

4902

2009-2010 Regular Sessions

I N   S E N A T E

April 27, 2009

---

Introduced by Sen. HUNTLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law and the education law, in relation to creating mental health incident review panels

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

1     Section 1. The mental hygiene law is amended by adding a new section  
2     31.37 to read as follows:  
3     S 31.37 MENTAL HEALTH INCIDENT REVIEW PANELS.  
4     (A) THE COMMISSIONER IS AUTHORIZED TO ESTABLISH A MENTAL HEALTH INCIDENT REVIEW PANEL FOR THE PURPOSES OF REVIEWING THE CIRCUMSTANCES AND  
5     EVENTS RELATED TO A SERIOUS INCIDENT INVOLVING A PERSON WITH MENTAL  
6     ILLNESS. FOR PURPOSES OF THIS SECTION, A "SERIOUS INCIDENT INVOLVING A  
7     PERSON WITH MENTAL ILLNESS" MEANS AN INCIDENT OCCURRING IN THE COMMUNITY  
8     IN WHICH A PERSON WITH A SERIOUS MENTAL ILLNESS IS PHYSICALLY INJURED OR  
9     CAUSES PHYSICAL INJURY TO ANOTHER PERSON, OR SUFFERS A SERIOUS AND  
10    PREVENTABLE MEDICAL COMPLICATION OR BECOMES INVOLVED IN A CRIMINAL INCIDENT INVOLVING VIOLENCE. A PANEL SHALL CONDUCT A REVIEW OF SUCH SERIOUS  
11    INCIDENT IN AN ATTEMPT TO IDENTIFY PROBLEMS OR GAPS IN MENTAL HEALTH  
12    DELIVERY SYSTEMS AND TO MAKE RECOMMENDATIONS FOR CORRECTIVE ACTIONS TO  
13    IMPROVE THE PROVISION OF MENTAL HEALTH OR RELATED SERVICES, TO IMPROVE  
14    THE COORDINATION, INTEGRATION AND ACCOUNTABILITY OF CARE IN THE MENTAL  
15    HEALTH SERVICE SYSTEM, AND TO ENHANCE INDIVIDUAL AND PUBLIC SAFETY.  
16    (B) A MENTAL HEALTH INCIDENT REVIEW PANEL SHALL INCLUDE, BUT NEED NOT  
17    BE LIMITED TO, REPRESENTATIVES FROM THE OFFICE OF MENTAL HEALTH AND THE  
18    LOCAL GOVERNMENTAL UNIT WHERE THE SERIOUS INCIDENT INVOLVING A PERSON  
19    WITH A MENTAL ILLNESS OCCURRED. A MENTAL HEALTH INCIDENT REVIEW PANEL  
20    MAY ALSO INCLUDE, IF DEEMED APPROPRIATE BY THE COMMISSIONER BASED ON THE  
21    NATURE OF THE SERIOUS INCIDENT BEING REVIEWED, ONE OR MORE REPRESENTATIVES FROM MENTAL HEALTH PROVIDERS, LOCAL DEPARTMENTS OF SOCIAL  
22    SERVICES, AND OTHER AGENCIES.  
23    (C) THE COMMISSIONER SHALL REPORT ANNUALLY TO THE SENATE AND ASSEMBLY ON THE OPERATION OF THE PANELS.  
24    (D) THE COMMISSIONER SHALL REPORT ANNUALLY TO THE SENATE AND ASSEMBLY ON THE OPERATION OF THE PANELS.

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

LBD06740-02-9

SERVICES, HUMAN SERVICES PROGRAMS, HOSPITALS, LOCAL SCHOOLS, EMERGENCY MEDICAL OR MENTAL HEALTH SERVICES, THE OFFICE OF THE COUNTY ATTORNEY, STATE OR LOCAL LAW ENFORCEMENT AGENCIES, THE OFFICE OF THE MEDICAL EXAMINER OR THE OFFICE OF THE CORONER, OR OTHER APPROPRIATE STATE OR LOCAL OFFICIALS.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY AND TO THE EXTENT CONSISTENT WITH FEDERAL LAW, A MENTAL HEALTH INCIDENT REVIEW PANEL SHALL HAVE ACCESS TO THOSE CLIENT-IDENTIFIABLE MENTAL HEALTH RECORDS, AS WELL AS ALL RECORDS, DOCUMENTATION AND REPORTS RELATING TO THE INVESTIGATION OF AN INCIDENT BY A FACILITY IN ACCORDANCE WITH REGULATIONS OF THE COMMISSIONER, WHICH ARE NECESSARY FOR THE INVESTIGATION OF THE INCIDENT AND THE PREPARATION OF A REPORT OF THE INCIDENT, AS PROVIDED IN SUBDIVISION (E) OF THIS SECTION. A MENTAL HEALTH INCIDENT REVIEW PANEL ESTABLISHED PURSUANT TO THIS SECTION SHALL BE PROVIDED WITH ACCESS TO ALL OTHER RECORDS IN THE POSSESSION OF STATE OR LOCAL OFFICIALS OR AGENCIES, WITHIN TWENTY-ONE DAYS OF RECEIPT OF A REQUEST, EXCEPT THOSE RECORDS PROTECTED BY SECTION 190.25 OF THE CRIMINAL PROCEDURE LAW.

