S T A T E O F N E W Y O R K

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I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. DESTITO, BOYLAND, BROOK-KRASNY, CARROZZA, GUNTHER, KAVANAGH, KOON, PHEFFER, J. RIVERA, SCHROEDER, STIRPE, TITUS, ERRIGO, FINCH, MOLINARO, TOWNSEND, WALKER, EDDINGTON -- Multi-Sponsored by -- M. of A. ABBATE, AMEDORE, BACALLES, CALHOUN, CHRISTENSEN, CLARK, CROUCH, GALEF, GLICK, JACOBS, JOHN, V. LOPEZ, LUPARDO, MAGEE, MAISEL, McENENY, MILLMAN, PERRY, RABBITT, REILLY, ROBINSON, ROSENTHAL, SALADINO, SAYWARD, SCOZZAFAVA, SWEENEY, TOWNS, WEISENBERG -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to enabling individuals with disabilities to have the right to choose and receive services in the most integrated setting appropriate for the needs of the individual and to ensure that state agencies promote such integration through a plan and annual report

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

Section 1. Legislative intent. The purposes of this act are:

(a) to empower individuals with disabilities, including the elderly, to maximize employment, economic and social self sufficiency, independence, and inclusion and integration into society, through

(1) statewide systems, policies and regulations implemented in accordance with Title II of the Americans with Disabilities Act that include, as integral components, comprehensive and coordinated demonstration projects;

(2) the guarantee of equal opportunity; and

(b) to ensure that the New York state government plays a leadership role in promoting the integration of individuals with disabilities, especially individuals with significant disabilities, into every aspect of their communities and in assisting agencies and providers of services in fulfilling the aspirations of such individuals with disabilities for meaningful independent living.

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

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S 2. The executive law is amended by adding a new section 296-b to read as follows:

S 296-B. MOST INTEGRATED SERVICES. 1. DEFINITIONS. WHEN USED IN THIS SECTION:

(A) THE TERM "INDIVIDUAL" INCLUDES A PERSON OF ANY AGE WHO PARTICIPATES IN A STATE-FUNDED OR STATE-ADMINISTERED PROGRAM.

(B) THE TERM "COMMUNITY-BASED SETTING" INCLUDES A SETTING WHICH PROVIDES THE OPPORTUNITY TO LIVE, SOCIALIZE, RECREATE, LEARN, AND WORK IN AN ENVIRONMENT THAT DOES NOT SEGREGATE BASED ON DISABILITY. A COMMUNITY-BASED SETTING IS NOT A CONGREGATE INSTITUTION.

(C) THE TERM "INSTITUTIONALIZATION" INCLUDES SEGREGATION IN A CONGREGATE LIVING FACILITY BASED ON DISABILITY OR SEGREGATED SERVICES BASED ON DISABILITY.

(D) THE TERM "MOST INTEGRATED" SETTING INCLUDES A SETTING THAT ENABLES PEOPLE WITH DISABILITIES TO RECEIVE SERVICES IN AN ENVIRONMENT THAT DOES NOT SEGREGATE PEOPLE BASED ON DISABILITY. SEPARATE FACILITIES OR SERVICES FOR PEOPLE WITH DISABILITIES SHALL OCCUR ONLY WHEN THE NATURE OR SEVERITY OF THE DISABILITY IS SUCH THAT A PERSON CAN NOT BENEFIT FROM COMMUNITY-BASED SERVICES EVEN WITH THE USE OF SUPPLEMENTARY AIDS AND SERVICES.

(E) THE TERM "SERVICES" INCLUDES ANY STATE-SPONSORED PROGRAM OR SUPPORT PROVIDED TO AN ELIGIBLE INDIVIDUAL.

2. MOST INTEGRATED SERVICES. AN INDIVIDUAL SHALL HAVE THE RIGHT TO CHOOSE AND RECEIVE SERVICES INCLUDING BUT NOT LIMITED TO HOUSING, EDUCATION, TRANSPORTATION, EMPLOYMENT, AND MEDICAL ASSISTANCE FROM A GOVERNMENTAL AGENCY OR A PROVIDER THAT CONTRACTS WITH A GOVERNMENT AGENCY IN THE MOST INTEGRATED SETTING APPROPRIATE TO THE NEEDS OF THE INDIVIDUAL.

3. COMMUNITY-BASED SETTING. AN INDIVIDUAL SHALL HAVE A PRESUMPTIVE RIGHT TO INTEGRATED, INDIVIDUALIZED SERVICES IN A COMMUNITY-BASED SETTING AND THAT EVERYONE CAN BE PRESUMED TO BE CAPABLE OF BENEFITING FROM THESE SERVICES.

4. STATE AGENCIES. EACH STATE AGENCY RESPONSIBLE FOR DELIVERING SERVICES AND/OR WHO CONTRACTS WITH PROVIDERS TO DELIVER SERVICES MUST DEVELOP AN ASSESSMENT THAT PRESUMES EACH INDIVIDUAL IS ABLE TO RECEIVE SERVICES IN A COMMUNITY-BASED SETTING WITH APPROPRIATE, INDIVIDUALIZED ACCOMMODATIONS. EACH STATE AGENCY MUST DETERMINE WHAT SERVICES ARE NECESSARY TO ENABLE THE INDIVIDUAL TO LIVE IN THE COMMUNITY.

