

4467

2011-2012 Regular Sessions

I N S E N A T E

April 6, 2011

Introduced by Sen. McDONALD -- (at request of the Office for People With Developmental Disabilities) -- 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 facilities development corporation act, in relation to state mental health and developmental disabilities programs, offices, and issues; and to repeal certain provisions of the mental hygiene law relating thereto

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

1 Section 1. Subdivision 21 of section 1.03 of the mental hygiene law is
2 REPEALED.

3 S 2. Paragraph 1 of subdivision (a) of section 5.07 of the mental
4 hygiene law, as added by chapter 223 of the laws of 1992 and the opening
5 paragraph as amended by chapter 558 of the laws of 1999, is amended to
6 read as follows:

7 (1) The mental health services council and the advisory councils on
8 [mental retardation and] developmental disabilities and alcoholism and
9 substance abuse services shall each establish statewide goals and objec-
10 tives to guide comprehensive planning, resource allocation and evalu-
11 ation processes for state and local services for [the mentally ill,
12 mentally retarded and developmentally disabled] PERSONS WITH MENTAL
13 ILLNESS, DEVELOPMENTAL DISABILITIES and those suffering from chemical
14 abuse or dependence, respectively. Such goals and objectives shall:

15 a. be measurable in terms of attainment;

16 b. be communicated to providers of services, department facilities,
17 consumers and consumer representatives, and other appropriate state and
18 local governmental agencies;

19 c. require that all state and local public and private services for
20 [the mentally disabled] PERSONS WITH MENTAL DISABILITIES be organized,
21 staffed and financed to best meet the needs of all [mentally disabled]

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

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1 persons WITH MENTAL DISABILITIES whether receiving in-patient or non
2 in-patient services;

3 d. reflect the partnership between state and local governmental units;
4 and

5 e. emphasize that gaps in services be filled and that services are
6 provided to [the multiply disabled] PERSONS WITH MENTAL DISABILITIES.

7 S 3. Subdivision (a) of section 5.09 of the mental hygiene law, as
8 added by chapter 978 of the laws of 1977, is amended to read as follows:

9 (a) The facilities development corporation shall be entitled to exclu-
10 sive possession, jurisdiction, supervision and control of all real prop-
11 erty held for facilities operated by any of the offices of the depart-
12 ment, such facilities being defined as mental hygiene facilities by
13 section three of the facilities development corporation act, to exclu-
14 sive possession, jurisdiction, supervision and control of such facili-
15 ties, and to all payments made for the care, maintenance and treatment
16 of patients at such facilities; provided, however, that the directors of
17 the said corporation shall make all such property and all such facili-
18 ties available to the commissioners and offices of the department of
19 mental hygiene for use in the care, maintenance, and treatment of the
20 mentally disabled.

21 The provisions of this section shall not be applicable to community
22 mental health and [retardation] DEVELOPMENTAL DISABILITIES facilities as
23 defined in section three of the facilities development corporation act
24 or to payments made for the care, maintenance and treatment of patients
25 at such community mental health and [retardation] DEVELOPMENTAL DISABIL-
26 ITIES facilities.

27 S 4. Subdivisions (c) and (g) of section 7.09 of the mental hygiene
28 law, subdivision (c) as amended by chapter 440 of the laws of 1987 and
29 subdivision (g) as amended by chapter 601 of the laws of 2007, are
30 amended to read as follows:

31 (c) The commissioner shall administer the forensic psychiatric program
32 of the office. Commitments to the commissioner of mental hygiene pursu-
33 ant to the provisions of the criminal procedure law and the correction
34 law shall be deemed to be commitments to the custody of the commissioner
35 of mental health or the commissioner of [mental retardation and] devel-
36 opmental disabilities, as appropriate. The commissioner of mental health
37 shall arrange with the commissioner of [mental retardation and] develop-
38 mental disabilities for the placement, where appropriate, of any such
39 committed person in a school.

