

6361

2009-2010 Regular Sessions

I N S E N A T E

December 30, 2009

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

AN ACT to amend the family court act, in relation to youth drug and alcohol detoxification; and to amend the insurance law, in relation to providing benefits for treatment of chemical dependency in certain health insurance plans

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

1 Section 1. This act shall be known and may be cited as "Denise's law".
2 S 2. The family court act is amended by adding a new article 10-B to
3 read as follows:

4 ARTICLE 10-B

5 YOUTH DRUG AND ALCOHOL DETOXIFICATION

6 S 1100. YOUTH DRUG AND ALCOHOL DETOXIFICATION.

7 S 1100. YOUTH DRUG AND ALCOHOL DETOXIFICATION. 1. FOR PURPOSES OF THIS
8 SECTION:

9 (A) "APPROVED APPLICANT" MEANS:

10 (I) WITH RESPECT TO A YOUTH:

11 (1) THAT YOUTH'S PARENT; OR

12 (2) A PERSON WITH WHOM THAT YOUTH HAS A CLOSE PERSONAL RELATIONSHIP;

13 OR

14 (II) A SOCIAL WORKER;

15 (B) "ASSESSED YOUTH" MEANS A YOUTH WHO IS THE SUBJECT OF A WARRANT
16 ISSUED PURSUANT TO SUBDIVISION THREE OF THIS SECTION, WHO HAS BEEN
17 APPREHENDED FOR THE PURPOSES OF AN EXAMINATION OR WHO IS THE SUBJECT OF
18 A DETOXIFICATION ORDER;

19 (C) "DETOXIFICATION FACILITY" MEANS A FACILITY IN NEW YORK STATE
20 CERTIFIED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES;

21 (D) "DETOXIFICATION ORDER" MEANS AN ORDER ISSUED PURSUANT TO SUBDIVI-
22 SION THIRTEEN OF THIS SECTION RESPECTING AN ASSESSED YOUTH.

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

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1 2. AN APPROVED APPLICANT MAY PETITION THE COURT STATING THAT THE
2 APPROVED APPLICANT BELIEVES ON REASONABLE GROUNDS THAT A YOUTH:

3 (A) IS SUFFERING FROM SEVERE DRUG ADDICTION OR DRUG ABUSE;

4 (B) IS AT RISK OF SERIOUS HARM OR DANGER TO HIMSELF OR HERSELF OR TO
5 ANOTHER PERSON;

6 (C) IS IN NEED OF DETAINMENT TO ENSURE HIS OR HER SAFETY OR THE SAFETY
7 OF ANOTHER PERSON OR TO FACILITATE THE YOUTH'S DETOXIFICATION AND
8 STABILIZATION; AND

9 (D) SHOULD BE EXAMINED BY A PHYSICIAN TO DETERMINE WHETHER OR NOT THE
10 YOUTH SHOULD BE ADMITTED TO A DETOXIFICATION FACILITY OR RECEIVE DETOXI-
11 FICATION AND STABILIZATION SERVICES.

12 3. IF THE JUDGE IS SATISFIED ON REASONABLE GROUNDS THAT THE YOUTH
13 NAMED IN THE PETITION SHOULD BE EXAMINED BY A PHYSICIAN TO DETERMINE
14 WHETHER OR NOT THE YOUTH SHOULD BE ADMITTED TO A DETOXIFICATION FACILITY
15 OR RECEIVE DETOXIFICATION AND STABILIZATION SERVICES, THAT JUDGE MAY,
16 AFTER MAKING ARRANGEMENTS WITH A PHYSICIAN WHO IS TO CONDUCT THE EXAM-
17 INATION, ISSUE A WARRANT IN THE PRESCRIBED FORM TO:

18 (A) APPREHEND THE YOUTH NAMED IN THE WARRANT; AND

19 (B) CAUSE THE YOUTH TO BE TAKEN TO THE PHYSICIAN WHERE THE YOUTH MAY
20 BE DETAINED AND MAY BE EXAMINED BY THAT PHYSICIAN.