(D) MENTAL HEALTH INCIDENT REVIEW PANELS, MEMBERS OF THE REVIEW PANELS AND PERSONS WHO PRESENT INFORMATION TO A REVIEW PANEL SHALL HAVE IMMUNITY FROM CIVIL AND CRIMINAL LIABILITY FOR ALL REASONABLE AND GOOD FAITH ACTIONS TAKEN PURSUANT TO THIS SECTION, AND SHALL NOT BE QUESTIONED IN ANY CIVIL OR CRIMINAL PROCEEDING REGARDING ANY OPINIONS FORMED AS A RESULT OF A MEETING OF SUCH REVIEW PANEL. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT A PERSON FROM TESTIFYING AS TO INFORMATION OBTAINED INDEPENDENTLY OF A MENTAL HEALTH INCIDENT REVIEW PANEL, OR INFORMATION WHICH IS PUBLIC.

(E) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ALL MEETINGS CONDUCTED, ALL REPORTS AND RECORDS MADE AND MAINTAINED AND ALL BOOKS AND PAPERS OBTAINED BY A MENTAL HEALTH INCIDENT REVIEW PANEL SHALL BE CONFIDENTIAL, AND SHALL NOT BE OPEN OR MADE AVAILABLE, EXCEPT BY COURT ORDER OR AS SET FORTH IN SUBDIVISION (G) OF THIS SECTION. EACH MENTAL HEALTH INCIDENT REVIEW PANEL SHALL DEVELOP A REPORT OF THE INCIDENT INVESTIGATED. SUCH REPORT SHALL NOT CONTAIN ANY INDIVIDUALLY IDENTIFIABLE INFORMATION, AND IT SHALL BE PROVIDED TO THE OFFICE OF MENTAL HEALTH UPON COMPLETION. SUCH REPORTS MUST BE APPROVED BY THE OFFICE OF MENTAL HEALTH PRIOR TO BECOMING FINAL.

(F) IF QUALITY PROBLEMS OF PARTICULAR MENTAL HEALTH PROGRAMS ARE IDENTIFIED BASED ON SUCH REVIEWS, THE COMMISSIONER IS AUTHORIZED, PURSUANT TO THE RELEVANT PROVISIONS OF THIS CHAPTER, TO TAKE APPROPRIATE ACTIONS REGARDING THE LICENSURE OF PARTICULAR PROVIDERS, TO REFER THE ISSUE TO OTHER RESPONSIBLE PARTIES FOR INVESTIGATION, OR TO TAKE OTHER APPROPRIATE ACTION.

(G) IN HIS OR HER DISCRETION, THE COMMISSIONER SHALL BE AUTHORIZED TO PROVIDE THE FINAL REPORT OF A REVIEW PANEL OR PORTIONS THEREOF TO ANY INDIVIDUAL OR ENTITY FOR WHOM THE REPORT MAKES RECOMMENDATIONS FOR CORRECTIVE OR OTHER APPROPRIATE ACTIONS THAT SHOULD BE TAKEN.

(H) THE COMMISSIONER SHALL SUBMIT AN ANNUAL CUMULATIVE REPORT TO THE GOVERNOR AND THE LEGISLATURE INCORPORATING THE DATA IN THE MENTAL HEALTH INCIDENT REVIEW PANEL REPORTS AND INCLUDING A SUMMARY OF THE FINDINGS AND RECOMMENDATIONS MADE BY SUCH REVIEW PANELS. THE ANNUAL CUMULATIVE REPORTS MAY THEREAFTER BE MADE AVAILABLE TO THE PUBLIC.

S 2. Subdivision (c) of section 33.13 of the mental hygiene law is amended by adding a new paragraph 15 to read as follows:

1 15. TO A MENTAL HEALTH INCIDENT REVIEW PANEL, OR MEMBERS THEREOF,  
2 ESTABLISHED BY THE COMMISSIONER PURSUANT TO SECTION 31.37 OF THIS TITLE,  
3 IN CONNECTION WITH INCIDENT REVIEWS CONDUCTED BY SUCH PANEL.

