on Disabilities

AN ACT to amend the mental hygiene law, in relation to the creation of an innovative housing initiative for persons with a developmental disability who wish and are able to safely reside in such a setting; to direct the division of housing and community renewal to establish guidelines for the dissemination of disclosure materials for the offer and sale of interests in residential environments formed under the innovative housing initiative; and to amend the general business law, in relation to creating an exemption from certain filing requirements for residential environments that are formed as cooperative interests in realty for persons receiving services under the innovative housing initiative

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Legislative purpose and findings. The legislature hereby
2 finds and declares as follows:
3 (a) New York state is currently facing a severe housing crisis for
4 people with developmental disabilities. Staffing shortages for certified
5 housing, commonly referred to as group homes, has put additional pres-
6 sure on the state to provide alternative and innovative housing models,
7 especially for those persons who are able to live more independently and
8 wish to do so.
9 (b) Many persons with developmental disabilities live with a parent or
10 parents, a family member, or other similar direct support personnel.
11 However, many such persons wish to live more independently, and would do
12 so if an option existed that included certain appropriate supports.
13 (c) Further, although family caregiving is appropriate in many
14 instances, parents and similar direct support personnel may eventually
15 become unable to continue supporting the person who has a developmental

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

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1 disability, due to the direct support personnel's infirmity, death, or
2 other concerns.

3 (d) Accordingly, there is a need to create new and innovative housing
4 models that maximize independence for persons with developmental disa-
5 bilities. The state should provide more independent housing options to
6 persons with developmental disabilities, where such persons wish and are
7 able to take advantage of such opportunities.

8 (e) Thus, to maximize the availability of innovative housing settings,
9 this legislation directs the office for people with developmental disa-
10 bilities ("OPWDD") to create an Innovative Housing Initiative that
11 enables persons with developmental disabilities to live more independ-
12 ently, including housing that is owned or leased in their name, or by
13 someone else on behalf of such person or that of a trust established for
14 their benefit, with supports provided through OPWDD, such as availabili-
15 ty of shared direct support personnel. In this way, OPWDD will help
16 ensure that persons with developmental disabilities are afforded
17 settings that are the most integrated and appropriate for their needs.

18 § 2. The mental hygiene law is amended by adding a new section 16.38
19 to read as follows:

20 § 16.38 Innovative housing initiative.

21 (a) The office shall enable persons with a developmental disability to
22 live independently in a residential environment, with support services,
23 including but not limited to staffing support, shared staffing support,
24 and opportunities for social engagement and recreation.

25 (b) Such residential environment may be comprised of a single housing
26 unit or multiple units of housing, in one or more buildings, including
27 but not limited to: (i) leased residential housing units; (ii) housing
28 that qualifies as a cooperative interest in realty under section three
29 hundred fifty-two-e of the general business law; and (iii) condominium
30 units under article nine-B of the real property law. The interest in
31 such residential unit may be leased or owned by a person with a develop-
32 mental disability, or an entity on behalf of such person, including but
33 not limited to a trust established for such person's benefit. Each unit
34 of residential housing may be occupied by no more than the number of
35 unrelated persons permitted by local law.

36 (c) The selection of the residential environment, the person or
37 persons with whom they live and the determination that they may inde-
38 pendently live in such residential environment, with support services,
39 shall be made solely by such person with a developmental disability and
40 their qualified representative.

41 (d) In recognition of the requirement that the individual's experience
42 shall determine whether a residential environment is the most integrated
43 and appropriate for the needs of the person with a developmental disa-
44 bility, in determining eligibility for any housing program, support
45 services or other benefits, the office shall:

46 (1) honor the right of the person with a developmental disability to
47 choose the residential environment and with whom they may live;

48 (2) maximize the types of residential environments in which a person
49 with a developmental disability may live while being eligible for funds
50 through a home and community based waiver to the full extent permitted
51 by federal law; and

52 (3) permit a number of persons with a developmental disability to live
53 in a residential environment when viewed as a whole up to the full
54 extent permitted by federal law.

