

11197

I N A S S E M B L Y

May 25, 2010

Introduced by M. of A. ORTIZ -- (at request of the Governor) -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to changing the name of the office of mental retardation and developmental disabilities to the New York state office for people with developmental disabilities; to amend chapter 455 of the laws of 2007 relating to the use of certain language and terminology when dealing with certain issues, in relation to the language to be used in reference to persons with developmental disabilities; and to repeal subdivision 6 of section 29.29 of the mental hygiene law relating thereto

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

1 Section 1. Subdivisions 2, 11 and 28 of section 1.03 of the mental
2 hygiene law, subdivision 2 as amended by chapter 223 of the laws of
3 1992, subdivision 11 as added by chapter 978 of the laws of 1977 and
4 subdivision 28 as amended by chapter 1024 of the laws of 1981, are
5 amended to read as follows:
6 2. "Commissioner" means the commissioner of mental health, the commis-
7 sioner of [mental retardation and] developmental disabilities and the
8 commissioner of alcoholism and substance abuse services as used in this
9 chapter. Any power or duty heretofore assigned to the commissioner of
10 mental hygiene or to the department of mental hygiene pursuant to this
11 chapter shall hereafter be assigned to the commissioner of mental health
12 in the case of facilities, programs, or services for [the mentally ill]
13 INDIVIDUALS WITH MENTAL ILLNESS, to the commissioner of [mental retarda-
14 tion and] developmental disabilities in the case of facilities,
15 programs, or services for [the mentally retarded and developmentally
16 disabled] INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES, to the commis-
17 sioner of alcoholism and substance abuse services in the case of facili-
18 ties, programs, or services for alcoholism, alcohol abuse, substance
19 abuse, substance dependence, and chemical dependence in accordance with
20 the provisions of titles D and E of this chapter.
21 11. "School" means the in-patient service of a developmental center or
22 other residential facility for [the mentally retarded and develop-

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

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mentally disabled] INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES under the jurisdiction of the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities or a facility for the residential care, treatment, training, or education of [the mentally retarded and developmentally disabled] INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES which has been issued an operating certificate by the commissioner of [mental retardation and] developmental disabilities.

28. "Community residence" means any facility operated by or subject to licensure by the office of mental health or the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities which provides a supervised residence or residential respite services for [mentally disabled persons] INDIVIDUALS WITH MENTAL DISABILITIES and a homelike environment and room, board and responsible supervision for the habilitation or rehabilitation of [mentally disabled persons] INDIVIDUALS WITH MENTAL DISABILITIES as part of an overall service delivery system. A community residence shall include an intermediate care facility with fourteen or fewer residents that has been approved pursuant to law, and a community residential facility as that term is used in section 41.36 of this chapter. Such term does not include family care homes.

S 2. Section 5.01 of the mental hygiene law, as added by chapter 978 of the laws of 1977, is amended to read as follows:

S 5.01 Department of mental hygiene.

There shall continue to be in the state government a department of mental hygiene. Within the department there shall be the following autonomous offices:

(1) office of mental health;

(2) office [of mental retardation and] FOR PEOPLE WITH developmental disabilities;

(3) office of alcoholism and substance abuse.

S 3. Section 5.03 of the mental hygiene law, as amended by chapter 223 of the laws of 1992, is amended to read as follows:

S 5.03 Commissioners.

The head of the office of mental health shall be the commissioner of mental health; the head of the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities shall be the commissioner of [mental retardation and] developmental disabilities; and the head of the office of alcoholism and substance abuse services shall be the commissioner of alcoholism and substance abuse services. Each commissioner shall be appointed by the governor, by and with the advice and consent of the senate, to serve at the pleasure of the governor.

S 4. Subdivision (a) and paragraph 1 of subdivision (b) of section 5.05 of the mental hygiene law, subdivision (a) as added by chapter 978 of the laws of 1977 and paragraph 1 of subdivision (b) as amended by chapter 294 of the laws of 2007, are amended to read as follows:

(a) The commissioners of the [offices] OFFICE of mental health and [mental retardation and developmental disability of the department] THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, as the [head] HEADS of the department, shall jointly visit and inspect, or cause to be visited and inspected, all facilities either public or private used for the care, treatment and rehabilitation of [persons suffering from] INDIVIDUALS WITH mental illness[, mental retardation] and developmental [disability] DISABILITIES in accordance with the requirements of section four of article seventeen of the New York state constitution.

(1) The commissioners of the [offices] OFFICE of mental health, [mental retardation and] THE OFFICE FOR PEOPLE WITH developmental disabilities and THE OFFICE OF alcoholism and substance abuse services shall

1 constitute an inter-office coordinating council which, consistent with
2 the autonomy of each office for matters within its jurisdiction, shall
3 ensure that the state policy for the prevention, care, treatment and
4 rehabilitation of INDIVIDUALS WITH mental illness[, mental retardation]
5 and developmental [disability] DISABILITIES, alcoholism, alcohol abuse,
6 substance abuse, substance dependence, and chemical dependence is
7 planned, developed and implemented comprehensively; that gaps in
8 services to [the multiply disabled] INDIVIDUALS WITH MULTIPLE DISABILI-
9 TIES are eliminated and that no person is denied treatment and services
10 because he or she [suffers from] HAS more than one disability; that
11 procedures for the regulation of programs which offer care and treatment
12 for more than one class of [mentally disabled] persons WITH MENTAL DISA-
13 BILITIES be coordinated between the offices having jurisdiction over
14 such programs; and that research projects of the institutes, as identi-
15 fied in section 7.17 or 13.17 of this chapter, are coordinated to maxi-
16 mize the success and cost effectiveness of such projects and to elimi-
17 nate wasteful duplication.

18 S 5. The opening paragraph of paragraph 1 of subdivision (b) of
19 section 5.07 of the mental hygiene law, as amended by chapter 223 of the
20 laws of 1992, is amended to read as follows:

21 The [offices] OFFICE of mental health [and mental retardation and],
22 THE OFFICE FOR PEOPLE WITH developmental disabilities and the office of
23 alcoholism and substance abuse services shall each formulate a statewide
24 comprehensive five-year plan for the provision of all state and local
25 services for [the mentally ill, mentally retarded and developmentally
26 disabled] PERSONS WITH MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES,
27 and those suffering from alcoholism and substance abuse, respectively.
28 Each plan shall be formulated from local comprehensive plans developed
29 by each local governmental unit, with participation of consumers,
30 consumer groups, providers of services and departmental facilities
31 furnishing services to [the mentally disabled] INDIVIDUALS WITH MENTAL
32 DISABILITIES of the area in conformance with statewide goals and objec-
33 tives established by the advisory council of each office. Each plan
34 shall:

35 S 6. Subdivisions (a), (b), (j) and (o) of section 10.03 of the mental
36 hygiene law, as added by chapter 7 of the laws of 2007, are amended to
37 read as follows:

38 (a) "Agency with jurisdiction" as to a person means that agency which,
39 during the period in question, would be the agency responsible for
40 supervising or releasing such person, and can include the department of
41 correctional services, the office of mental health, the office [of
42 mental retardation and] FOR PEOPLE WITH developmental disabilities, and
43 the division of parole.

44 (b) "Commissioner" means the commissioner of mental health or the
45 commissioner of [mental retardation and] developmental disabilities.

46 (j) "Psychiatric examiner" means a qualified psychiatrist or a
47 licensed psychologist who has been designated to examine a person pursu-
48 ant to this article; such designee may, but need not, be an employee of
49 the office of mental health or the office [of mental retardation and]
50 FOR PEOPLE WITH developmental disabilities.