40 (g) The commissioner shall work cooperatively with the commissioner of
41 the office [of mental retardation and] FOR PEOPLE WITH developmental
42 disabilities and the commissioner of the office of temporary and disa-
43 bility assistance to assist the commissioner of education in furnishing
44 integrated employment services to individuals with severe disabilities,
45 including the development of an integrated employment implementation
46 plan, pursuant to article twenty-one of the education law.

47 S 5. Subdivision (b) of section 7.31 of the mental hygiene law, as
48 added by chapter 978 of the laws of 1977, is amended to read as follows:

49 (b) The provisions of this section shall not be applicable to communi-
50 ty mental health and [retardation] DEVELOPMENTAL DISABILITIES facili-
51 ties, as defined in section three of the facilities development corpo-
52 ration act, nor to payments made for the care, maintenance, and
53 treatment of patients at such community mental health and [retardation]
54 DEVELOPMENTAL DISABILITIES facilities.

1 S 6. Subdivisions (a) and (b) of section 7.38 of the mental hygiene
2 law, as amended by chapter 405 of the laws of 1998, are amended to read
3 as follows:

4 (a) The office shall, in consultation with the department of social
5 services, the education department, the office [of mental retardation
6 and] FOR PEOPLE WITH developmental disabilities, and the council on
7 children and families, develop a plan and implement procedures to help
8 assure that all persons who are at the age or time to first qualify for
9 transitional care as described in section 7.37-a of this article, and
10 for whom the office has accepted planning responsibilities, receive
11 assistance in locating an appropriate and available residential place-
12 ment or plan of services, within the state and within the system of care
13 subject to the jurisdiction of the office, prior to the age or time at
14 which they would otherwise have qualified for transitional care, if such
15 individual had become twenty-one or become ineligible for educational
16 services prior to July first, nineteen hundred ninety-six. For purposes
17 of this section, the age or time at which a person would qualify for
18 transitional care is twenty-one for persons in foster care, and the end
19 of the school year in which they become twenty-one for persons in resi-
20 dential schools.

21 (b) The office shall, in consultation with the department of social
22 services, the education department, the office [of mental retardation
23 and] FOR PEOPLE WITH developmental disabilities, and the council on
24 children and families, develop a plan and implement procedures to help
25 assure that all persons in transitional care receive assistance in
26 locating appropriate and available placements or services within the
27 adult care systems supervised or funded by the office, and to monitor
28 the health and safety of persons receiving transitional funding pursuant
29 to section 7.37-a of this article. In connection with the plans and
30 procedures, the office shall establish standards governing the quality
31 of care provided to such persons by the residential programs, including
32 standards relating to the development and monitoring of written individ-
33 ual services plans for each such person, the involvement of the individ-
34 ual and, unless the individual objects, parents, guardians or other
35 persons interested in the care of such persons in the development of
36 written individual services plans, and the investigation of complaints
37 relating to the quality of care or services provided to such persons. In
38 appropriate circumstances, the office shall work with the individual
39 and, unless the individual objects, the parents, guardians or other
40 family members to help determine what services would be necessary to
41 enable the family to provide care for the person at their home or in an
42 independent community setting, and shall provide or assist in arranging
43 for those services to the extent funds are available for that purpose.

44 S 6-a. The title heading of title C of the mental hygiene law, as
45 added by chapter 978 of the laws of 1977, is amended to read as follows:

46 [MENTAL RETARDATION AND] DEVELOPMENTAL DISABILITIES ACT

47 S 7. The first and second undesignated paragraphs of section 13.01 of
48 the mental hygiene law, as amended by chapter 676 of the laws of 1994,
49 are amended to read as follows:

50 The state of New York and its local governments have a responsibility
51 for the prevention and early detection of [mental retardation and]
52 developmental disabilities and for the comprehensively planned provision
53 of services including care, treatment habilitation and rehabilitation of
54 their citizens with [mental retardation and] developmental disabilities.

