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

8448

2011-2012 Regular Sessions

I N A S S E M B L Y

June 15, 2011

Introduced by M. of A. RODRIGUEZ -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to drug and alcohol testing of employees of the office for people with developmental disabilities facilities

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 16.34 to read as follows:

S 16.34 DRUG AND ALCOHOL TESTING OF CERTAIN EMPLOYEES.

(A) (I) EVERY PROVIDER OF SERVICES STATEWIDE, WHO CONTRACTS WITH OR IS APPROVED, CERTIFIED, LICENSED, FUNDED OR OTHERWISE AUTHORIZED BY THE DEPARTMENT TO PROVIDE SERVICES SHALL REQUIRE ALL OFFICERS, EMPLOYEES AND VOLUNTEERS TO SUBMIT TO RANDOM, UNANNOUNCED DRUG TESTING NO LESS THAN TWICE A YEAR AT THE EXPENSE OF SUCH FACILITY.

(II) ALL OFFICERS, EMPLOYEES AND VOLUNTEERS WORKING AT A FACILITY PROVIDING RESIDENTIAL CARE TO YOUTH AS SUCH TERM IS DEFINED IN PARAGRAPH (A) OR (B) OF SUBDIVISION FOUR OF SECTION FOUR HUNDRED TWELVE-A OF THE SOCIAL SERVICES LAW SHALL SUBMIT TO RANDOM, UNANNOUNCED DRUG TESTING NO LESS THAN TWICE A YEAR AT THE EXPENSE OF SUCH FACILITY.

(B) (I) ALL PROSPECTIVE EMPLOYEES OR VOLUNTEERS MUST PASS A DRUG TEST ADMINISTERED BY THE PROVIDER PRIOR TO BEING HIRED.

(II) ALL PROSPECTIVE EMPLOYEES, PROVIDERS OR VOLUNTEERS WORKING AT A FACILITY PROVIDING RESIDENTIAL CARE TO YOUTH AS SUCH TERM IS DEFINED IN PARAGRAPH (A) OR (B) OF SUBDIVISION FOUR OF SECTION FOUR HUNDRED TWELVE-A OF THE SOCIAL SERVICES LAW MUST PASS A DRUG TEST ADMINISTERED BY THE FACILITY PRIOR TO BEING HIRED.

(C) (I) IMMEDIATELY FOLLOWING ANY INCIDENT WHICH WOULD BE CONSIDERED A SERIOUS REPORTABLE INCIDENT, AN ALLEGATION OF ABUSE, OR RESULTS IN SUBSTANTIAL INJURY OR DEATH, OR FOLLOWING ANY INCIDENT WHICH DIRECTLY CREATES RISK OF SUBSTANTIAL INJURY OR DEATH OF A RESIDENT WITH MENTAL

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

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DISABILITIES OR A PHYSICAL DISABILITY, ALL EMPLOYEES INVOLVED IN SUCH INCIDENT SHALL BE SUBJECT TO DRUG AND ALCOHOL TESTS AS SOON AS POSSIBLE BUT IN NO EVENT MORE THAN ONE HOUR AFTER SUCH INCIDENT WAS REPORTED. IF THE INCIDENT RISES TO THE LEVEL OF A CRIME THE INCIDENT SHALL BE REPORTED TO LOCAL LAW ENFORCEMENT AND TO THE DISTRICT ATTORNEY.

(II) IMMEDIATELY FOLLOWING ANY INCIDENT WHICH RESULTS IN SUBSTANTIAL INJURY OR DEATH OR FOLLOWING ANY INCIDENT WHICH DIRECTLY CREATES A RISK OF SUBSTANTIAL INJURY TO OR DEATH OF A YOUTH RESIDING IN RESIDENTIAL CARE AS SUCH TERM IS DEFINED IN PARAGRAPH (A) OR (B) OF SUBDIVISION FOUR OF SECTION FOUR HUNDRED TWELVE-A OF THE SOCIAL SERVICES LAW, ALL EMPLOYEES INVOLVED IN SUCH INCIDENT SHALL BE SUBJECT TO DRUG AND ALCOHOL TESTS AS SOON AS POSSIBLE BUT IN NO EVENT MORE THAN ONE HOUR AFTER SUCH INCIDENT WAS REPORTED. IF THE INCIDENT RISES TO THE LEVEL OF A CRIME THE INCIDENT SHALL BE REPORTED IMMEDIATELY TO LOCAL LAW ENFORCEMENT AND TO THE DISTRICT ATTORNEY.