51 (o) "Secure treatment facility" means a facility or a portion of a
52 facility, designated by the commissioner, that may include a facility
53 located on the grounds of a correctional facility, that is staffed with
54 personnel from the office of mental health or the office [of mental
55 retardation and] FOR PEOPLE WITH developmental disabilities for the
56 purposes of providing care and treatment to persons confined under this

1 article, and persons defined in paragraph five of subdivision (g) of
2 this section. Personnel from these same agencies may provide security
3 services, provided that such staff are adequately trained in security
4 methods and so equipped as to minimize the risk or danger of escape.

5 S 7. Subdivision (a) of section 10.05 of the mental hygiene law, as
6 added by chapter 7 of the laws of 2007, is amended to read as follows:

7 (a) The commissioner of mental health, in consultation with the
8 commissioner of the department of correctional services and the commis-
9 sioner of [mental retardation and] developmental disabilities, shall
10 establish a case review panel consisting of at least fifteen members,
11 any three of whom may sit as a team to review a particular case. At
12 least two members of each team shall be professionals in the field of
13 mental health or the field of [mental retardation and] developmental
14 disabilities, as appropriate, with experience in the treatment, diagno-
15 sis, risk assessment or management of sex offenders. To the extent prac-
16 ticable, the workload of the case review panel should be evenly distrib-
17 uted among its members. Members of the case review panel and psychiatric
18 examiners should be free to exercise independent professional judgment
19 without pressure or retaliation for the exercise of that judgment from
20 any source.

21 S 8. The article heading of article 13 of the mental hygiene law, as
22 added by chapter 978 of the laws of 1977, is amended to read as follows:

23 OFFICE [OF MENTAL RETARDATION AND] FOR PEOPLE WITH
24 DEVELOPMENTAL DISABILITIES

25 S 9. The closing paragraph of section 13.01 of the mental hygiene law,
26 as amended by chapter 353 of the laws of 2004, is amended to read as
27 follows:

28 To accomplish these goals and meet the particular needs of [persons
29 with mental retardation and] INDIVIDUALS WITH developmental disabili-
30 ties, a new autonomous agency to be known as the office [of mental
31 retardation and] FOR PEOPLE WITH developmental disabilities has been
32 established. The office and its commissioner shall plan and work with
33 local governments and voluntary organizations and all providers of
34 services, and [persons with mental retardation and] INDIVIDUALS WITH
35 developmental disabilities and their families and representatives, to
36 develop an effective, integrated, comprehensive system for the delivery
37 of all necessary supports and services to all [persons with mental
38 retardation and] INDIVIDUALS WITH developmental disabilities and to
39 create financing procedures and mechanisms to support such a system of
40 supports and services to ensure that all individuals with [mental retar-
41 dation and] developmental disabilities in need of supports and services
42 receive appropriate and timely supports and services close to their
43 families and community. In carrying out these responsibilities, the
44 office and its commissioner shall make full use of existing services in
45 the community, including those provided by voluntary and other service
46 organizations, and within annual amounts made available shall add
47 in-home, residential and day service and support capacity, to address
48 the needs of [persons with mental retardation and] INDIVIDUALS WITH
49 developmental disabilities.

50 ANY PROVISIONS OF THIS ARTICLE WHICH EXPLICITLY OR IMPLICITLY APPLY
51 TO, OR REFERENCE, PERSONS WHO ARE MENTALLY RETARDED, SHALL BE DEEMED TO
52 APPLY TO, OR REFERENCE, PERSONS WITH DEVELOPMENTAL DISABILITIES.

53 S 10. Section 13.03 of the mental hygiene law, as added by chapter 978
54 of the laws of 1977, is amended to read as follows:

55 S 13.03 Definitions.

56 As used in this title:

1 1. "office" means the office [of mental retardation and] FOR PEOPLE
2 WITH developmental disabilities.

3 2. "commissioner" means the head of the office [of mental retardation
4 and] FOR PEOPLE WITH developmental disabilities.

5 S 11. The opening paragraph of subdivision (c) of section 13.05 of the
6 mental hygiene law, as amended by chapter 55 of the laws of 1992, is
7 amended to read as follows:

8 The mental retardation and developmental disabilities advisory council
9 shall have no executive, administrative or appointive duties. The coun-
10 cil shall have the duty to foster public understanding and acceptance of
11 [mental retardation and] developmental disabilities. It shall, in coop-
12 eration with the commissioner of [mental retardation and] developmental
13 disabilities, establish statewide goals and objectives for services for
14 [persons with mental retardation and] INDIVIDUALS WITH developmental
15 disabilities and shall advise the commissioner on matters related to
16 development and implementation of the [OMRDD's] OPWDD'S triennial state
17 developmental disabilities comprehensive plan as required under para-
18 graph two of subdivision (b) of section 5.07 of this chapter. The advi-
19 sory council shall have the power to consider any matter relating to the
20 improvement of the state [mental retardation and] developmental disabil-
21 ities program and shall advise the commissioner of [mental retardation
22 and] developmental disabilities thereon and on any matter relating to
23 the performance of their duties with relation to [persons with mental
24 retardation and] INDIVIDUALS WITH developmental disabilities and on
25 policies, goals, budget and operation of developmental disabilities
26 services.

27 S 12. The section heading and subdivision (a) of section 13.07 of the
28 mental hygiene law, the section heading as added by chapter 978 of the
29 laws of 1977 and subdivision (a) as amended by chapter 676 of the laws
30 of 1994, are amended to read as follows:

31 Office [of mental retardation and] FOR PEOPLE WITH developmental disa-
32 bilities; scope of responsibilities.

33 (a) The office [of mental retardation and] FOR PEOPLE WITH develop-
34 mental disabilities shall assure the development of comprehensive plans,
35 programs, and services in the areas of research, prevention, and care,
36 treatment, habilitation, rehabilitation, vocational and other education,
37 and training of [persons with mental retardation and] INDIVIDUALS WITH
38 developmental disabilities. Such plans, programs, and services shall be
39 developed by the cooperation of the office, other offices of the depart-
40 ment where appropriate, other state departments and agencies, local
41 governments, community organizations and agencies providing services to
42 [persons with mental retardation and] INDIVIDUALS WITH developmental
43 disabilities, [and persons with mental retardation and developmental
44 disabilities,] their families and representatives. It shall provide
45 appropriate facilities, programs, supports and services and encourage
46 the provision of facilities, programs, supports and services by local
47 government and community organizations and agencies.