21 4. NO PERSON SHALL FALSELY SWEAR OR AFFIRM ANY INFORMATION PURSUANT TO
22 THIS SECTION.

23 5. A WARRANT ISSUED PURSUANT TO SUBDIVISION THREE OF THIS SECTION
24 SHALL BE ACCOMPANIED BY WRITTEN REASONS FOR ITS ISSUANCE.

25 6. A COPY OF A WARRANT ISSUED PURSUANT TO SUBDIVISION THREE OF THIS
26 SECTION AND THE WRITTEN REASONS ARE TO BE PROVIDED TO THE PHYSICIAN WHO
27 EXAMINES THE YOUTH.

28 7. IF AN APPROVED APPLICANT SO REQUESTS, THE WARRANT MAY BE DIRECTED
29 TO AND EXECUTED BY THAT APPROVED APPLICANT.

30 8. IF THE WARRANT IS NOT DIRECTED TO AN APPROVED APPLICANT PURSUANT TO
31 SUBDIVISION SEVEN OF THIS SECTION THE WARRANT MUST BE DIRECTED TO AND
32 EXECUTED BY A POLICE OFFICER.

33 9. EVERY ASSESSED YOUTH:

34 (A) SHALL BE INFORMED OF THE REASON FOR HIS OR HER APPREHENSION OR
35 DETENTION; AND

36 (B) IS ENTITLED TO RECEIVE A COPY OF THE ORDER PURSUANT TO WHICH HE OR
37 SHE HAS BEEN APPREHENDED OR DETAINED.

38 10. A PHYSICIAN SHALL EXAMINE THE ASSESSED YOUTH:

39 (A) AS SOON AS IS REASONABLY PRACTICABLE; AND

40 (B) IN ALL CASES WITHIN TWENTY-FOUR HOURS OF THE YOUTH'S APPREHENSION.

41 11. NO YOUTH SHALL BE APPREHENDED PURSUANT TO A WARRANT ISSUED PURSU-
42 ANT TO SUBDIVISION THREE OF THIS SECTION MORE THAN SEVEN DAYS AFTER THE
43 DATE ON WHICH THE WARRANT WAS ISSUED.

44 12. AFTER AN EXAMINATION BY A PHYSICIAN, ALL OR ANY OF THE FOLLOWING
45 MAY BE DONE:

46 (A) AN ARRANGEMENT FOR DETOXIFICATION AND STABILIZATION SERVICES MAY
47 BE MADE BY A YOUTH;

48 (B) A DETOXIFICATION ORDER MAY BE ISSUED PURSUANT TO SUBDIVISION THIR-
49 TEEN OF THIS SECTION WITH RESPECT TO THE ASSESSED YOUTH.

50 13. (A) AFTER CONDUCTING AN EXAMINATION OF AN ASSESSED YOUTH FOR THE
51 PURPOSES OF THIS SECTION AND IF THERE IS NO VOLUNTARY ARRANGEMENT MADE
52 BY THE ASSESSED YOUTH, A PHYSICIAN MAY ISSUE A DETOXIFICATION ORDER TO
53 DETAIN THE ASSESSED YOUTH IN A DETOXIFICATION FACILITY.

54 (B) A DETOXIFICATION ORDER MAY BE ISSUED ONLY IF THE PHYSICIAN IS OF
55 THE OPINION THAT THE ASSESSED YOUTH:

(I) IS SUFFERING FROM SEVERE DRUG ADDICTION OR DRUG ABUSE AND REQUIRES DETENTION TO FACILITATE DETOXIFICATION AND STABILIZATION;

(II) IS LIKELY TO CAUSE HARM TO HIMSELF OR HERSELF OR TO OTHER PERSONS, OR TO SUFFER SUBSTANTIAL MENTAL OR PHYSICAL DETERIORATION, IF HE OR SHE IS NOT DETAINED IN A DETOXIFICATION FACILITY; AND

(III) IS EITHER:

