

5209

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, in relation to establishing a program of tiered eligibility for services offered by the office of mental retardation and developmental disabilities for persons with learning disabilities and other complex neurological impairments

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 41.58 to read as follows:  
3 S 41.58 TIERED SERVICES ELIGIBILITY.  
4 1. LEGISLATIVE FINDINGS AND PURPOSE. THE LEGISLATURE HEREBY FINDS THAT  
5 INDIVIDUALS WITH LEARNING DISABILITIES AND OTHER COMPLEX NEUROLOGICAL  
6 IMPAIRMENTS ARE OFTEN NOT PROVIDED ESSENTIAL SUPPORT AND HABILITATIVE  
7 SERVICES DUE TO THE LACK OF ESTABLISHED OFFICE OF MENTAL RETARDATION AND  
8 DEVELOPMENTAL DISABILITIES' ELIGIBILITY PROTOCOLS. THIS INCLUDES INDI-  
9 VIDUALS WITH LEARNING DISABILITIES, HIGH FUNCTIONING AUTISM SPECTRUM  
10 DISORDERS, SUCH AS ASPERGER'S SYNDROME, AND A NUMBER OF OTHER COMPLEX  
11 NEUROLOGICALLY BASED COGNITIVE DISABILITIES. UNFORTUNATELY, THESE INDI-  
12 VIDUALS ARE THEN LEFT TO NAVIGATE THEIR LIVES AND THE CHALLENGES OF  
13 THEIR DISABILITIES WITH MINIMAL OR NO ASSISTANCE. AS A RESULT, SUCH  
14 INDIVIDUALS OFTEN LEAD LIVES OF GREAT DIFFICULTY AND VULNERABILITY THAT  
15 MAY INCLUDE, BUT ARE NOT LIMITED TO, EXTENDED PERIODS OF INCARCERATION,  
16 LIFELONG DEPENDENCE ON PUBLIC ASSISTANCE, SUBSTANCE ABUSE, AND VICTIMI-  
17 ZATION, COUPLED WITH MANY OTHER NEGATIVE AND COSTLY OUTCOMES. IN  
18 RESPONSE TO THIS GROWING PROBLEM, THE LEGISLATURE HEREBY DIRECTS THE  
19 COMMISSIONER OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES TO  
20 DEVELOP AND IMPLEMENT A PROGRAM OF TIERED ELIGIBILITY FOR OFFICE OF  
21 MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES' SERVICES FOR PERSONS  
22 WITH LEARNING DISABILITIES AND OTHER COMPLEX NEUROLOGICAL IMPAIRMENTS.

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

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1 THIS TIERED SERVICE-DELIVERY MODEL WOULD ALLOW SERVICES TO BE TARGETED  
2 AND BASED ON AN INDIVIDUAL'S SPECIFIC NEEDS, WHICH FOR SOME MAY BE MORE  
3 INTENSIVE AND FOR OTHERS RELATIVELY MINIMAL. THIS MODEL WILL ALSO FACIL-  
4 ITATE RAPID RESPONSE TO ADDRESSING PROBLEMS ENCOUNTERED BY INDIVIDUALS  
5 IN CRISIS. PROVIDING SERVICES THAT ARE TRULY NEEDED WILL BE MORE COST  
6 EFFECTIVE AND A MORE SENSIBLE OPTION THAN THE CURRENT ELIGIBILITY PROC-  
7 ESS UTILIZED BY THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISA-  
8 BILITIES.

9 2. WHEN USED IN THIS ARTICLE, UNLESS OTHERWISE EXPRESSLY STATED OR  
10 UNLESS THE CONTEXT OTHERWISE REQUIRES:

11 (A) "LEARNING DISABILITY" MEANS A DISORDER IN ONE OR MORE OF THE BASIC  
12 PSYCHOLOGICAL PROCESSES INVOLVED IN UNDERSTANDING OR IN USING SPOKEN OR  
13 WRITTEN LANGUAGE, WHICH MAY MANIFEST ITSELF IN AN IMPERFECT ABILITY TO  
14 LISTEN, THINK, SPEAK, READ, WRITE, SPELL OR TO DO MATHEMATICAL CALCU-  
15 LATIONS. THIS INCLUDES SUCH CONDITIONS AS PERCEPTUAL DISABILITIES, MINI-  
16 MAL BRAIN DYSFUNCTION, DYSLEXIA, DYSGRAPHIA, DYSCALCULIA, DYSPRAXIA, AND  
17 DEVELOPMENTAL APHASIA;