48 S 13. Subdivision (f) of section 13.09 of the mental hygiene law, as
49 added by chapter 491 of the laws of 2008, is relettered subdivision (g)
50 and amended to read as follows:

51 (g) The commissioner, in cooperation with other applicable state agen-
52 cies, shall be authorized to collect, retain or modify data or records,
53 or to transmit such data or records to the division of criminal justice
54 services, or to the criminal justice information services division of
55 the federal bureau of investigation, for the purposes of responding to
56 queries to the national instant criminal background check system regard-

1 ing attempts to purchase or otherwise take possession of firearms, as
2 defined in 18 USC 921(a)(3), in accordance with applicable federal laws
3 or regulations. Such records shall include only names and other non-
4 clinical identifying information of persons who have had a guardian
5 appointed for them pursuant to any provision of state law, based on a
6 determination that as a result of marked subnormal intelligence, mental
7 illness, incapacity, condition or disease, they lack the mental capacity
8 to contract or manage their own affairs, and persons who have been
9 involuntarily committed to a facility pursuant to article fifteen of
10 this chapter, or article seven hundred thirty or section 330.20 of the
11 criminal procedure law or sections 322.2 or 353.4 of the family court
12 act. The commissioner shall establish within the office [of mental
13 retardation and] FOR PEOPLE WITH developmental disabilities an adminis-
14 trative process to permit a person who has been or may be disqualified
15 from possessing such a firearm pursuant to 18 USC 922(4)(d) to petition
16 for relief from that disability where such person's record and reputa-
17 tion are such that such person will not be likely to act in a manner
18 dangerous to public safety and where the granting of the relief would
19 not be contrary to public safety. The commissioner shall promulgate
20 regulations to establish the relief from disabilities program, which
21 shall include, but not be limited to, provisions providing for: (i) an
22 opportunity for a disqualified person to petition for relief in writing;
23 (ii) the authority for the agency to require that the petitioner undergo
24 a clinical evaluation and risk assessment; and (iii) a requirement that
25 the agency issue a decision in writing explaining the reasons for a
26 denial or grant of relief. The denial of a petition for relief from
27 disabilities may be reviewed de novo pursuant to the proceedings under
28 article seventy-eight of the civil practice law and rules.

29 S 14. The section heading of section 13.11 of the mental hygiene law,
30 as added by chapter 978 of the laws of 1977, is amended to read as
31 follows:

32 Organization and administration of the office [of mental retardation
33 and] FOR PEOPLE WITH developmental disabilities and its facilities.

34 S 15. The section heading of section 13.15 of the mental hygiene law,
35 as added by chapter 978 of the laws of 1977, is amended to read as
36 follows:

37 Programs of the office [of mental retardation and] FOR PEOPLE WITH
38 developmental disabilities.

39 S 16. The section heading of section 13.17 of the mental hygiene law,
40 as added by chapter 978 of the laws of 1977, is amended to read as
41 follows:

42 Programs, services, and operations of facilities in the office [of
43 mental retardation and] FOR PEOPLE WITH developmental disabilities.

44 S 17. Subdivisions (a) and (d) of section 13.19 of the mental hygiene
45 law, subdivision (a) as amended by chapter 307 of the laws of 1979 and
46 subdivision (d) as added by chapter 978 of the laws of 1977, are amended
47 to read as follows:

48 (a) The commissioner may, within the amounts appropriated therefor,
49 appoint and remove in accordance with law and applicable rules of the
50 state civil service commission, such officers and employees of the
51 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
52 bilities and school and facility officers and employees who are desig-
53 nated managerial or confidential pursuant to article fourteen of the
54 civil service law as are necessary for efficient administration.

55 (d) The use of volunteers at facilities in the office [of mental
56 retardation and] FOR PEOPLE WITH developmental disabilities shall be

1 encouraged. The commissioner may establish regulations governing such
2 volunteer services.

3 S 18. The section heading and subdivisions (a) and (c) of section
4 13.21 of the mental hygiene law, the section heading and subdivision (c)
5 as added by chapter 978 of the laws of 1977 and subdivision (a) as
6 amended by chapter 538 of the laws of 1987, are amended to read as
7 follows:

8 Directors of schools in the office [of mental retardation and] FOR
9 PEOPLE WITH developmental disabilities.

10 (a) The director of a school in the office [of mental retardation and]
11 FOR PEOPLE WITH developmental disabilities shall be appointed by the
12 commissioner and shall be its chief executive officer. The director of a
13 school shall be the director of the developmental disabilities services
14 office serving the areas designated by the commissioner in regulation,
15 and in such context, the term facility shall also refer to such develop-
16 mental disabilities services office. Each such director shall be in the
17 non-competitive class and designated as confidential as defined by
18 subdivision two-a of section forty-two of the civil service law and
19 shall serve at the pleasure of the commissioner. Except for school and
20 facility officers and employees for which subdivision (a) of section
21 13.19 of this article makes the commissioner the appointing and removing
22 authority, the director of a school shall have the power, within amounts
23 appropriated therefor, to appoint and remove in accordance with law and
24 applicable rules of the state civil service commission such officers and
25 employees of the facility of which he OR SHE is director as are neces-
26 sary for its efficient administration. He OR SHE shall in exercising his
27 OR HER appointing authority take, consistent with article twenty-three-A
28 of the correction law, all reasonable and necessary steps to insure that
29 any such person so appointed has not previously engaged in any act in
30 violation of any law which could compromise the health and safety of
31 patients in the facility of which he OR SHE is director. He OR SHE
32 shall manage the facility, and administer its personnel system, subject
33 to applicable law, the regulations of the commissioner, and the rules of
34 the state civil service commission. Before the commissioner shall issue
35 any such regulation or any amendment or revision thereof, he OR SHE
36 shall consult with the directors of schools in the office regarding its
37 suitability. The director shall maintain effective supervision of all
38 parts of the facility and over all persons employed therein or coming
39 thereon and shall generally direct the care and treatment of patients.
40 Directors presently serving at facilities of the office shall continue
41 to serve under the terms of their original appointment.

42 (c) In any investigation into the treatment and care of patients or
43 the conduct, performance, or neglect of duty of officers or employees,
44 the director of a school in the office [of mental retardation and] FOR
45 PEOPLE WITH developmental disabilities shall be authorized to subpoena
46 witnesses, compel their attendance, administer oaths to witnesses, exam-
47 ine witnesses under oath, and require the production of any books or
48 papers deemed relevant to the inquiry or investigation. A subpoena
49 issued under this section shall be regulated by the civil practice law
50 and rules.

51 S 19. Subdivisions (b) and (d) of section 13.27 of the mental hygiene
52 law, as added by chapter 978 of the laws of 1977, are amended to read as
53 follows:

54 (b) Fire mutual aid. In cooperation with the development and operation
55 of plans for mutual aid in cases of fire and other public emergencies,
56 the director of a facility in the office [of mental retardation and] FOR

1 PEOPLE WITH developmental disabilities, with the approval of the commis-
2 sioner, may authorize the fire department of the facility to furnish aid
3 to such territory surrounding the facility as may be practical in cases
4 of fire and such emergencies, having due regard to the safety of the
5 patients and property of the facility and to engage in practice and
6 training programs in connection with the development and operation of
7 such mutual aid plans.

8 (d) Laboratory services. Subject to the commissioner's regulations,
9 the director may agree to make the laboratory service of a facility in
10 the office [of mental retardation and] FOR PEOPLE WITH developmental
11 disabilities available to adjacent local governments and may receive,
12 apply, and spend money for the extension of laboratory service according
13 to the terms of the agreement as approved by the commissioner.

14 S 20. Subdivisions (a) and (c) of section 13.29 of the mental hygiene
15 law, as added by chapter 978 of the laws of 1977, are amended to read as
16 follows:

17 (a) The commissioner, on behalf of the state and if in the public
18 interest, shall accept, hold in trust, administer, apply, execute, or
19 use gifts, devises, bequests, grants, powers, or trusts of personal or
20 real property made to the state, the office [of mental retardation and]
21 FOR PEOPLE WITH developmental disabilities, a facility within the
22 office, the commissioner, or the directors or visitors of facilities
23 which are to be used or may be used for purposes of the office [of
24 mental retardation and] FOR PEOPLE WITH developmental disabilities,
25 including, but not limited to, the maintenance, support, or benefit of
26 one or more patients in a facility.