55 (e) This section shall not limit or otherwise affect requirements
56 applying to:

1 (1) an integrated supportive housing program administered by the
2 office in coordination with the division of housing and community
3 renewal (commonly referred to as the Integrative Supportive Housing
4 program or "ISH"); or

5 (2) projects developed as part of an empire state supportive housing
6 initiative (commonly referred to as "ESSHI").

7 (f) The office shall coordinate with the department of health to
8 determine whether an amendment to the state plan authorized by section
9 three hundred sixty-three-a of the social services law or a waiver is
10 required from the federal Centers for Medicare and Medicaid Services
11 ("CMS") to maximize federal financial participation for the initiative
12 described in this section no more than thirty days from the effective
13 date of this section. If the office determines that an amendment to the
14 state plan or a waiver is required or desirable, the department of
15 health shall submit such amendment or apply to CMS for such waiver with-
16 in twelve months from the date of said determination.

17 (g) The office may conduct public hearings to receive public comment
18 on how residential environments that include innovative housing author-
19 ized by this section can best be integrated with the broader community.

20 (h) This section shall not be construed to permit the operation with-
21 out an operating certificate of a community residence, community resi-
22 dential facility for the disabled, supervised living facility, support-
23 ive living facility, or any other provider of service requiring an
24 operating certificate under section 16.03 of this article. Nothing in
25 this section shall be interpreted as authorizing an increase in the
26 number of beds approved for a community residence, community residential
27 facility for the disabled, supervised living facility, supportive living
28 facility, or any other provider of service requiring an operating
29 certificate under section 16.03 of this article.

30 (i) Residential environments in which persons with a developmental
31 disability receive services pursuant to the innovative housing initi-
32 ative described by this section shall not discriminate against any resi-
33 dent or potential resident based on race, creed, age other than being at
34 least eighteen years of age, color, national origin, sex, disability,
35 marital status, military status, family status, sexual orientation,
36 gender identity or expression, or any other protected characteristic
37 under the New York state human rights law.

38 § 3. The division of housing and community renewal shall establish
39 guidelines for the dissemination of disclosure materials for the offer
40 and sale of interests in residential environments formed under the inno-
41 vative housing initiative established by section 16.38 of the mental
42 hygiene law, including (a) housing that qualifies as a cooperative
43 interest in realty under section 352-e of the general business law; (b)
44 condominium units under article 9-B of the real property law; and (c)
45 shares in a housing development fund corporation which are otherwise
46 exempt from the filing requirements of section 352-e of the general
47 business law, to ensure material information is disclosed to any
48 prospective shareholder that: (i) fully describes the risks to a
49 prospective shareholder's investment; and (ii) encourages the prospec-
50 tive shareholder to consult with legal counsel prior to purchasing any
51 shares. The division of housing and community renewal shall make the
52 disclosure guidelines publicly available on its website in compliance
53 with section 102(14) of the state administrative procedure act.

54 § 4. Section 352-g of the general business law, as added by chapter
55 987 of the laws of 1960, is amended to read as follows:

1 § 352-g. Exemptions. (a) The attorney general, upon application, may
2 exempt from the provisions of sections three hundred fifty-two-e, three
3 hundred fifty-two-f and three hundred fifty-two-h any offerings of secu-
4 rities (1) made to persons not exceeding forty in number or (2) which
5 securities have been fully registered with the securities and exchange
6 commission of the United States of America or have received an exemption
7 therefrom for reasons other than said offering is an intrastate offering
8 to residents of the state of New York only.

9 (b) Residential environments that are formed as housing development
10 fund corporations pursuant to article XI of the private housing finance
11 law and section four hundred two of the business corporation law where
12 such residential environment is formed for persons receiving services
13 under the innovative housing initiative established by section 16.38 of
14 the mental hygiene law and where the division of housing and community
15 renewal is the supervising agency as defined by section five hundred
16 seventy-two of the private housing finance law, and where the division
17 of housing and community renewal requires the housing development fund
18 corporation to enter into a monitoring agreement with a qualified not-
19 for-profit with experience in the oversight, support and management of
20 housing development fund corporations shall be exempt from any filing
21 requirements of section three hundred fifty-two-e of this article for
22 the investment in any residential environments and the conversion of any
23 building, group of buildings or development which are converted to a
24 housing development fund corporation.

25 § 5. This act shall take effect immediately.