55 Therefore, it shall be the policy of the state to conduct research and
56 to develop programs to further the prevention and early detection of

1 [mental retardation and] developmental disabilities; to develop a
2 comprehensive, integrated system of services which has as its primary
3 purposes the promotion and attainment of independence, inclusion, indi-
4 viduality and productivity for persons with [mental retardation and]
5 developmental disabilities; to serve the full range of needs of persons
6 with [mental retardation and] developmental disabilities by expanding
7 the number and types of community based services and developing new
8 methods of service delivery; and to improve the equity, effectiveness
9 and efficiency of services for persons with [mental retardation and]
10 developmental disabilities by serving persons in the community as well
11 as those in developmental centers, by improving the conditions in devel-
12 opmental centers, and by establishing accountability for carrying out
13 the policies of the state with regard to such persons.

14 S 8. The section heading and subdivisions (a), (c), and (f) of section
15 13.05 of the mental hygiene law, the section heading as amended and
16 subdivisions (c) and (f) as added by chapter 802 of the laws of 1986,
17 subdivision (a) as amended by chapter 90 of the laws of 1990 and the
18 opening paragraph of subdivision (c) as amended by chapter 168 of the
19 laws of 2010, are amended to read as follows:

20 [Mental retardation and developmental] DEVELOPMENTAL disabilities
21 advisory council.

22 (a) There is hereby established a [mental retardation and] develop-
23 mental disabilities advisory council. The council shall consist of the
24 commissioner, the chairman of the conference of local mental hygiene
25 directors or his designee, and at least thirty-three members to be
26 appointed by the governor. Members shall be appointed only if they have
27 demonstrated an active interest in or have obtained professional know-
28 ledge in the care of persons with [mental retardation or] developmental
29 disabilities or in the field of [mental retardation and] developmental
30 disabilities generally. The governor shall designate one of the
31 appointed members as chair. The council shall at all times include in
32 its membership representatives of community service board [mental retar-
33 dation and] developmental disabilities subcommittees, providers of
34 services and non-governmental organizations concerned with services for
35 [mentally retarded or developmentally disabled] persons WITH DEVELOP-
36 MENTAL DISABILITIES. At least one-third of the membership of the advi-
37 sory council shall consist of consumer representatives including persons
38 with developmental disabilities, or their parents or guardians.

39 (c) The [mental retardation and] developmental disabilities advisory
40 council shall have no executive, administrative or appointive duties.
41 The council shall have the duty to foster public understanding and
42 acceptance of developmental disabilities. It shall, in cooperation with
43 the commissioner of developmental disabilities, establish statewide
44 goals and objectives for services for individuals with developmental
45 disabilities and shall advise the commissioner on matters related to
46 development and implementation of the OPWDD's triennial state develop-
47 mental disabilities comprehensive plan as required under paragraph two
48 of subdivision (b) of section 5.07 of this chapter. The advisory council
49 shall have the power to consider any matter relating to the improvement
50 of the state developmental disabilities program and shall advise the
51 commissioner of developmental disabilities thereon and on any matter
52 relating to the performance of their duties with relation to individuals
53 with developmental disabilities and on policies, goals, budget and oper-
54 ation of developmental disabilities services.

55 1. The council shall establish such committees as deemed necessary by
56 the chair with advice from the commissioner. Such committees shall

1 consider matters related to the various service populations served, and
2 programs certified by the office, as well as other matters, including
3 planning, fiscal, and consumer affairs. The council shall prepare and
4 issue such reports on its activities as deemed necessary.

5 2. The council shall meet at least four times in each full calendar
6 year. The council shall meet at the request of its chair or the commis-
7 sioner.

8 (f) The council shall assist the commissioner of [mental retardation
9 and] developmental disabilities with the development and assessment of
10 the triennial state developmental disabilities plan issued by the
11 office. To ensure the full use of existing specialized and generic
12 services in the community, to ensure that all providers and appropriate
13 local governmental agencies are involved, and to ensure that local
14 services to [developmentally disabled] persons WITH DEVELOPMENTAL DISA-
15 BILITIES and their families are readily available and accessible, the
16 council shall periodically assess the local planning process and make
17 recommendations thereon to the commissioner and to the council for
18 mental hygiene planning.