5. TRANSITIONS TO MOST INTEGRATED SETTING. (A) FOR PEOPLE WANTING TO MOVE TO A MOST INTEGRATED SETTING:

(1) STATE AGENCIES SHOULD DEVELOP A PLAN TO TRANSITION THE INDIVIDUAL FROM A COMMUNITY-BASED SETTING IN CONSULTATION WITH THE INDIVIDUAL AND/OR THE INDIVIDUAL'S REPRESENTATIVE.

(2) THE PLAN SHALL SPECIFY

A. THE NECESSARY SERVICES AND SUPPORTS TO ENABLE THE PERSON TO RECEIVE INTEGRATED, COMMUNITY-BASED SERVICES; AND

B. THE METHODS TO ACCESS THESE SERVICES; AND

C. WHICH AGENCIES AND/OR REPRESENTATIVES WILL BE RESPONSIBLE FOR PROVIDING THESE COMMUNITY SERVICES AND SUPPORTS; AND

D. A TIMELINE TO COMPLETE THIS PLAN; AND

E. THE MEANS BY WHICH THE INDIVIDUAL MAY EXPRESS, AND SEEK A REMEDY FOR, ANY DISSATISFACTION WITH THE PLAN OR THE IMPLEMENTATION OF THE PLAN, INCLUDING THE PROCEDURES TO SEEK REVIEW BY THE STATE AGENCY.

(3) THE STATE AGENCY SHALL PROVIDE THE INDIVIDUAL, OR, AS APPROPRIATE, THE INDIVIDUAL'S REPRESENTATIVE, WITH A COPY OF THIS PLAN, SUPPLEMENTED AS NECESSARY BY OTHER APPROPRIATE MODES OF COMMUNICATION CONSISTENT WITH THE INFORMED CHOICE OF THE INDIVIDUAL.

(B) FOR PEOPLE WANTING TO PREVENT PLACEMENT IN A MORE RESTRICTIVE SETTING:

IN ORDER TO PLACE AN INDIVIDUAL IN A MORE RESTRICTIVE SETTING THAN THE ONE IN WHICH THE INDIVIDUAL CURRENTLY RESIDES OR RECEIVES SERVICES, THE STATE AGENCY MUST

(1) STATE THE SPECIFIC CIRCUMSTANCES WHY A MORE RESTRICTIVE PLACEMENT IS NECESSARY;

(2) STATE THE STRATEGIES AND SUPPORTS THAT HAVE BEEN UTILIZED AND DID NOT BENEFIT THE INDIVIDUAL;

(3) STATE THE DESIRED PLACEMENT AND PLAN TO ACHIEVE IT WITH AN EXPLANATION OF WHY IT IS BELIEVED THE INDIVIDUAL WILL BENEFIT FROM THIS RESTRICTIVE PLACEMENT;

(4) PROVIDE THE INDIVIDUAL WITH THE MEANS BY WHICH THE INDIVIDUAL MAY EXPRESS, AND SEEK A REMEDY FOR, ANY DISSATISFACTION WITH THE RESTRICTIVE PLACEMENT, INCLUDING THE PROCEDURES TO SEEK REVIEW BY THE STATE AGENCY.

6. ANNUAL REPORTS. ALL STATE AGENCIES AND DEPARTMENTS SHALL SUBMIT ANNUAL REPORTS TO THE LEGISLATURE AND GOVERNOR WHICH DETAIL THEIR EFFORTS TO PROVIDE SERVICES AND SUPPORTS IN A COMMUNITY-BASED SETTING AND STATE HOW THE AGENCY HAS SOUGHT TO EXPAND OPPORTUNITIES FOR INTEGRATED COMMUNITY-BASED PARTICIPATION FOR INTEGRATED OPPORTUNITIES IN SERVICE AND PROGRAM ADMINISTRATION.

7. SUBSTANTIAL AND ACTUAL PARTICIPATION. ALL STATE AGENCIES MUST PROVIDE OPPORTUNITIES FOR SUBSTANTIAL AND ACTIVE PARTICIPATION BY PEOPLE WITH DISABILITIES, ELDERLY PEOPLE AND PARENT ADVOCATES IN THE DEVELOPMENT OF REGULATIONS, POLICIES AND GUIDELINES CONCERNING THIS LAW. EACH STATE AGENCY WILL PROMULGATE REGULATIONS DEFINING "SUBSTANTIAL AND ACTIVE PARTICIPATION" THAT ARE CONSISTENT WITH THIS LAW. ALL STATE AGENCIES AND DEPARTMENTS SHALL PROMULGATE RULES, REGULATIONS AND POLICIES CONSISTENT WITH THIS STATUTE WITHIN ONE YEAR OF ENACTMENT.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.