27 (c) Subdivisions (a) and (b) of this section apply to gifts, devises,
28 bequests, grants, powers, or trusts given to, received, or applied by
29 the state, the commissioner, the office [of mental retardation and] FOR
30 PEOPLE WITH developmental disabilities, or facilities thereof and prede-
31 cessor officers, agencies, or facilities prior to as well as subsequent
32 to the enactment of this section.

33 S 21. The opening paragraph and paragraph 1 of subdivision (a) of
34 section 13.31 of the mental hygiene law, as added by chapter 978 of the
35 laws of 1977, are amended to read as follows:

36 The commissioner, or the officer or employee of the office designated
37 by him OR HER, shall:

38 1. Receive and turn over to the comptroller for liquidation all bonds,
39 notes, mortgages, trust funds, and other securities and obligations
40 belonging to the office [of mental retardation and] FOR PEOPLE WITH
41 developmental disabilities or any subdivision thereof, except such as
42 may have come into the possession of the said office or any subdivision
43 thereof on account of or for the payment of charges for the care, main-
44 tenance, and treatment after January first, nineteen hundred sixty-four
45 of patients at those mental hygiene facilities as defined in section
46 three of the facilities development corporation act which are under his
47 OR HER jurisdiction, in which case the same shall be turned over to the
48 commissioner of taxation and finance as agent for the facilities devel-
49 opment corporation for liquidation, and he OR SHE shall have the author-
50 ity to transfer all such securities and evidences of indebtedness and to
51 execute on behalf of the office [of mental retardation and] FOR PEOPLE
52 WITH developmental disabilities or any of its facilities or the facili-
53 ties development corporation a satisfaction and release thereof.

54 S 22. Paragraph 2 of subdivision (i) and subdivision (m) of section
55 13.33 of the mental hygiene law, paragraph 2 of subdivision (i) as

1 amended by chapter 14 of the laws of 1990 and subdivision (m) as amended
2 by chapter 118 of the laws of 1991, are amended to read as follows:

3 (2) Any member or members of the board may visit and inspect a commu-
4 nity residence operated by the office [of mental retardation and] FOR
5 PEOPLE WITH developmental disabilities, which is within the catchment
6 area of the school on the board of which such member or members serve.
7 Such member or members shall be granted access to such facility and to
8 all books, records and data pertaining to such facility deemed necessary
9 for carrying out the purposes of such visit and inspection. Information,
10 books, records or data which are confidential as provided by law shall
11 be kept confidential and any limitations on the release thereof imposed
12 by law upon the party furnishing the information, books, records or data
13 shall apply to such member or members of the board. After any such
14 visits or inspection, a report containing findings and recommendations
15 shall be submitted promptly to the commissioner and to the chairman of
16 the state commission on quality of care [for the mentally disabled] AND
17 ADVOCACY FOR PERSONS WITH DISABILITIES.

18 (m) Members of the boards of visitors shall be considered officers of
19 the office [of mental retardation and] FOR PEOPLE WITH developmental
20 disabilities for the purposes of sections seventy-three, to the extent
21 provided therein, and seventy-four of the public officers law relating
22 to business or professional activities by state officers and employees
23 and the code of ethics.

24 S 23. Subdivision (a) of section 13.39 of the mental hygiene law, as
25 added by chapter 800 of the laws of 1986, is amended to read as follows:

26 (a) Notwithstanding any other law, rule or regulation, the executive
27 director, chairperson or president of a voluntary, not-for-profit corpo-
28 ration or facility which is subject to the jurisdiction of the office
29 [of mental retardation and] FOR PEOPLE WITH developmental disabilities
30 shall furnish annually to the commissioner a list of the names and
31 addresses of the current members of the board of directors or trustees
32 of such facility or corporation. Failure to furnish such annual list
33 shall remove such facility or corporation from consideration for recer-
34 tification.

35 S 24. Paragraph 3 of subdivision (b) of section 15.07 of the mental
36 hygiene law, as amended by chapter 789 of the laws of 1985, is amended
37 to read as follows:

38 3. the right of the resident to communicate with the director, the
39 board of visitors, the commissioner of [mental retardation and] develop-
40 mental disabilities, and the mental hygiene legal service.

41 S 25. Section 16.00 of the mental hygiene law, as added by chapter 786
42 of the laws of 1983, is amended to read as follows:

43 S 16.00 Regulation and quality control of services for [the mentally
44 retarded and developmentally disabled] INDIVIDUALS WITH DEVEL-
45 OPMENTAL DISABILITIES.

46 This article sets forth provisions enabling the commissioner of the
47 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
48 bilities to regulate and assure the consistent high quality of services
49 provided within the state to its [mentally retarded and developmentally
50 disabled citizens] CITIZENS WITH DEVELOPMENTAL DISABILITIES. The commis-
51 sioner may adopt and promulgate any regulation reasonably necessary to
52 implement and effectively exercise the powers and perform the duties
53 conferred by this article. This article shall govern the operation of
54 programs, provision of services and the facilities hereinafter described
55 and the commissioner's powers and authority with respect thereto, and

1 shall supersede, as to such matters, sections of article thirty-one that
2 are inconsistent with the provisions of this chapter.

3 ANY PROVISIONS OF THIS ARTICLE WHICH EXPLICITLY OR IMPLICITLY APPLY
4 TO, OR REFERENCE, PERSONS WHO ARE MENTALLY RETARDED, SHALL BE DEEMED TO
5 APPLY TO, OR REFERENCE, PERSONS WITH DEVELOPMENTAL DISABILITIES.

6 S 26. Paragraph 4 of subdivision (b) of section 16.17 of the mental
7 hygiene law, as amended by chapter 169 of the laws of 1992, is amended
8 to read as follows:

9 (4) The facility operator, within ten days of the date when the emer-
10 gency suspension or limitation pursuant to paragraph one of this subdi-
11 vision is first imposed, may request an evidentiary hearing to contest
12 the validity of the emergency suspension or limitation. Such an eviden-
13 tiary hearing shall commence within ten days of the facility operator's
14 request and no request for an adjournment shall be granted without the
15 concurrence of the facility operator, office [of mental retardation and]
16 FOR PEOPLE WITH developmental disabilities, and the hearing officer. The
17 evidentiary hearing shall be limited to those violations of federal and
18 state law and regulations that existed at the time of the emergency
19 suspension or limitation and which gave rise to the emergency suspension
20 or limitation. The emergency suspension or limitation shall be upheld
21 upon a determination that the office [of mental retardation and] FOR
22 PEOPLE WITH developmental disabilities had reasonable cause to believe
23 that a client's health or safety was in imminent danger. A record of
24 such hearing shall be made available to the facility operator upon
25 request. Should the commissioner determine to revoke, suspend or limit
26 the facility's operating certificate pursuant to subdivision (a) of this
27 section, no administrative hearing on that action shall commence prior
28 to the conclusion of the evidentiary hearing. The commissioner shall
29 issue a ruling within ten days after the receipt of the hearing offi-
30 cer's report.

31 S 27. Subdivision (d) of section 16.27 of the mental hygiene law, as
32 added by chapter 611 of the laws of 1981 and such section as renumbered
33 by chapter 786 of the laws of 1983, is amended to read as follows:

34 (d) This section shall apply only to the facilities under the juris-
35 diction of the office [of mental retardation and] FOR PEOPLE WITH devel-
36 opmental disabilities. Reference to the commissioner in this section
37 shall mean the commissioner of [the office of mental retardation and]
38 developmental disabilities.