19 S 9. Section 13.06 of the mental hygiene law, as added by chapter 367
20 of the laws of 1981, is amended to read as follows:

21 S 13.06 Annual plan.

22 The commissioner shall submit an annual plan to the director of the
23 budget for his review and approval. Such annual plan shall also be filed
24 with the chairman of the assembly ways and means committee and the
25 senate finance committee. Such plan shall identify those community resi-
26 dences to be converted to intermediate care facilities for [the mentally
27 retarded] PERSONS WITH DEVELOPMENTAL DISABILITIES. In developing such
28 plan, the commissioner shall utilize specific criteria, including client
29 eligibility criteria, fiscal criteria and such other relevant criteria
30 as he may deem necessary, to assess the appropriateness of such conver-
31 sion. The procedures contained in this plan shall be applied on a case
32 by case basis to individual community residential sites. No community
33 residence shall be so converted unless it meets such criteria.

34 S 10. Subdivisions (b), (c) and (e) of section 13.07 of the mental
35 hygiene law, subdivisions (b) and (c) as amended by chapter 676 of the
36 laws of 1994 and subdivision (e) as added by chapter 978 of the laws of
37 1977, are amended to read as follows:

38 (b) It shall advise and assist the governor in developing policies
39 designed to meet the needs of persons with [mental retardation and]
40 developmental disabilities and encourage their full inclusion and
41 participation in society.

42 (c) The office shall have the responsibility for seeing that persons
43 with [mental retardation and] developmental disabilities specified in
44 the foregoing subdivision are provided with services including care and
45 treatment, that such services are of high quality and effectiveness, and
46 that the personal and civil rights of persons receiving such services
47 are protected. The services provided shall seek to promote and attain
48 independence, inclusion, individuality and productivity for persons with
49 [mental retardation and] developmental disabilities.

50 (e) Consistent with the requirements of subdivision (b) of section
51 5.05 of this chapter, the office shall carry out the provisions of arti-
52 cle thirty-one OF THIS CHAPTER as such article pertains to regulation
53 and quality control of services for [the mentally retarded and develop-
54 mentally disabled] PERSONS WITH DEVELOPMENTAL DISABILITIES.

1 S 11. Subdivisions (a) and (c) of section 13.11 of the mental hygiene
2 law, as added by chapter 978 of the laws of 1977, are amended to read as
3 follows:

4 (a) The commissioner shall have the professional jurisdiction, super-
5 vision, and control of the office and all department facilities for [the
6 mentally retarded and developmentally disabled] PERSONS WITH DEVELOP-
7 MENTAL DISABILITIES.

8 (c) The commissioner may, within the amounts appropriated therefor,
9 lease space or facilities in which services for [the mentally retarded
10 and developmentally disabled] PERSONS WITH DEVELOPMENTAL DISABILITIES
11 are to be provided. He may delegate this authority to the facilities
12 development corporation.

13 S 12. Section 13.13 of the mental hygiene law, as added by chapter 978
14 of the laws of 1977, is amended to read as follows:

15 S 13.13 Local services.

16 Local services for [the mentally retarded and developmentally disa-
17 bled] PERSONS WITH DEVELOPMENTAL DISABILITIES shall be planned, financed
18 and implemented in accordance with the provisions of article forty-one
19 of this chapter.

20 S 13. Subdivision (a) and the opening paragraph of subdivision (c) of
21 section 13.15 of the mental hygiene law, subdivision (a) as amended by
22 chapter 515 of the laws of 1992 and the opening paragraph of subdivision
23 (c) as amended by chapter 552 of the laws of 1978, are amended to read
24 as follows:

25 (a) The commissioner shall plan, promote, establish, develop, coordi-
26 nate, evaluate, and conduct programs and services of prevention, diagno-
27 sis, examination, care, treatment, rehabilitation, training, and
28 research for the benefit of individuals [who are mentally retarded and
29 developmentally disabled] WITH DEVELOPMENTAL DISABILITIES. Such programs
30 shall include but not be limited to in-patient, out-patient, partial
31 hospitalization, day care, emergency, rehabilitative, and other appro-
32 priate treatments and services. He shall take all actions that are
33 necessary, desirable, or proper to implement the purposes of this chap-
34 ter and to carry out the purposes and objectives of the office within
35 the amounts made available therefor by appropriation, grant, gift,
36 devise, bequest, or allocation from the mental [hygiene] HEALTH services
37 fund established under section ninety-seven-f of the state finance law.

