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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:

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 INCI-
5 DENT REVIEW PANEL FOR THE PURPOSES OF REVIEWING THE CIRCUMSTANCES AND
6 EVENTS RELATED TO A SERIOUS INCIDENT INVOLVING A PERSON WITH MENTAL
7 ILLNESS. FOR PURPOSES OF THIS SECTION, A "SERIOUS INCIDENT INVOLVING A
8 PERSON WITH MENTAL ILLNESS" MEANS AN INCIDENT OCCURRING IN THE COMMUNITY
9 IN WHICH A PERSON WITH A SERIOUS MENTAL ILLNESS IS PHYSICALLY INJURED OR
10 CAUSES PHYSICAL INJURY TO ANOTHER PERSON, OR SUFFERS A SERIOUS AND
11 PREVENTABLE MEDICAL COMPLICATION OR BECOMES INVOLVED IN A CRIMINAL INCI-
12 DENT INVOLVING VIOLENCE. A PANEL SHALL CONDUCT A REVIEW OF SUCH SERIOUS
13 INCIDENT IN AN ATTEMPT TO IDENTIFY PROBLEMS OR GAPS IN MENTAL HEALTH
14 DELIVERY SYSTEMS AND TO MAKE RECOMMENDATIONS FOR CORRECTIVE ACTIONS TO
15 IMPROVE THE PROVISION OF MENTAL HEALTH OR RELATED SERVICES, TO IMPROVE
16 THE COORDINATION, INTEGRATION AND ACCOUNTABILITY OF CARE IN THE MENTAL
17 HEALTH SERVICE SYSTEM, AND TO ENHANCE INDIVIDUAL AND PUBLIC SAFETY.
18 (B) A MENTAL HEALTH INCIDENT REVIEW PANEL SHALL INCLUDE, BUT NEED NOT
19 BE LIMITED TO, REPRESENTATIVES FROM THE OFFICE OF MENTAL HEALTH AND THE
20 LOCAL GOVERNMENTAL UNIT WHERE THE SERIOUS INCIDENT INVOLVING A PERSON
21 WITH A MENTAL ILLNESS OCCURRED. A MENTAL HEALTH INCIDENT REVIEW PANEL
22 MAY ALSO INCLUDE, IF DEEMED APPROPRIATE BY THE COMMISSIONER BASED ON THE
23 NATURE OF THE SERIOUS INCIDENT BEING REVIEWED, ONE OR MORE REPRESENT-
24 ATIVES FROM MENTAL HEALTH PROVIDERS, LOCAL DEPARTMENTS OF SOCIAL
25 SERVICES, HUMAN SERVICES PROGRAMS, HOSPITALS, LOCAL SCHOOLS, EMERGENCY
26 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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1 STATE OR LOCAL LAW ENFORCEMENT AGENCIES, THE OFFICE OF THE MEDICAL EXAM-
2 INER OR THE OFFICE OF THE CORONER, OR OTHER APPROPRIATE STATE OR LOCAL
3 OFFICIALS.

4 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY AND TO
5 THE EXTENT CONSISTENT WITH FEDERAL LAW, A MENTAL HEALTH INCIDENT REVIEW
6 PANEL SHALL HAVE ACCESS TO THOSE CLIENT-IDENTIFIABLE MENTAL HEALTH
7 RECORDS, AS WELL AS ALL RECORDS, DOCUMENTATION AND REPORTS RELATING TO
8 THE INVESTIGATION OF AN INCIDENT BY A FACILITY IN ACCORDANCE WITH REGU-
9 LATIONS OF THE COMMISSIONER, WHICH ARE NECESSARY FOR THE INVESTIGATION
10 OF THE INCIDENT AND THE PREPARATION OF A REPORT OF THE INCIDENT, AS
11 PROVIDED IN SUBDIVISION (E) OF THIS SECTION. A MENTAL HEALTH INCIDENT
12 REVIEW PANEL ESTABLISHED PURSUANT TO THIS SECTION SHALL BE PROVIDED WITH
13 ACCESS TO ALL OTHER RECORDS IN THE POSSESSION OF STATE OR LOCAL OFFI-
14 CIALS OR AGENCIES, WITHIN TWENTY-ONE DAYS OF RECEIPT OF A REQUEST,
15 EXCEPT: (1) THOSE RECORDS PROTECTED BY SECTION 190.25 OF THE CRIMINAL
16 PROCEDURE LAW, AND (II) WHERE PROVISION OF LAW ENFORCEMENT RECORDS WOULD
17 INTERFERE WITH AN ONGOING LAW ENFORCEMENT INVESTIGATION OR JUDICIAL
18 PROCEEDING, OR IDENTIFY A CONFIDENTIAL SOURCE OR DISCLOSE CONFIDENTIAL
19 INFORMATION RELATING TO AN ONGOING CRIMINAL INVESTIGATION, HIGHLY SENSI-
20 TIVE CRIMINAL INVESTIGATIVE TECHNIQUES OR PROCEDURES, OR ENDANGER THE
21 SAFETY OR WELFARE OF AN INDIVIDUAL.

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

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

41 (F) IF QUALITY PROBLEMS OF PARTICULAR MENTAL HEALTH PROGRAMS ARE IDEN-
42 TIFIED BASED ON SUCH REVIEWS, THE COMMISSIONER IS AUTHORIZED, PURSUANT
43 TO THE RELEVANT PROVISIONS OF THIS CHAPTER, TO TAKE APPROPRIATE ACTIONS
44 REGARDING THE LICENSURE OF PARTICULAR PROVIDERS, TO REFER THE ISSUE TO
45 OTHER RESPONSIBLE PARTIES FOR INVESTIGATION, OR TO TAKE OTHER APPROPRI-
46 ATE ACTION.

47 (G) IN HIS OR HER DISCRETION, THE COMMISSIONER SHALL BE AUTHORIZED TO
48 PROVIDE THE FINAL REPORT OF A REVIEW PANEL OR PORTIONS THEREOF TO ANY
49 INDIVIDUAL OR ENTITY FOR WHOM THE REPORT MAKES RECOMMENDATIONS FOR
50 CORRECTIVE OR OTHER APPROPRIATE ACTIONS THAT SHOULD BE TAKEN. ANY FINAL
51 REPORT OR PORTION THEREOF SHALL NOT BE FURTHER DISSEMINATED BY THE
52 RECIPIENT.

53 (H) THE COMMISSIONER SHALL SUBMIT AN ANNUAL CUMULATIVE REPORT TO THE
54 GOVERNOR AND THE LEGISLATURE INCORPORATING THE DATA IN THE MENTAL HEALTH
55 INCIDENT REVIEW PANEL REPORTS AND INCLUDING A SUMMARY OF THE FINDINGS

1 AND RECOMMENDATIONS MADE BY SUCH REVIEW PANELS. THE ANNUAL CUMULATIVE
2 REPORTS MAY THEREAFTER BE MADE AVAILABLE TO THE PUBLIC.

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

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

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

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

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

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

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