4 S 3. Subdivision 3 of section 6527 of the education law, as amended by  
5 chapter 257 of the laws of 1987, is amended to read as follows:

6 3. No individual who serves as a member of (a) a committee established  
7 to administer a utilization review plan of a hospital, including a  
8 hospital as defined in article twenty-eight of the public health law or  
9 a hospital as defined in subdivision ten of section 1.03 of the mental  
10 hygiene law, or (b) a committee having the responsibility of the inves-  
11 tigation of an incident reported pursuant to section 29.29 of the mental  
12 hygiene law or the evaluation and improvement of the quality of care  
13 rendered in a hospital as defined in article twenty-eight of the public  
14 health law or a hospital as defined in subdivision ten of section 1.03  
15 of the mental hygiene law, or (c) any medical review committee or  
16 subcommittee thereof of a local, county or state medical, dental, podia-  
17 try or optometrical society, any such society itself, a professional  
18 standards review organization or an individual when such committee,  
19 subcommittee, society, organization or individual is performing any  
20 medical or quality assurance review function including the investigation  
21 of an incident reported pursuant to section 29.29 of the mental hygiene  
22 law, either described in clauses (a) and (b) of this subdivision,  
23 required by law, or involving any controversy or dispute between (i) a  
24 physician, dentist, podiatrist or optometrist or hospital administrator  
25 and a patient concerning the diagnosis, treatment or care of such  
26 patient or the fees or charges therefor or (ii) a physician, dentist,  
27 podiatrist or optometrist or hospital administrator and a provider of  
28 medical, dental, podiatric or optometrical services concerning any  
29 medical or health charges or fees of such physician, dentist, podiatrist  
30 or optometrist, or (d) a committee appointed pursuant to section twen-  
31 ty-eight hundred five-j of the public health law to participate in the  
32 medical and dental malpractice prevention program, or (e) any individual  
33 who participated in the preparation of incident reports required by the  
34 department of health pursuant to section twenty-eight hundred five-l of  
35 the public health law, or (f) a committee established to administer a  
36 utilization review plan, or a committee having the responsibility of  
37 evaluation and improvement of the quality of care rendered, in a health  
38 maintenance organization organized under article forty-four of the  
39 public health law or article forty-three of the insurance law, including  
40 a committee of an individual practice association or medical group  
41 acting pursuant to a contract with such a health maintenance organiza-  
42 tion, OR (G) A MENTAL HEALTH INCIDENT REVIEW PANEL CONVENED PURSUANT TO  
43 SECTION 31.37 OF THE MENTAL HYGIENE LAW, shall be liable in damages to  
44 any person for any action taken or recommendations made, by him OR HER  
45 within the scope of his OR HER function in such capacity provided that  
46 (a) such individual has taken action or made recommendations within the  
47 scope of his OR HER function and without malice, and (b) in the reason-  
48 able belief after reasonable investigation that the act or recommenda-  
49 tion was warranted, based upon the facts disclosed.

50 Neither the proceedings nor the records relating to performance of a  
51 medical or a quality assurance review function or participation in a  
52 medical and dental malpractice prevention program nor any report  
53 required by the department of health pursuant to section twenty-eight  
54 hundred five-l of the public health law described herein, including the  
55 investigation of an incident reported pursuant to section 29.29 of the  
56 mental hygiene law OR REVIEWED PURSUANT TO SECTION 31.37 OF THE MENTAL

1 HYGIENE LAW, shall be subject to disclosure under article thirty-one of  
2 the civil practice law and rules except as hereinafter provided or as  
3 provided by any other provision of law. No person in attendance at a  
4 meeting when a medical or a quality assurance review or a medical and  
5 dental malpractice prevention program or an incident reporting function  
6 described herein was performed, including the investigation of an inci-  
7 dent reported pursuant to section 29.29 of the mental hygiene law OR AN  
8 INCIDENT REVIEWED PURSUANT TO SECTION 31.37 OF THE MENTAL HYGIENE LAW,  
9 shall be required to testify as to what transpired thereat. The prohibi-  
10 tion relating to discovery of testimony shall not apply to the state-  
11 ments made by any person in attendance at such a meeting who is a party  
12 to an action or proceeding the subject matter of which was reviewed at  
13 such meeting.

14 S 4. This act shall take effect on the thirtieth day after it shall  
15 have become a law.