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

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I N S E N A T E

March 25, 2010

Introduced by Sen. MORAHAN -- (at request of the Office of Mental Health) -- 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:

Section 1. The mental hygiene law is amended by adding a new section 31.37 to read as follows:

S 31.37 MENTAL HEALTH INCIDENT REVIEW PANELS.

(A) THE COMMISSIONER IS AUTHORIZED TO ESTABLISH A MENTAL HEALTH INCIDENT REVIEW PANEL FOR THE PURPOSES OF REVIEWING THE CIRCUMSTANCES AND EVENTS RELATED TO A SERIOUS INCIDENT INVOLVING A PERSON WITH MENTAL ILLNESS. FOR PURPOSES OF THIS SECTION, A "SERIOUS INCIDENT INVOLVING A PERSON WITH MENTAL ILLNESS" MEANS AN INCIDENT OCCURRING IN THE COMMUNITY IN WHICH A PERSON WITH A SERIOUS MENTAL ILLNESS IS PHYSICALLY INJURED OR CAUSES PHYSICAL INJURY TO ANOTHER PERSON, OR SUFFERS A SERIOUS AND PREVENTABLE MEDICAL COMPLICATION OR BECOMES INVOLVED IN A CRIMINAL INCIDENT INVOLVING VIOLENCE. A PANEL SHALL CONDUCT A REVIEW OF SUCH SERIOUS INCIDENT IN AN ATTEMPT TO IDENTIFY PROBLEMS OR GAPS IN MENTAL HEALTH DELIVERY SYSTEMS AND TO MAKE RECOMMENDATIONS FOR CORRECTIVE ACTIONS TO IMPROVE THE PROVISION OF MENTAL HEALTH OR RELATED SERVICES, TO IMPROVE THE COORDINATION, INTEGRATION AND ACCOUNTABILITY OF CARE IN THE MENTAL HEALTH SERVICE SYSTEM, AND TO ENHANCE INDIVIDUAL AND PUBLIC SAFETY.

(B) A MENTAL HEALTH INCIDENT REVIEW PANEL SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, REPRESENTATIVES FROM THE OFFICE OF MENTAL HEALTH AND THE LOCAL GOVERNMENTAL UNIT WHERE THE SERIOUS INCIDENT INVOLVING A PERSON WITH A MENTAL ILLNESS OCCURRED. A MENTAL HEALTH INCIDENT REVIEW PANEL MAY ALSO INCLUDE, IF DEEMED APPROPRIATE BY THE COMMISSIONER BASED ON THE NATURE OF THE SERIOUS INCIDENT BEING REVIEWED, ONE OR MORE REPRESENTATIVES FROM MENTAL HEALTH PROVIDERS, LOCAL DEPARTMENTS OF SOCIAL SERVICES, HUMAN SERVICES PROGRAMS, HOSPITALS, LOCAL SCHOOLS, EMERGENCY MEDICAL OR MENTAL HEALTH SERVICES, THE OFFICE OF THE COUNTY ATTORNEY,

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

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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: (1) THOSE RECORDS PROTECTED BY SECTION 190.25 OF THE CRIMINAL PROCEDURE LAW, AND (II) WHERE PROVISION OF LAW ENFORCEMENT RECORDS WOULD INTERFERE WITH AN ONGOING LAW ENFORCEMENT INVESTIGATION OR JUDICIAL PROCEEDING, OR IDENTIFY A CONFIDENTIAL SOURCE OR DISCLOSE CONFIDENTIAL INFORMATION RELATING TO AN ONGOING CRIMINAL INVESTIGATION, HIGHLY SENSITIVE CRIMINAL INVESTIGATIVE TECHNIQUES OR PROCEDURES, OR ENDANGER THE SAFETY OR WELFARE OF AN INDIVIDUAL.

(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. ANY FINAL REPORT OR PORTION THEREOF SHALL NOT BE FURTHER DISSEMINATED BY THE RECIPIENT.

(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:

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

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

3. No individual who serves as a member of (a) a committee established to administer a utilization review plan of a hospital, including a hospital as defined in article twenty-eight of the public health law or a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law, or (b) a committee having the responsibility of the investigation of an incident reported pursuant to section 29.29 of the mental hygiene law or the evaluation and improvement of the quality of care rendered in a hospital as defined in article twenty-eight of the public health law or a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law, or (c) any medical review committee or subcommittee thereof of a local, county or state medical, dental, podiatry or optometrical society, any such society itself, a professional standards review organization or an individual when such committee, subcommittee, society, organization or individual is performing any medical or quality assurance review function including the investigation of an incident reported pursuant to section 29.29 of the mental hygiene law, either described in clauses (a) and (b) of this subdivision, required by law, or involving any controversy or dispute between (i) a physician, dentist, podiatrist or optometrist or hospital administrator and a patient concerning the diagnosis, treatment or care of such patient or the fees or charges therefor or (ii) a physician, dentist, podiatrist or optometrist or hospital administrator and a provider of medical, dental, podiatric or optometrical services concerning any medical or health charges or fees of such physician, dentist, podiatrist or optometrist, or (d) a committee appointed pursuant to section twenty-eight hundred five-j of the public health law to participate in the medical and dental malpractice prevention program, or (e) any individual who participated in the preparation of incident reports required by the department of health pursuant to section twenty-eight hundred five-l of the public health law, or (f) a committee established to administer a utilization review plan, or a committee having the responsibility of evaluation and improvement of the quality of care rendered, in a health maintenance organization organized under article forty-four of the public health law or article forty-three of the insurance law, including a committee of an individual practice association or medical group acting pursuant to a contract with such a health maintenance organization, OR (G) A MENTAL HEALTH INCIDENT REVIEW PANEL CONVENED PURSUANT TO SECTION 31.37 OF THE MENTAL HYGIENE LAW, shall be liable in damages to any person for any action taken or recommendations made, by him OR HER within the scope of his OR HER function in such capacity provided that (a) such individual has taken action or made recommendations within the scope of his OR HER function and without malice, and (b) in the reasonable belief after reasonable investigation that the act or recommendation was warranted, based upon the facts disclosed.

Neither the proceedings nor the records relating to performance of a medical or a quality assurance review function or participation in a medical and dental malpractice prevention program nor any report

required by the department of health pursuant to section twenty-eight hundred five-l of the public health law described herein, including the investigation of an incident reported pursuant to section 29.29 of the mental hygiene law OR REVIEWED PURSUANT TO SECTION 31.37 OF THE MENTAL HYGIENE LAW, shall be subject to disclosure under article thirty-one of the civil practice law and rules except as hereinafter provided or as provided by any other provision of law. No person in attendance at a meeting when a medical or a quality assurance review or a medical and dental malpractice prevention program or an incident reporting function described herein was performed, including the investigation of an incident reported pursuant to section 29.29 of the mental hygiene law OR AN INCIDENT REVIEWED PURSUANT TO SECTION 31.37 OF THE MENTAL HYGIENE LAW, shall be required to testify as to what transpired thereat. The prohibition relating to discovery of testimony shall not apply to the statements made by any person in attendance at such a meeting who is a party to an action or proceeding the subject matter of which was reviewed at such meeting.

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