39 S 28. Subparagraphs (I) and (II) of paragraph 2 of subdivision (i) of
40 section 29.15 of the mental hygiene law, as amended by chapter 534 of
41 the laws of 2006, are amended to read as follows:

42 (I) A patient about to be discharged or conditionally released from a
43 department facility licensed or operated by the office [of mental retar-
44 dation and] FOR PEOPLE WITH developmental disabilities or from an inpa-
45 tient facility operated or licensed by the office of [alcohol] ALCOHOL-
46 ISM and substance abuse services or the office of mental health to an
47 adult home or residence for adults, as defined in section two of the
48 social services law, shall be referred only to such home or residence
49 that is consistent with that patient's needs and that operates pursuant
50 to section four hundred sixty of the social services law, provided
51 further that: (A) for a department facility licensed or operated by the
52 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
53 bilities or for an inpatient facility operated by the office of [alco-
54 hol] ALCOHOLISM and substance abuse services or the office of mental
55 health, the facility director retains authority to determine whether the
56 home, program or residence is consistent with that patient's needs and

(B) such referral shall be made to the patient's home county whenever possible or appropriate.

(II) No patient about to be discharged or conditionally released from a department facility licensed or operated by the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities or from an inpatient facility operated or licensed by the office of [alcohol] ALCOHOLISM and substance abuse services or the office of mental health shall be referred to any adult home or residence for adults, as defined in section two of the social services law, which has received an official written notice from the department of health of: (A) the proposed revocation, suspension or denial of its operating certificate; (B) the limitation of its operating certificate with respect to new admissions; (C) the issuance of a department of health order or commissioner of health's order or the seeking of equitable relief pursuant to section four hundred sixty-d of the social services law; (D) the proposed assessment of civil penalties for violations of the provisions of subparagraph two of paragraph (b) of subdivision seven of section four hundred sixty-d of the social services law; or placement on the "do not refer list" pursuant to subdivision fifteen of section four hundred sixty-d of the social services law. Referrals may resume when such enforcement actions are resolved.

S 29. Section 29.20 of the mental hygiene law, as added by chapter 425 of the laws of 1991, is amended to read as follows:

S 29.20 In-patient nasogastric feeding procedures.

The commissioners of the [offices] OFFICE of mental health and [mental retardation and] THE OFFICE FOR PEOPLE WITH developmental disabilities of the department shall each promulgate and administer regulations and policies governing the maximum size of nasogastric feeding tubes with the principal purposes of protecting patients from undue discomfort, for the benefit of any patient in a facility subject to the jurisdiction of the commissioners.

S 30. The opening paragraph and subdivision 4 of section 29.29 of the mental hygiene law, as amended by chapter 24 of the laws of 2007, are amended to read as follows:

The commissioners of the [offices] OFFICE of mental health and [mental retardation and] THE OFFICE FOR PEOPLE WITH developmental disabilities of the department shall establish policies and uniform procedures for their respective offices for the reporting, compilation, and analysis of incident reports. Incident reports shall, for the purposes of this chapter, mean reports of accidents and injuries affecting patient health and welfare at facilities. These policies and procedures shall include but shall not be limited to:

4. Each facility shall aggregate its data monthly for the director and that aggregated information shall be submitted, at least semi-annually to the commissioner of the office of mental health and to the commissioner of the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities.

S 31. Subdivision 6 of section 29.29 of the mental hygiene law is REPEALED.

S 32. The section heading, the opening paragraph of subdivision (a) and subdivisions (b) and (c) of section 33.02 of the mental hygiene law, the section heading as added by chapter 325 of the laws of 1985, the opening paragraph of subdivision (a) as amended by chapter 401 of the laws of 2006 and subdivisions (b) and (c) as amended by chapter 306 of the laws of 1995, are amended to read as follows:

1 Notice of rights of [the mentally disabled] INDIVIDUALS WITH MENTAL
2 DISABILITIES.

3 In order to ensure that residents of facilities or programs operated
4 or licensed by the office of mental health and facilities or programs
5 operated or certified by the office [of mental retardation and] FOR
6 PEOPLE WITH developmental disabilities are treated consistently with the
7 laws and regulations assuring quality care, the commissioner of the
8 office of mental health and the commissioner of the office [of mental
9 retardation and] FOR PEOPLE WITH developmental disabilities shall
10 promulgate regulations informing residents of their rights under law.
11 Such regulations shall include, but not be limited to, informing resi-
12 dents that they have the right to:

13 (b) The foregoing rights may not be limited as a punishment or for the
14 convenience of staff. Any limitation on the rights enumerated shall be
15 permitted for an individual resident of a hospital operated or licensed
16 by the office of mental health or developmental center operated by the
17 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
18 bilities only upon written order of a physician in the resident's clin-
19 ical record stating the clinical justification for such limitation and
20 the specific period of time such limitation shall remain in effect. Any
21 limitation on the rights enumerated shall be permitted for an individual
22 resident of any other residential facility or program operated or
23 licensed by the office of mental health or operated or certified by the
24 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
25 bilities only upon written order by the director or chief executive
26 officer of such facility or program upon receipt of a recommendation by
27 the treating practitioner as defined by paragraph seven of subdivision
28 (a) of section 33.16 of this article with such order to be placed in the
29 resident's clinical record stating the clinical justification for such
30 limitation and the specific period of time such limitation shall remain
31 in effect.

32 (c) The commissioners and the facility director shall ensure that a
33 notice of the rights included in regulations promulgated pursuant to
34 this section is posted in each ward or living area of every hospital
35 operated or licensed by the office of mental health and every develop-
36 mental center operated by the office [of mental retardation and] FOR
37 PEOPLE WITH developmental disabilities, and that such notice is provided
38 to every individual resident of any other residential facility or
39 program operated or licensed by the respective offices upon admission to
40 such facility or program, upon limitation on any right, or at the indi-
41 vidual's request. The notice shall include the address and telephone
42 numbers of the office of the facility director or such person's designee
43 responsible for receiving questions or complaints, the board of visitors
44 if applicable, the mental hygiene legal service and the commission on
45 quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS
46 WITH DISABILITIES.

47 S 33. Subdivision (e) of section 33.07 of the mental hygiene law, as
48 added by chapter 709 of the laws of 1986, is amended to read as follows:

49 (e) A mental hygiene facility which is a representative payee for a
50 patient pursuant to designation by the social security administration or
51 which assumes management responsibility over the funds of a patient,
52 shall maintain such funds in a fiduciary capacity to the patient. The
53 commissioners of mental health and [mental retardation and] develop-
54 mental disabilities shall develop standards regarding the management of
55 patient funds.

1 S 34. Subdivision (c) of section 33.09 of the mental hygiene law, as
2 amended by chapter 690 of the laws of 1989, is amended to read as
3 follows:

4 (c) The provisions of the workers' compensation law, the unemployment
5 insurance law, and articles thirteen, nineteen, and twenty of the labor
6 law shall not apply to any patient in a facility with respect to his
7 participation in a sheltered workshop program, provided, however, that
8 participants in sheltered workshop programs operated by the office of
9 mental health, the office [of mental retardation and] FOR PEOPLE WITH
10 developmental disabilities or voluntary agencies or institutional worker
11 programs operated by the office of mental health shall be eligible for
12 workers' compensation benefits (excluding benefits provided pursuant to
13 article nine of the workers' compensation law) if such offices or agen-
14 cies elect to provide such benefits. Sheltered workshops operated at
15 department facilities shall be subject to the laws and regulations
16 applicable to sheltered workshops operated by voluntary agencies.