(1) UNABLE TO FULLY UNDERSTAND AND TO MAKE AN INFORMED DECISION RESPECTING HIS OR HER NEED TO DETOXIFY OR STABILIZE; OR

(2) UNABLE OR UNWILLING TO TAKE STEPS TO BEGIN RECOVERY FROM DRUG ADDICTION OR DRUG ABUSE OR TO REDUCE THE RISK OF HARM TO HIMSELF OR HERSELF OR OTHER PERSONS;

14. (A) AN ASSESSED YOUTH, OR A PERSON ON BEHALF OF AN ASSESSED YOUTH, MAY APPEAL THE DECISION OF THE COURT ISSUING THE WARRANT PURSUANT TO SUBDIVISION THREE OF THIS SECTION OR THE DETOXIFICATION ORDER ISSUED BY THE PHYSICIAN WITHIN SEVEN DAYS AFTER THE DATE OF THE DECISION OR WITHIN ANY LONGER PERIOD THAT THE JUDGE MAY ALLOW.

(B) AN APPEAL PURSUANT TO THIS SECTION MAY BE MADE BY NOTICE OF MOTION, AND THE NOTICE OF MOTION IS TO BE SERVED ON:

(I) THE COURT;

(II) THE PERSON IN CHARGE OF A DETOXIFICATION FACILITY IN WHICH THE ASSESSED YOUTH IS DETAINED; AND

(III) ANY OTHER PERSONS THAT THE JUDGE MAY DIRECT.

(C) AN APPEAL PURSUANT TO THIS SECTION IS TO BE SUPPORTED BY AN AFFIDAVIT OF THE APPELLANT SETTING FORTH FULLY THE FACTS IN SUPPORT OF THE APPEAL.

(D) IN ADDITION TO THE EVIDENCE ADDUCED BY THE APPELLANT, THE JUDGE MAY DIRECT ANY FURTHER EVIDENCE TO BE GIVEN THAT THE JUDGE CONSIDERS NECESSARY.

(E) THE JUDGE MAY CONFIRM OR REVERSE THE DECISION TO ISSUE A WARRANT OR THE DETOXIFICATION ORDER ISSUED BY THE PHYSICIAN AND MAY MAKE ANY ORDER THAT THE JUDGE CONSIDERS NECESSARY TO GIVE EFFECT TO THE JUDGE'S DECISION.

S 3. Subparagraph (A) of paragraph 5 of subsection (1) of section 3221 of the insurance law, as amended by chapter 502 of the laws of 2007, is amended to read as follows:

(A) Every insurer delivering a group or school blanket policy or issuing a group or school blanket policy for delivery, in this state, which provides coverage for inpatient hospital care or coverage for physician services shall provide as part of such policy broad-based coverage for the diagnosis and treatment of mental, nervous or emotional disorders or ailments, however defined in such policy, at least equal to the coverage provided for other health conditions and:

(i) where the policy provides coverage for inpatient hospital care, benefits for inpatient care in a hospital as defined by subdivision ten of section 1.03 of the mental hygiene law, which benefits may be limited to not less than thirty days of active treatment in any contract year, plan year or calendar year, and benefits for outpatient care provided in a facility issued an operating certificate by the commissioner of mental health pursuant to the provisions of article thirty-one of the mental hygiene law, or in a facility operated by the office of mental health, which benefits may be limited to not less than twenty visits in any contract year, plan year or calendar year. Benefits for partial hospitalization program services shall be provided as an offset to covered inpatient days at a ratio of two partial hospitalization visits to one inpatient day of treatment. BENEFITS REGARDING DETOXIFICATION AND REHA-

1 BILITATION CARE AND TREATMENT OF CHEMICAL ABUSE AND CHEMICAL DEPENDENCE
2 SHALL BE PROVIDED IN ACCORDANCE WITH PARAGRAPH SIX OF THIS SUBSECTION.