38 The commissioner shall prepare annually for the governor, the legisla-
39 ture and the state commission on quality of care for the mentally disa-
40 bled a written evaluation report concerning the delivery of care and
41 services in family care homes and other community residences and
42 projected plans for providing and improving such homes and residences.
43 Such report concerning family care shall detail efforts to maintain and
44 improve the quality of care for [the mentally retarded and develop-
45 mentally disabled] PERSONS WITH DEVELOPMENTAL DISABILITIES in the family
46 care program including, but not limited to the following:

47 S 14. Paragraph 8 of subdivision (a) and paragraph 2 of subdivision
48 (b) of section 13.16 of the mental hygiene law, as added by chapter 720
49 of the laws of 1979, are amended to read as follows:

50 8. If known, the nature and amount of any interest in, or relationship
51 with, any other residential facility for [the mentally retarded] PERSONS
52 WITH DEVELOPMENTAL DISABILITIES, held by any person named in response to
53 subparagraph (c) of paragraph three of this subdivision or by any affil-
54 iate of such person.

55 2. "Controlling person" of any corporation, partnership or other enti-
56 ty means any person who by reason of a direct or indirect ownership

1 interest (whether of record or beneficial) has the ability, acting
2 either alone or in concert with others with ownership interest, to
3 direct or cause the direction of the management or policies of said
4 corporation, partnership or other entity. Neither the commissioner nor
5 any employee of the department nor any member of a local legislative
6 body of a county or municipality, nor any county or municipal official
7 except when acting as the administrator of a residential facility for
8 [the mentally retarded] PERSONS WITH DEVELOPMENTAL DISABILITIES, shall
9 by reason of his or her official position, be deemed a controlling
10 person of any corporation, partnership or other entity nor shall any
11 person who serves as an officer, administrator or other employee of any
12 corporation, partnership or other entity or as a member of a board of
13 directors or trustees of any corporation be deemed to be a controlling
14 person of such corporation, partnership or other entity as a result of
15 such position or his or her official actions in such position.

16 S 15. Subdivisions (b) and (d) of section 13.17 of the mental hygiene
17 law, subdivision (b) as amended by section 1 of part J of chapter 58 of
18 the laws of 2009 and subdivision (d) as added by chapter 978 of the laws
19 of 1977, are amended to read as follows:

20 (b) There shall be in the office the developmental disabilities
21 services offices named below serving the areas either currently or
22 previously served by a school, for the care and treatment of [the
23 mentally retarded and developmentally disabled] PERSONS WITH DEVELOP-
24 MENTAL DISABILITIES and for research and teaching in the science and
25 skills required for the care and treatment of such [mentally retarded
26 and developmentally disabled] PERSONS WITH DEVELOPMENTAL DISABILITIES:

27 Bernard M. Fineson Developmental Disabilities Services Office
28 Brooklyn Developmental Disabilities Services Office
29 Broome Developmental Disabilities Services Office
30 Capital District Developmental Disabilities Services Office
31 Central New York Developmental Disabilities Services Office
32 Finger Lakes Developmental Disabilities Services Office
33 Institute for Basic Research in Developmental Disabilities
34 Hudson Valley Developmental Disabilities Services Office
35 Metro New York Developmental Disabilities Services Office
36 Long Island Developmental Disabilities Services Office
37 Sunmount Developmental Disabilities Services Office
38 Taconic Developmental Disabilities Services Office
39 Western New York Developmental Disabilities Services Office
40 Staten Island Developmental Disabilities Services Office

41 The New York State Institute for Basic Research in Developmental Disa-
42 bilities is designated as an institute for the conduct of medical
43 research and other scientific investigation directed towards furthering
44 knowledge of the etiology, diagnosis, treatment and prevention of
45 [mental retardation and] developmental disabilities.