18 (B) "COMPLEX NEUROLOGICAL IMPAIRMENT" MEANS AUTISM SPECTRUM DISORDER,  
19 SUCH AS ASPERGER'S SYNDROME, OR OTHER COGNITIVE DISABILITIES OF A SIMI-  
20 LAR NATURE AND RESULTING IN SIMILAR NEEDS BY AFFECTED INDIVIDUALS;

21 (C) "INTENSIVE SERVICE NAVIGATION" MEANS A SERVICE WHOSE PRIMARY FUNC-  
22 TION IS TO CONNECT PERSONS WITH LEARNING DISABILITIES AND/OR OTHER  
23 COMPLEX NEUROLOGICAL IMPAIRMENTS TO APPROPRIATE SERVICES AND SUPPORTS.  
24 INTENSIVE SERVICE NAVIGATION COORDINATES ALL SERVICES FOR A PERSON WITH  
25 A LEARNING DISABILITY OR OTHER COMPLEX NEUROLOGICAL IMPAIRMENT INCLUD-  
26 ING, BUT NOT LIMITED TO, MENTAL HEALTH SERVICES, PARENTING CLASSES,  
27 SUPPORT GROUPS, RECREATIONAL ACTIVITIES, VOCATIONAL SERVICES, AND EDUCA-  
28 TIONAL TRANSITIONAL PLANNING AND ALL BASIC NEEDS OF THE INDIVIDUAL. THE  
29 SERVICES OF THE INTENSIVE SERVICE NAVIGATOR ARE TIME LIMITED AND  
30 ORIENTED TO SHORT TERM CRISIS INTERVENTION.

31 3. NOTWITHSTANDING ANY INCONSISTENT PROVISIONS OF THIS CHAPTER OR ANY  
32 OTHER STATE LAW, THE COMMISSIONER OF THE OFFICE OF MENTAL RETARDATION  
33 AND DEVELOPMENTAL DISABILITIES SHALL ESTABLISH A PROGRAM OF TIERED  
34 ELIGIBILITY FOR SERVICES OFFERED BY THE OFFICE OF MENTAL RETARDATION AND  
35 DEVELOPMENT DISABILITIES FOR PERSONS WITH LEARNING DISABILITIES AND  
36 OTHER COMPLEX NEUROLOGICAL IMPAIRMENTS. SUCH PROGRAM SHALL CONTAIN THE  
37 FOLLOWING ELEMENTS:

38 (A) WHEN AN INDIVIDUAL PRESENTS TO A SERVICE PROVIDER SEEKING SUPPORT  
39 SERVICES, THE SERVICE PROVIDER SHALL DETERMINE IF THE INDIVIDUAL IS  
40 PRESENTING WITH A LEARNING DISABILITY OR OTHER COMPLEX NEUROLOGICAL  
41 IMPAIRMENT. IF THE SERVICE PROVIDER DETERMINES THAT THE INDIVIDUAL IS A  
42 PERSON WITH AN APPARENT LEARNING DISABILITY OR OTHER COMPLEX NEUROLOGI-  
43 CAL IMPAIRMENT, AND THAT SUCH INDIVIDUAL REQUIRES IMMEDIATE SERVICE IN  
44 ORDER TO PROTECT AND PROMOTE THE INDIVIDUAL'S HEALTH AND SAFETY, OR THAT  
45 THE INDIVIDUAL OTHERWISE FACES A CRISIS SITUATION THAT CAN BE HELPED BY  
46 SERVICE AND ASSISTANCE, THE SERVICE PROVIDER MAY IMPLEMENT THE TIERED  
47 SERVICES ELIGIBILITY PROGRAM;

