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

5556

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. V. LOPEZ, SCHROEDER -- read once and referred to the Committee on Mental Health, Mental Retardation and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to requiring a mandatory public hearing prior to the site selection for a "community residential facility" and repealing certain provisions of such law relating thereto

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

Section 1. Paragraph 1 of subdivision (a) of section 41.34 of the mental hygiene law is REPEALED and a new paragraph 1 is added to read as follows: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 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 MENTALLY DISABLED OPERATED OR LICENSED BY THE OFFICES OF MENTAL HEALTH OR MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES OR BY 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 FAMILY ASSISTANCE, GROUP HOMES, CONTRACT HOMES AND URBAN HOMES OPERATED OR LICENSED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES AND HALF-WAY HOUSES OPERATED OR LICENSED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES.

S 2. Paragraph 2 of subdivision (a) 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:

(2) "Sponsoring agency" means an agency or unit of government, a voluntary agency or any other person or organization which intends to

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

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establish or operate a community residential facility [for the disabled].

S 3. 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 disabled] within a municipality but does not have a specific site selected, it [may] SHALL notify the chief executive officer of the municipality in writing NINETY DAYS PRIOR TO THE TAKING OF ANY OTHER ACTION RELATED THERETO, INCLUDING BUT NOT LIMITED TO, THE SELECTION OF THE SPECIFIC SITE, of its intentions and include in such 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 4. Subdivision (c) of section 41.34 of the mental hygiene law, as amended by chapter 1024 of the laws of 1981 and subparagraph (C) of paragraph 1 as amended by chapter 823 of the laws of 1992, is amended to read as follows:

(c) (1) When a site has been selected by the sponsoring agency, it shall notify the chief executive officer of the municipality in writing and include in such notice the specific address of the site, the type of community residence, the number of residents and the community support requirements of the program. Such notice shall also contain the most recently published data compiled pursuant to [section four hundred sixty-three] ARTICLE SEVEN of the social services law which can reasonably be expected to permit the municipality to evaluate all such facilities affecting the nature and character of the area wherein such proposed facility is to be located. The municipality shall have forty days after the receipt of such notice to:

(A) approve the site recommended by the sponsoring agency;

(B) suggest one or more suitable sites within its jurisdiction which could accommodate such a facility; or

(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 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 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.

Such response shall be forwarded to the sponsoring agency and the commissioner. If the municipality does not respond within forty days, the sponsoring agency may establish a community residence at a site recommended in its notice.

(2) Prior to forwarding a response to the sponsoring agency and the commissioner, the municipality [may] SHALL hold a public hearing pursuant to local law.

(3) If the municipality approves the site recommended by the sponsoring agency, the sponsoring agency shall seek to establish the facility at the approved site.

(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 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.

(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 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. The commissioner shall sustain the objection if he OR SHE 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 5. This act shall take effect immediately and shall apply to the siting of community residential facilities on or after such date.