3 (ii) where the policy provides coverage for physician services, it
4 shall include benefits for outpatient care provided by a psychiatrist or
5 psychologist licensed to practice in this state, a licensed clinical
6 social worker who meets the requirements of subparagraph (D) of para-
7 graph four of this subsection, or a professional corporation or univer-
8 sity faculty practice corporation thereof[. Such benefits may be limited
9 to not less than twenty visits in any contract year, plan year, or
10 calendar year]; PROVIDED, HOWEVER, THAT BENEFITS REGARDING DETOXIFICA-
11 TION AND REHABILITATION CARE AND TREATMENT OF CHEMICAL ABUSE AND CHEMI-
12 CAL DEPENDENCE SHALL BE PROVIDED IN ACCORDANCE WITH PARAGRAPH SIX OF
13 THIS SUBSECTION.

14 (iii) Coverage required by this paragraph may be provided on a
15 contract year, plan year or calendar year basis and shall be consistent
16 with the provision of other benefits under the policy. Such coverage may
17 be subject to annual deductibles, co-pays and coinsurance as may be
18 deemed appropriate by the superintendent and shall be consistent with
19 those imposed on other benefits under the policy. In the event that a
20 policy provides coverage for both inpatient hospital care and physician
21 services, the aggregate of the benefits for outpatient care obtained
22 under this paragraph may be limited to not less than twenty visits in
23 any contract year, plan year or calendar year.

24 [(iv) In this paragraph, "active treatment" means treatment furnished
25 in conjunction with inpatient confinement for mental, nervous or
26 emotional disorders or ailments that meet standards prescribed pursuant
27 to the regulations of the commissioner of mental health.]

28 S 4. Paragraphs 6 and 7 of subsection (1) of section 3221 of the
29 insurance law, paragraph 6 as amended by chapter 558 of the laws of 1999
30 and paragraph 7 as amended by chapter 565 of the laws of 2000, are
31 amended to read as follows:

32 (6) (A) Every insurer delivering a group or school blanket policy or
33 issuing a group or school blanket policy for delivery, in this state,
34 which provides coverage for inpatient hospital care [must make available
35 and, if requested by the policyholder,] SHALL provide AS PART OF SUCH
36 POLICY coverage for the diagnosis and treatment of chemical abuse and
37 chemical dependence, however defined in such policy, provided, however,
38 that the term chemical abuse shall mean and include alcohol and
39 substance abuse and chemical dependence shall mean and include alcohol-
40 ism and substance dependence, however defined in such policy. Written
41 notice of the availability of such coverage shall be delivered to the
42 policyholder prior to inception of such group policy and annually there-
43 after, except that this notice shall not be required where a policy
44 covers two hundred or more employees or where the benefit structure was
45 the subject of collective bargaining affecting persons who are employed
46 in more than one state.

47 (B) Such coverage shall be at least equal to [the following] COVERAGE
48 PROVIDED FOR OTHER HEALTH CONDITIONS AND SHALL INCLUDE:

49 (i) [with respect to] benefits for detoxification as a consequence of
50 chemical dependence, inpatient benefits in a hospital or a detoxifica-
51 tion facility [may not be limited to less than seven days of active
52 treatment in any calendar year]; and

53 (ii) [with respect to] benefits for rehabilitation services, [such
54 benefits may not be limited to less than thirty days of] AND inpatient
55 care in [any calendar year] A HOSPITAL OR REHABILITATION FACILITY.

1 (C) Such coverage may be limited to facilities in New York state which
2 are certified by the office of alcoholism and substance abuse services
3 and, in other states, to those which are accredited by the joint commis-
4 sion on accreditation of hospitals as alcoholism, substance abuse or
5 chemical dependence treatment programs.

6 (D) Such coverage shall be [made available] PROVIDED at the inception
7 of all new policies and with respect to all other policies at any anni-
8 versary date of the policy [subject to evidence of insurability].

9 (E) Such coverage may be subject to annual deductibles and co-insu-
10 rance as may be deemed appropriate by the superintendent and are
11 consistent with those imposed on other benefits within a given policy.
12 [Further, each insurer shall report to the superintendent each year the
13 number of contract holders to whom it has issued policies for the inpa-
14 tient treatment of chemical dependence, and the approximate number of
15 persons covered by such policies.]