(D) IMMEDIATELY FOLLOWING ANY ALLEGATION OR REPORT OF SUSPECTED PHYSICAL OR SEXUAL ABUSE ALL EMPLOYEES NAMED IN SUCH ALLEGATION OR REPORT SHALL BE SUBJECT TO DRUG AND ALCOHOL TESTS SOON AS POSSIBLE BUT IN NO EVENT MORE THAN ONE HOUR AFTER SUCH INCIDENT WAS REPORTED.

(E) DRUG AND ALCOHOL TESTING AS AUTHORIZED BY SUBDIVISIONS (C) AND (D) OF THIS SECTION SHALL BE ADMINISTERED AS SOON AS POSSIBLE BUT IN NO EVENT MORE THAN ONE HOUR AFTER ANY OF THE CIRCUMSTANCES DESCRIBED IN SUCH SUBDIVISION (C) OR (D) HAVE OCCURRED. FAILURE BY SUCH EMPLOYEE TO COMPLY WITH SUCH TESTING REQUIREMENTS SHALL BE SUBJECT TO IMMEDIATE SUSPENSION WITHOUT PAY AND TERMINATION.

(F) AN EMPLOYEE MAY SUBMIT A LIST OF ANY LEGALLY PRESCRIBED MEDICATIONS HE OR SHE IS USING PRIOR TO THE ADMINISTRATION OF THE TEST.

(G) THE EMPLOYER SHALL REQUIRE THE SIMULTANEOUS COLLECTION OF TWO SAMPLES IN SEPARATE CONTAINERS AND PROMPTLY SUBMIT BOTH TO A PRIVATE LABORATORY WHICH PERFORMS FORENSIC DRUG TESTING. ONE SAMPLE SHALL BE PRESERVED IN A SECURE FACILITY IN SUCH A WAY THAT IT MAY BE SUBSEQUENTLY TESTED FOR THE PRESENCE OF A CONTROLLED SUBSTANCE OR ALCOHOL IN THE EVENT TESTING OF THE OTHER SAMPLE INDICATES A POSITIVE RESULT FOR THE PRESENCE OF SUCH A SUBSTANCE OR ALCOHOL.

(H) ANY SAMPLE THAT INITIALLY TESTS POSITIVE FOR THE PRESENCE OF A CONTROLLED SUBSTANCE OR ALCOHOL SHALL, WHERE APPLICABLE, ALSO BE SUBJECTED TO A CONFIRMATORY TEST BY GAS CHROMATOGRAPHY WITH MASS SPECTROMETRY OR AN EQUIVALENT SCIENTIFICALLY ACCEPTED METHOD THAT PROVIDES QUANTITATIVE DATA REGARDING THE DETECTED CONTROLLED SUBSTANCE, CONTROLLED SUBSTANCE METABOLITES OR ALCOHOL.

(I) THE LABORATORY WHICH PERFORMED THE TEST SHALL REPORT TO AN EMPLOYER THAT A SAMPLE IS POSITIVE ONLY IF BOTH THE INITIAL TEST AND THE CONFIRMATION TEST ARE POSITIVE FOR THE PRESENCE OF A CONTROLLED SUBSTANCE.

(J) AN EMPLOYEE WHO REFUSES TO SUBMIT TO A DRUG TEST SHALL IMMEDIATELY BE SUSPENDED WITHOUT PAY AND WILL BE TERMINATED.

(K) ANY EMPLOYEE WHO DOES NOT PASS A DRUG TEST ADMINISTERED PURSUANT TO THIS SECTION SHALL BE IMMEDIATELY SUSPENDED FROM EMPLOYMENT WITHOUT PAY AND WILL BE TERMINATED.

S 2. This act shall take effect on the ninetieth day after it shall have become a law, provided, however, that effective immediately, the department of mental hygiene shall be authorized to adopt any rules and regulations deemed necessary to effect the provisions of this act.