48 (B) TIER ONE OF THE TIERED SERVICES ELIGIBILITY PROGRAM WILL CONSIST  
49 OF THE IMMEDIATE PROVISION OF INTENSIVE SERVICE NAVIGATION. THIS  
50 PROVISION OF SERVICES WILL BE PROVIDED FOR UP TO SIX MONTHS IN DURATION.  
51 THE SERVICE MAY END ANYTIME PRIOR TO THE END OF THE SIX-MONTH PERIOD IF  
52 THE INDIVIDUAL AND SERVICE PROVIDER AGREE THAT NO FURTHER SERVICE OR  
53 INTERVENTION IS REQUIRED. IF THE INDIVIDUAL AND SERVICE PROVIDER AGREE  
54 AT THE END OF THE SIX MONTH PERIOD THAT THE NEED FOR SERVICES PERSISTS  
55 AND MORE INTERVENTION IS REQUIRED, THE INDIVIDUAL WILL MOVE INTO TIER  
56 TWO;

1 (C) TIER TWO OF THE TIERED SERVICES ELIGIBILITY PROGRAM WILL BE  
2 PROVIDED FOR UP TO AN ADDITIONAL SIX-MONTH PERIOD AND PROVIDE:

3 (1) CONTINUATION AND INTENSIFICATION OF THE INTENSIVE SERVICE  
4 NAVIGATOR'S EFFORTS TO STABILIZE THE INDIVIDUAL'S CRISIS SITUATION;

5 (2) A PROCESS POTENTIALLY LEADING TO FULL ELIGIBILITY FOR OFFICE OF  
6 MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES' SERVICES. AS PART OF  
7 THIS PROCESS, THE INTENSIVE SERVICE NAVIGATOR WILL CONDUCT AN ASSESSMENT  
8 OF THE INDIVIDUAL'S ADAPTIVE BEHAVIOR LEVELS, CONDUCT AN ASSESSMENT OF  
9 AN INDIVIDUAL'S ABILITY TO EFFECTIVELY LEARN AND PUT INTO PRACTICE NEW  
10 ADAPTIVE SKILLS, AND GENERALLY PREPARE THE INDIVIDUAL FOR THE ELIGIBIL-  
11 ITY PROCESS;

12 (D) IF DURING TIER TWO, THE INDIVIDUAL LEARNS NEW SKILLS AND THE  
13 CRISIS SUBSIDIES, THE INDIVIDUAL AND SERVICE PROVIDER CAN AGREE THAT  
14 SERVICES BE TERMINATED PRIOR TO THE CONCLUSION OF THIS TIER; AND

15 (E) IF THE INTENSIVE SERVICE NAVIGATOR AND INDIVIDUAL AGREE THAT THE  
16 INDIVIDUAL WOULD BENEFIT FROM ON-GOING SERVICE AND SUPPORT, THE INTEN-  
17 SIVE SERVICE NAVIGATOR WILL ASSIST THE INDIVIDUAL IN APPLYING TO THE  
18 OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES FOR A FULL  
19 ELIGIBILITY DETERMINATION.

20 4. THE COMMISSIONER OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILI-  
21 TIES SHALL, IN CONSULTATION WITH EXPERIENCED SERVICE PROVIDERS, DEVELOP  
22 A REIMBURSEMENT METHODOLOGY FOR INTENSIVE SERVICE NAVIGATION AS  
23 DESCRIBED HEREIN. SUCH REIMBURSEMENT SHALL COVER THE SERVICE PROVIDER'S  
24 REASONABLE COSTS FOR PROVIDING THIS SERVICE AND BE PAID TO THE SERVICE  
25 PROVIDERS AS PART OF THE USUAL AND CUSTOMARY COST REIMBURSEMENT PROCESS.

26 5. IN DEVELOPING THIS PROGRAM, THE COMMISSIONER OF MENTAL RETARDATION  
27 AND DEVELOPMENTAL DISABILITIES SHALL CONSULT WITH A STATEWIDE ASSOCI-  
28 ATION SPECIFICALLY REPRESENTING INDIVIDUALS WITH LEARNING DISABILITIES  
29 AND RELATED SERVICES PROVIDERS.

30 S 2. This act shall take effect on the one hundred eightieth day after  
31 it shall have become a law; provided however, that the commissioner of  
32 mental retardation and developmental disabilities is authorized to  
33 promulgate any and all rules and regulations and take any other measures  
34 necessary to implement this act on its effective date on or before such  
35 effective date.