17 S 35. Section 33.11 of the mental hygiene law, as amended by chapter
18 345 of the laws of 1985, is amended to read as follows:

19 S 33.11 Education for [mentally disabled] children WITH MENTAL DISABILI-
20 TIES.

21 The office of mental health and the office [of mental retardation and]
22 FOR PEOPLE WITH developmental disabilities shall provide the same educa-
23 tion for patients in office of mental health hospitals and residents in
24 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
25 bilities schools who are between the ages of five and twenty-one which
26 they would otherwise be entitled to receive in their local school
27 districts pursuant to article eighty-nine of the education law. The cost
28 of such education shall be a charge upon and shall be paid by the office
29 of mental health or the office [of mental retardation and] FOR PEOPLE
30 WITH developmental disabilities when received within such a hospital or
31 school by a patient or resident therein. Such education shall be adapted
32 to the mental attainments of such children. Provided, however, that such
33 children as can benefit therefrom shall be admitted to the schools of
34 the school district in which such hospital or school is located in
35 accordance with regulations of the commissioner of education developed
36 in consultation with the commissioners of mental health and [mental
37 retardation and] developmental disabilities. The cost of such instruc-
38 tion less the [State] STATE aid attributed to such child, shall be a
39 charge upon the school district in which the child resided at the time
40 of admission to the [State] STATE hospital or school, except in those
41 cases as provided in paragraph c of subdivision five of section thirty-
42 two hundred two of the education law.

43 S 36. Section 33.12 of the mental hygiene law, as added by chapter 345
44 of the laws of 1985, is amended to read as follows:

45 S 33.12 Hearing evaluation.

46 The office [of mental retardation and] FOR PEOPLE WITH developmental
47 disabilities shall provide suitable hearing evaluations periodically for
48 the residents in state schools. Upon the ascertainment that any resident
49 so evaluated is deaf or hard of hearing, it shall be the duty of the
50 office to provide suitable remedial efforts, to include, but not be
51 limited to, hearing aids, alternative forms of communication and audito-
52 ry training to overcome this handicap and to ascertain the true level of
53 intelligence of such residents.

54 S 37. Subdivision (a) and paragraph 10 of subdivision (c) of section
55 33.13 of the mental hygiene law, subdivision (a) as amended by chapter

571 of the laws of 2005 and paragraph 10 of subdivision (c) as amended by chapter 230 of the laws of 2008, are amended to read as follows:

(a) A clinical record for each patient or client shall be maintained at each facility licensed or operated by the office of mental health or the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, hereinafter referred to as the offices. For the purposes of this section, the term "facility" shall mean "facility" as such term is defined in section 1.03 of this chapter, provided, however, such term shall also include any provider of services for [persons] INDIVIDUALS with mental illness[, mental retardation] or developmental disabilities which is operated by, under contract with, receives funding from, or is otherwise approved to render services by, a director of community services pursuant to article forty-one of this chapter or one or both of the offices, including any such provider which is exempt from the requirement for an operating certificate under article sixteen or article thirty-one of this chapter. The record shall contain information on all matters relating to the admission, legal status, care, and treatment of the patient or client and shall include all pertinent documents relating to the patient or client. The commissioners of such offices, by regulation, each shall determine the scope and method of recording information, including data pertaining to admission, legal matters affecting the patient or client, records and notation of course of care and treatment, therapies, restrictions on patient's or client's rights, periodic examinations, and such other information as he or she may require.

10. to a correctional facility, when the chief administrative officer has requested such information with respect to a named inmate of such correctional facility as defined by subdivision three of section forty of the correction law or to the division of parole, when the division has requested such information with respect to a person under its jurisdiction or an inmate of a state correctional facility, when such inmate is within four weeks of release from such institution to the jurisdiction of the division of parole. Information released pursuant to this paragraph may be limited to a summary of the record, including but not limited to: the basis for referral to the facility; the diagnosis upon admission and discharge; a diagnosis and description of the patient's or client's current mental condition; the current course of treatment, medication and therapies; and the facility's recommendation for future mental hygiene services, if any. Such information may be forwarded to the department of correctional services staff in need of such information for the purpose of making a determination regarding an inmate's health care, security, safety or ability to participate in programs. In the event an inmate is transferred, the sending correctional facility shall forward, upon request, such summaries to the chief administrative officer of any correctional facility to which the inmate is subsequently incarcerated. The office of mental health and the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, in consultation with the commission of correction and the division of parole, shall promulgate rules and regulations to implement the provisions of this paragraph.

S 38. Subdivision (d) of section 33.16 of the mental hygiene law, as amended by chapter 223 of the laws of 1992, is amended to read as follows:

(d) Clinical records access review committees. The commissioner of mental health, the commissioner of [mental retardation and] developmental disabilities and the commissioner of alcoholism and substance

abuse services shall appoint clinical record access review committees to hear appeals of the denial of access to patient or client records as provided in paragraph four of subdivision (c) of this section. Members of such committees shall be appointed by the respective commissioners. Such clinical record access review committees shall consist of no less than three nor more than five persons. The commissioners shall promulgate rules and regulations necessary to effectuate the provisions of this subdivision.

S 39. Paragraph 1 of subdivision (a) and paragraph 2 of subdivision (e) of section 41.34 of the mental hygiene law, paragraph 1 of subdivision (a) as amended by chapter 1025 of the laws of 1981 and paragraph 2 of subdivision (e) as added by chapter 823 of the laws of 1992, are amended to read as follows:

(1) "Community residential facility for the 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] FOR PEOPLE WITH developmental disabilities which provides a residence for up to fourteen [mentally disabled persons] INDIVIDUALS WITH MENTAL DISABILITIES, including residential treatment facilities for children and youth.

(2) The office of mental health and the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities 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 40. Paragraphs 1, 2 and 5 of subdivision (a) of section 41.36 of the mental hygiene law, paragraphs 1 and 5 as added by chapter 809 of the laws of 1980 and paragraph 2 as amended by chapter 262 of the laws of 1992, are amended to read as follows:

1. "Community residential facility" means any facility subject to licensure by the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities which provides a supervised residence or residential respite services for [mentally disabled persons] INDIVIDUALS WITH MENTAL DISABILITIES. Such term does not include family care homes.

2. "Reimbursable services" means services, other than intermediate care services, comprehensive medicaid case management and personal care services for which funding is available under Title XIX of the federal social security act, provided at a community residential facility described by regulations of the commissioner of [mental retardation and] developmental disabilities for which fees or rates may be paid to a provider of services pursuant to this section.

5. "Commissioner" means the commissioner of [mental retardation and] developmental disabilities.

S 41. The opening paragraph of subdivision (a) of section 41.39 of the mental hygiene law, as added by chapter 515 of the laws of 1992, is amended to read as follows:

1 The commissioner of mental health and the commissioner of [mental
2 retardation and] developmental disabilities shall, consistent with the
3 state integrated employment implementation plan developed pursuant to
4 subdivision two of section one thousand four-b of the education law, and
5 subject to appropriations made therefor, to develop and support services
6 that provide individuals with mental disabilities the opportunity to
7 learn and develop employment related skills and work experience, includ-
8 ing but not limited to sheltered workshops and integrated employment
9 opportunities, including supported employment, as provided pursuant to
10 sections one thousand four-a and one thousand four-b of the education
11 law. Such programs shall, to the extent possible:

12 S 42. Subdivisions (a) and (c) of section 41.43 of the mental hygiene
13 law, as amended by chapter 552 of the laws of 1992, are amended to read
14 as follows:

15 (a) The commissioner of the office [of mental retardation and] FOR
16 PEOPLE WITH developmental disabilities, directly or through contract,
17 and within amounts made available therefor, shall establish a family-di-
18 rected, statewide system of comprehensive family support services. The
19 purpose of family support services will be to enhance a family's ability
20 to provide in-home care to their family members with a developmental
21 disability.

