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

7037

2009-2010 Regular Sessions

I N A S S E M B L Y

March 18, 2009

Introduced by M. of A. ORTIZ, PERRY, JAFFEE, PHEFFER -- Multi-Sponsored by -- M. of A. BOYLAND, GOTTFRIED, KOON, J. RIVERA -- read once and referred to the Committee on Alcoholism and Drug Abuse

AN ACT to amend the mental hygiene law and the social services law, in relation to site selection of community residential facilities for the treatment of chemical dependency

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

Section 1. Paragraphs 1 and 2 of subdivision (a) of section 41.34 of the mental hygiene law, subdivision 1 as amended by chapter 1025 of the laws of 1981 and subdivision 2 as amended by chapter 1024 of the laws of 1981, are amended to read as follows:

(1) "Community residential facility for [the] PERSONS WHO ARE disabled" means a supportive living facility with four to fourteen residents or a supervised living facility subject to licensure by the office of mental health or the office of mental retardation and developmental disabilities OR THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES which provides a residence for up to fourteen [mentally disabled] persons WHO ARE MENTALLY DISABLED, including residential treatment facilities for children and youth.

(2) "Sponsoring agency" means an agency or unit of government, a voluntary agency or any other person or organization which intends to establish or operate a community residential facility for [the] PERSONS WHO ARE disabled.

S 2. Subdivision (b) of section 41.34 of the mental hygiene law, as amended by chapter 1024 of the laws of 1981, is amended to read as follows:

(b) If a sponsoring agency intends to establish a residential facility for [the] PERSONS WHO ARE disabled within a municipality but does not have a specific site selected, it may notify the chief executive officer of the municipality in writing of its intentions and include in such

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

LBD10350-01-9

notice a description of the nature, size and community support requirements of the program. Provided, however, nothing in this subdivision shall preclude the proposed establishment of a site pursuant to subdivision (c) of this section.

S 3. Subparagraph (C) of paragraph 1 of subdivision (c) of section 41.34 of the mental hygiene law, as amended by chapter 823 of the laws of 1992, is amended to read as follows:

(C) object to the establishment of a facility of the kind described by the sponsoring agency because to do so would result in such a concentration of community residential facilities for [the] PERSONS WHO ARE mentally disabled in the municipality or in the area in proximity to the site selected or a combination of such facilities with other community residences or similar facilities licensed by other agencies of state government, including all community residences, intermediate care facilities, residential care facilities for adults and residential treatment facilities for individuals with mental illness or developmental disabilities operated pursuant to article sixteen [or], article thirty-one OR ARTICLE THIRTY-TWO of this chapter and all similar residential facilities of fourteen or less residents operated or licensed by another state agency, that the nature and character of the areas within the municipality would be substantially altered.

S 4. Paragraph 4 of subdivision (c) of section 41.34 of the mental hygiene law, as amended by chapter 1024 of the laws of 1981, is amended to read as follows:

(4) If the site or sites suggested by the municipality are satisfactory with regard to the nature, size and community support requirements of the program of the proposed facility and the area in which such site or sites are located does not already include an excessive number of community residential facilities for [the] PERSONS WHO ARE mentally disabled or similar facilities licensed by other state agencies, the sponsoring agency shall seek to establish its facility at one of the sites designated by the municipality.

If the municipality suggests a site or sites which are not satisfactory to the sponsoring agency, the agency shall so notify the municipality which shall have fifteen days to suggest an alternative site or sites for the proposed community residential facility.

S 5. Paragraph 5 of subdivision (c) of section 41.34 of the mental hygiene law, as amended by chapter 1024 of the laws of 1981, is amended to read as follows:

(5) In the event the municipality objects to establishment of a facility in the municipality because to do so would result in such a concentration of community residential facilities for [the] PERSONS WHO ARE mentally disabled or combination of such facilities and other facilities licensed by other state agencies that the nature and character of areas within the municipality would be substantially altered; or the sponsoring agency objects to the establishment of a facility in the area or areas suggested by the municipality; or in the event that the municipality and sponsoring agency cannot agree upon a site, either the sponsoring agency or the municipality may request an immediate hearing before the commissioner to resolve the issue. The commissioner shall personally or by a hearing officer conduct such a hearing within fifteen days of such a request.

In reviewing any such objections, the need for such facilities in the municipality shall be considered as shall the existing concentration of such facilities and other similar facilities licensed by other state agencies in the municipality or in the area in proximity to the site

selected and any other facilities in the municipality or in the area in proximity to the site selected providing residential services to a significant number of persons who have formerly received in-patient mental health services in facilities of the office of mental health or the office of mental retardation and developmental disabilities OR THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES. The commissioner shall sustain the objection if he determines that the nature and character of the area in which the facility is to be based would be substantially altered as a result of establishment of the facility. The commissioner shall make a determination within thirty days of the hearing.

S 6. Paragraph 2 of subdivision (e) of section 41.34 of the mental hygiene law, as added by chapter 823 of the laws of 1992, is amended to read as follows:

(2) The office of mental health [and], the office of mental retardation and developmental disabilities OR THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES shall not issue an operating certificate for the operation of a supportive living facility or a supervised living facility of more than fourteen residents if the agency or unit of government, voluntary agency or any other person or organization which intends to establish or operate such a facility does not notify the chief executive officer of the municipality in which that facility is to be established in writing of the intention to establish such facility and include in such notice the specific address of the site, the type of residence, the number of residents and the community support requirements of the program; provided, however, that nothing contained in this paragraph shall either be construed to require facilities of more than fourteen beds to meet any other requirement of this section, or to deem such facilities family units for the purposes of local laws and ordinances.

S 7. Subdivision 1 of section 463 of the social services law, as amended by chapter 465 of the laws of 1992, is amended to read as follows:

1. "Community residential facility" means any facility operated or subject to licensure by the state which provides a supervised residence for PERSONS WHO ARE mentally, emotionally, physically, or socially disabled [persons] or for persons in need of supervision or juvenile delinquents. This term includes, but is not limited to, community residences for [the] PERSONS WHO ARE mentally disabled operated or licensed by the offices of mental health or mental retardation and developmental disabilities or by [the divisions of] the office of alcoholism and substance abuse SERVICES, agency operated boarding homes, group homes or private proprietary homes for adults operated or licensed by the department of [social services] FAMILY ASSISTANCE, group homes operated by, contracted for or licensed by the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES and half-way houses operated or licensed by the [division of substance abuse services] OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES.

S 8. This act shall take effect immediately; provided, however, the provisions of this act shall apply to applications for operating certificates initiated on or after the effective date of this act.