16 (F) Such coverage shall not replace, restrict or eliminate existing
17 coverage provided by the policy.

18 (7) Every insurer delivering a group or school blanket policy or issu-
19 ing a group or school blanket policy for delivery in this state which
20 provides coverage for inpatient hospital care [must] SHALL provide AS
21 PART OF SUCH POLICY, coverage for [at least sixty] outpatient [visits in
22 any calendar year] CARE for the diagnosis and treatment of chemical
23 dependence [of which up to twenty may be for family members, except
24 that] AT BEST EQUAL TO THE COVERAGE PROVIDED FOR OTHER HEALTH CONDI-
25 TIONS. HOWEVER, this provision shall not apply to a policy which covers
26 persons employed in more than one state or the benefit structure of
27 which was the subject of collective bargaining affecting persons who are
28 employed in more than one state. Such coverage may be limited to facili-
29 ties in New York state certified by the office of alcoholism and
30 substance abuse services or licensed by such office as outpatient clin-
31 ics or medically supervised ambulatory substance abuse programs and, in
32 other states, to those which are accredited by the joint commission on
33 accreditation of hospitals as alcoholism or chemical dependence treat-
34 ment programs. Such coverage may be subject to annual deductibles and
35 co-insurance as may be deemed appropriate by the superintendent and are
36 consistent with those imposed on other benefits within a given policy.
37 Such coverage shall not replace, restrict, or eliminate existing cover-
38 age provided by the policy. Except as otherwise provided in the applica-
39 ble policy or contract, no insurer delivering a group or school blanket
40 policy or issuing a group or school blanket policy providing coverage
41 for alcoholism or substance abuse services pursuant to this section
42 shall deny coverage to a family member who identifies themself as a
43 family member of a person suffering from the disease of alcoholism,
44 substance abuse or chemical dependency and who seeks treatment as a
45 family member who is otherwise covered by the applicable policy or
46 contract pursuant to this section. The coverage required by this para-
47 graph shall include treatment as a family member pursuant to such family
48 members' own policy or contract provided such family member [(i) does
49 not exceed the allowable number of family visits provided by the appli-
50 cable policy or contract pursuant to this section, and (ii)] is other-
51 wise entitled to coverage pursuant to this section and such family
52 members' applicable policy or contract.

53 S 5. Paragraphs 18 and 19 of subsection (b) of section 4322 of the
54 insurance law, as added by chapter 504 of the laws of 1995, are amended
55 to read as follows:

1 (18) Inpatient diagnosis and treatment of alcoholism and alcohol abuse
2 and substance abuse and [substance] CHEMICAL dependence [up to thirty
3 days per calendar year] AND for detoxification [combined with inpatient
4 treatment of mental, nervous or emotional disorders or ailments].

5 (19) Outpatient diagnosis and treatment of mental, nervous or
6 emotional disorders or ailments [up to thirty non-emergency and three
7 emergency visits per calendar year] AND DISORDERS OF ALCOHOLISM AND
8 ALCOHOL ABUSE AND SUBSTANCE ABUSE AND CHEMICAL DEPENDENCE.

9 S 6. Severability. If any clause, sentence, paragraph, section or part
10 of any provision of this act be adjudged by any court of competent
11 jurisdiction to be invalid, such judgment shall not affect, impair or
12 invalidate the remainder thereof, but shall be confined in its operation
13 to the clause, sentence, paragraph, section or part of the provision
14 directly involved in the controversy in which such judgment shall have
15 been rendered.

16 S 7. This act shall take effect on the first of January next succeed-
17 ing the date on which it shall have become a law; provided, however,
18 that this act shall apply to all policies and contracts issued, renewed,
19 modified, altered or amended on or after such effective date; and
20 provided further, however, that any rules and regulations necessary for
21 the implementation of the provisions of this act on its effective date
22 are authorized and directed to be promulgated on or before such date.