22 (c) For purposes of this section, family supports are goods, services,
23 and subsidies, determined by the family and the commissioner of the
24 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
25 bilities, which are provided to meet the goals of: (i) providing a qual-
26 ity of life comparable, to the extent practicable, to that of similarly
27 situated families without a family member having a developmental disa-
28 bility; (ii) maintaining family unity; (iii) preventing premature or
29 inappropriate out-of-home placement; (iv) reuniting families; (v)
30 enhancing parenting skills; and (vi) maximizing the potential of the
31 family member with a developmental disability.

32 S 43. Section 41.46 of the mental hygiene law, as amended by chapter
33 669 of the laws of 1995, is amended to read as follows:

34 S 41.46 Disclosure by members, officers and employees.

35 In the event that an agency licensed by the office [of mental retarda-
36 tion and] FOR PEOPLE WITH developmental disabilities, the office of
37 mental health or the office of alcoholism and substance abuse services
38 enters into an agreement or has entered into an agreement for the
39 purchase, lease, rehabilitation or improvement of real property or a
40 cooperative share in real property, any employee who receives an annual
41 salary in excess of thirty thousand dollars, or any board member, or
42 officer of such agency who has a direct or indirect interest either
43 financial or beneficial in such property including the interest of any
44 person for whom he or she is related by consanguinity or affinity, shall
45 disclose such interest prior to the making of such agreement or at the
46 time of acquisition of such interest. Disclosure pursuant to this
47 section shall be made in writing to the board of directors of such agen-
48 cy and shall indicate the material facts as to the member's, officer's,
49 employee's or relative's interest in such property or cooperative share.
50 Such disclosure shall be filed with the secretary of the corporation and
51 entered on the minutes of a meeting of the board. Such disclosure shall
52 also be forwarded in writing to the appropriate commissioner and to the
53 director of community services of the local governmental unit within
54 which the property or cooperative share is located prior to the approval
55 of public funding related to the property or cooperative share which is

1 the subject of disclosure made pursuant to this section or at the time
2 of the acquisition of such interest, whichever occurs later.

3 S 44. Subdivisions (a) and (c) of section 41.48 of the mental hygiene
4 law, as added by chapter 365 of the laws of 1987, are amended to read as
5 follows:

6 (a) Notwithstanding any inconsistent provision of this article and
7 within appropriations made therefor, the commissioners of the [offices]
8 OFFICE of mental health and [mental retardation and] THE OFFICE FOR
9 PEOPLE WITH developmental disabilities are authorized upon the applica-
10 tion of voluntary agencies, to make payments for the reasonable price of
11 options to acquire an interest in real property, for the purpose of
12 establishing a community mental hygiene facility. Such applications
13 shall be made in the manner and on forms prescribed by the appropriate
14 commissioner. Sellers of real property who are required to disclose
15 financial or other beneficial interests in such property under section
16 41.46 of this article shall not be eligible to receive payments under
17 this section.

18 (c) As used in this section the term "reasonable price" shall mean an
19 amount that is not in excess of guidelines developed by the commissioner
20 of the office of mental health or [mental retardation and] THE COMMIS-
21 SIONER OF THE OFFICE FOR PEOPLE WITH developmental disabilities and
22 approved by the director of the budget and the state comptroller.

23 S 45. Section 43.02 of the mental hygiene law, as amended by chapter
24 558 of the laws of 1999, is amended to read as follows:

25 S 43.02 Rates or methods of payment for services at facilities subject
26 to licensure or certification by the office of mental
27 health, the office [of mental retardation and] FOR PEOPLE
28 WITH developmental disabilities or the office of alcoholism
29 and substance abuse services.

30 (a) Notwithstanding any inconsistent provision of law, payment made by
31 government agencies pursuant to title eleven of article five of the
32 social services law for services provided by any facility licensed by
33 the office of mental health pursuant to article thirty-one of this chap-
34 ter or licensed or operated by the office [of mental retardation and]
35 FOR PEOPLE WITH developmental disabilities pursuant to article sixteen
36 of this chapter or certified by the office of alcoholism and substance
37 abuse services pursuant to this chapter to provide inpatient chemical
38 dependence services, as defined in section 1.03 of this chapter, shall
39 be at rates or fees certified by the commissioner of the respective
40 office and approved by the director of the division of the budget,
41 provided, however, the commissioner of mental health shall annually
42 certify such rates or fees which may vary for distinct geographical
43 areas of the state and, provided, further, that rates or fees for
44 service for inpatient psychiatric services or inpatient chemical depend-
45 ence services, at hospitals otherwise licensed pursuant to article twen-
46 ty-eight of the public health law shall be established in accordance
47 with section two thousand eight hundred seven of the public health law.

48 (b) Operators of facilities licensed by the office of mental health
49 pursuant to article thirty-one of this chapter, licensed by the office
50 [of mental retardation and] FOR PEOPLE WITH developmental disabilities
51 pursuant to article sixteen of this chapter or certified by the office
52 of alcoholism and substance abuse services pursuant to this chapter to
53 provide inpatient chemical dependence services shall provide to the
54 commissioner of the respective office such financial, statistical and
55 program information as the commissioner may determine to be necessary.

1 The commissioner of the appropriate office shall have the power to
2 conduct on-site audits of books and records of such facilities.

3 (c) The commissioner of the office of mental health, the commissioner
4 of the office [of mental retardation and] FOR PEOPLE WITH developmental
5 disabilities and the commissioner of the office of alcoholism and
6 substance abuse services shall adopt rules and regulations to effectuate
7 the provisions of this section. Such rules and regulations shall
8 include, but not be limited to, provisions relating to:

9 (i) the establishment of a uniform statewide system of reports and
10 audits relating to the quality of care provided, facility utilization
11 and costs of providing services; such a uniform statewide system may
12 provide for appropriate variation in the application of the system to
13 different classes or subclasses of facilities licensed by the office of
14 mental health pursuant to article thirty-one of this chapter or licensed
15 or operated by the office [of mental retardation and] FOR PEOPLE WITH
16 developmental disabilities pursuant to article sixteen of this chapter,
17 or certified by the office of alcoholism and substance abuse services
18 pursuant to this chapter to provide inpatient chemical dependence
19 services; and

20 (ii) methodologies used in the establishment of the schedules of rates
21 or fees pursuant to this section.

22 S 46. Subdivision 1 and paragraph (c) of subdivision 2 of section
23 43.04 of the mental hygiene law, subdivision 1 as amended by section 187
24 of part A of chapter 389 of the laws of 1997, paragraph (c) of subdivi-
25 sion 2 as amended by section 108 of part A of chapter 56 of the laws of
26 1998 and subparagraph (iii) of paragraph (c) of subdivision 2 as added
27 by section 3 of part D of chapter 58 of the laws of 2007, are amended to
28 read as follows:

29 1. For purposes of this section, provider of services shall refer to
30 (i) those providers as defined by subdivision five of section 1.03 of
31 this chapter which are licensed by the office [of mental retardation
32 and] FOR PEOPLE WITH developmental disabilities pursuant to article
33 sixteen of this chapter as intermediate care facilities for [persons who
34 are developmentally disabled] INDIVIDUALS WITH DEVELOPMENTAL DISABILI-
35 TIES, providers of day treatment services or specialty hospitals, except
36 that on and after December first, nineteen hundred ninety-seven, provid-
37 er of services shall not include specialty hospitals, and (ii), for
38 purposes of paragraph (c) of subdivision two of this section only, the
39 term provider of services, shall mean, and for purposes of this subdivi-
40 sion shall include, the office [of mental retardation and] FOR PEOPLE
41 WITH developmental disabilities as the operator of intermediate care
42 facilities for [persons who are developmentally disabled] INDIVIDUALS
43 WITH DEVELOPMENTAL DISABILITIES. Providers of services are charged
44 assessments on their gross receipts received from services and care
45 related to intermediate care facilities, day treatment services, or
46 specialty hospitals until November thirtieth, nineteen hundred ninety-
47 seven, for [persons who are developmentally disabled] INDIVIDUALS WITH
48 DEVELOPMENTAL DISABILITIES and other operating income, less personal
49 needs allowances and refunds, on a cash basis in the percentage amounts
50 and for the periods specified in subdivision two of this section. Such
51 assessments shall be submitted by or on behalf of such providers of
52 services to the commissioner of the office [of mental retardation and]
53 FOR PEOPLE WITH developmental disabilities or HIS OR her designee.

54 (c) (i) For the provider of services as set forth in clause (ii) of
55 subdivision one of this section in the category of intermediate care
56 facilities for [persons who are developmentally disabled] INDIVIDUALS

1 WITH DEVELOPMENTAL DISABILITIES operated by the office [of mental retar-
2 dation and] FOR PEOPLE WITH developmental disabilities, the assessment
3 shall be six-tenths of one percent of the gross receipts received for
4 all services rendered within such service category on a cash basis
5 beginning April first, nineteen hundred ninety-five and ending March
6 thirty-first, two thousand one.

7 (ii) For the provider of services as set forth in clause (ii) of
8 subdivision one of this section in the category of intermediate care
9 facilities for [persons who are developmentally disabled] INDIVIDUALS
10 WITH DEVELOPMENTAL DISABILITIES operated by the office [of mental retar-
11 dation and] FOR PEOPLE WITH developmental disabilities, an additional
12 assessment shall be two and four-tenths percent of the gross receipts
13 for all services rendered within such service category on a cash basis
14 beginning April first, nineteen hundred ninety-five; provided, however,
15 such additional assessment shall be five and four-tenths percent of the
16 gross receipts received for all services rendered within such service
17 category on a cash basis beginning April first, nineteen hundred nine-
18 ty-six and ending March thirty-first, two thousand one.

19 (iii) For each provider of services as set forth in clause (ii) of
20 subdivision one of this section in the category of intermediate care
21 facilities for [persons who are developmentally disabled] INDIVIDUALS
22 WITH DEVELOPMENTAL DISABILITIES operated by the office [of mental retar-
23 dation and] FOR PEOPLE WITH developmental disabilities, notwithstanding
24 any other provision of this paragraph, the total assessment shall be six
25 percent of the provider's gross receipts received on a cash basis for
26 all services rendered, beginning April first, two thousand one, and five
27 and five-tenths percent of the provider's gross receipts received on a
28 cash basis for all services rendered, beginning January first, two thou-
29 sand eight.

30 S 47. Section 43.12 of the mental hygiene law, as added by chapter 305
31 of the laws of 2007, is amended to read as follows:

32 S 43.12 Electronic submission of periodic cost reports to the office [of
33 mental retardation and] FOR PEOPLE WITH developmental disabil-
34 ities.

35 Notwithstanding any provision of law, rule or regulation to the
36 contrary, every operator of a facility which is licensed by the office
37 [of mental retardation and] FOR PEOPLE WITH developmental disabilities
38 (hereinafter "office") and every provider of services which is subject
39 to the regulation or control of the office shall submit electronically,
40 via the internet, any annual cost report which is required to be submit-
41 ted to the office pursuant to the provisions of section 43.02 of this
42 article and any rules and regulations promulgated thereunder and any
43 other required periodic cost report or accounting which may be
44 prescribed by the commissioner of [mental retardation and] developmental
45 disabilities as subject to such electronic submission. The office shall
46 publish and make available at all times on its website instructions for
47 the submission of such reports or accountings via the internet, includ-
48 ing instructions relating to the use of an electronic signature as may
49 be required by the commissioner of [mental retardation and] develop-
50 mental disabilities which signature shall be subject to, and submitted
51 in accordance with, the provisions of the state technology law and any
52 rules and regulations promulgated thereunder. Any operator or provider
53 of services that is unable to submit such cost report or accounting in
54 accordance with this section may apply for a waiver of such required
55 submission from the commissioner of [mental retardation and] develop-
56 mental disabilities. The commissioner of [mental retardation and] devel-

1 opmental disabilities may grant a waiver for any given submission to
2 such operator or provider of services for good cause shown and may grant
3 a general waiver to all operators or providers of services with respect
4 to any required submission. On and after the effective date of this
5 section, any contract entered into between the office and a provider of
6 services which involves the provision of services to persons with
7 [mental retardation and] developmental disabilities and which contains
8 provisions that require the submission of any periodic report or
9 accounting may also contain provisions that require the submission of
10 any periodic cost report or accounting required under such contract to
11 be submitted electronically as set forth in this section.

12 S 48. Paragraphs (a) and (b) of subdivision 2 of section 1 of chapter
13 455 of the laws of 2007 relating to the use of certain language and
14 terminology when dealing with certain issues, are amended to read as
15 follows:

16 (a) avoid language that (i) implies that a person as a whole is disa-
17 bled (e.g., the mentally ill or the learning disabled), (ii) equates
18 persons with their condition (e.g., epileptics, autistics or quadrapleg-
19 ics, (iii) has negative overtones (e.g., afflicted with cerebral palsy,
20 suffering from multiple sclerosis, confined to a wheelchair or wheel-
21 chair bound) or (iv) is regarded as derogatory or demeaning (e.g., hand-
22 icapped [or], mentally deficient, MENTAL RETARDATION OR MENTALLY
23 RETARDED, UNLESS SUCH TERM IS USED FOR CLINICAL PURPOSES AS DEFINED IN
24 SECTION 1.03 OF THE MENTAL HYGIENE LAW); and

25 (b) replace non-respectful language by referring to persons with disa-
26 bilities as persons first (e.g., individuals with disabilities, individ-
27 uals with developmental disabilities, individuals with mental illness,
28 OR individuals with autism [or individuals with mental retardation]).

29 S 49. Terms occurring in laws, contracts and other documents. Whenev-
30 er the functions, powers, obligations, duties and officials relating to
31 the office of mental retardation and development disabilities or the
32 commissioner of the office of mental retardation and development disa-
33 bilities is referred to or designated in any other law, regulation,
34 contract or document, such reference or designation shall be deemed to
35 refer to the appropriate functions, powers, obligations, duties, offi-
36 cials and commissioner of the office for people with developmental disa-
37 bilities, as designated by this act.

38 S 50. Existing rights and remedies preserved. No existing right or
39 remedy of any character shall be lost, impaired or affected by reason of
40 this act.

41 S 51. Severability. If any clause, sentence, paragraph, subdivision,
42 section or part contained in any part of this act shall be adjudged by
43 any court of competent jurisdiction to be invalid, such judgment shall
44 not affect, impair, or invalidate the remainder thereof, but shall be
45 confined in its operation to the clause, sentence, paragraph, subdivi-
46 sion, section or part contained in any part thereof directly involved in
47 the controversy in which such judgment shall have been rendered. It is
48 hereby declared to be the intent of the legislature that this act would
49 have been enacted even if such invalid provisions had not been included
50 herein.

51 S 52. This act shall take effect immediately.