46 (d) The commissioner may permit other offices of the department and
47 any public or private non-profit organization or political subdivision
48 of the state to operate programs for [the mentally retarded and develop-
49 mentally disabled] PERSONS WITH DEVELOPMENTAL DISABILITIES, not incon-
50 sistent with the programs and objectives of the office in any facility
51 under his jurisdiction. The commissioner may permit any facility under
52 his jurisdiction to operate programs for [the mentally disabled] PERSONS
53 WITH MENTAL DISABILITIES, not inconsistent with programs and objectives
54 of the department, under contracts or agreements with other offices
55 within the department.

1 S 16. Subdivision (a) of section 13.23 of the mental hygiene law, as
2 added by chapter 978 of the laws of 1977, is amended to read as follows:

3 (a) The commissioner shall have the power to establish such programs
4 of training and education related to [mental retardation and develop-
5 mental disability] DEVELOPMENTAL DISABILITIES as he shall deem desira-
6 ble.

7 S 17. Paragraphs a and b of subdivision 1 and paragraph a of subdivi-
8 sion 3 of section 13.24 of the mental hygiene law, as added by chapter
9 612 of the laws of 1981, are amended to read as follows:

10 a. "Sheltered workshops" means a program operated for the purpose of
11 providing sheltered employment to [mentally retarded and developmentally
12 disabled] persons WITH DEVELOPMENTAL DISABILITIES.

13 b. "Work activity and day training services" means pre-vocational
14 activities defined by regulation of the commissioner designed to enhance
15 the ability of a [mentally retarded or developmentally disabled] person
16 WITH A DEVELOPMENTAL DISABILITY to receive vocational rehabilitation
17 services.

18 a. Provision of equitable funding to all [developmentally disabled and
19 mentally retarded] individuals WITH DEVELOPMENTAL DISABILITIES which is
20 not dependent upon prior residence in facilities of the office.

21 S 18. Subdivision (b) of section 13.31 of the mental hygiene law, as
22 added by chapter 978 of the laws of 1977, is amended to read as follows:

23 (b) The provisions of this section shall not be applicable to communi-
24 ty mental health and [retardation] DEVELOPMENTAL DISABILITIES facili-
25 ties, as defined in section three of the facilities development corpo-
26 ration act, nor to payments made for the care, maintenance, and
27 treatment of patients at such community mental health and [retardation]
28 DEVELOPMENTAL DISABILITIES facilities.

29 S 19. Subdivision (a) of section 13.33 of the mental hygiene law, as
30 amended by chapter 663 of the laws of 1995, is amended to read as
31 follows:

32 (a) Each developmental disabilities services office under the juris-
33 diction of the commissioner shall have a board of visitors consisting of
34 at least seven but not more than fourteen members; provided, however,
35 that the Central New York developmental disabilities services office
36 shall have a board of visitors consisting of at least ten, but not more
37 than seventeen members; and that the Finger Lakes developmental disabil-
38 ities services office shall have a board of visitors consisting of at
39 least fourteen, but not more than twenty-one members. When a school is
40 replaced by a developmental disabilities services office, the members of
41 that school's board of visitors shall continue to serve their terms as
42 the board of visitors for the new developmental disabilities services
43 office. Members appointed or reappointed after the effective date of
44 this chapter shall be appointed by the governor, by and with the advice
45 and consent of the senate. Members shall be appointed for four year
46 terms to expire on the thirty-first day of December of the fourth year
47 of the term of office provided however, when more than three terms
48 expire in any one year, members may be appointed for terms of fewer
49 years as designated by the governor so that no more than three members'
50 terms expire in any one year. All terms of office shall expire on the
51 thirty-first day of December of the designated year. A member whose term
52 has expired shall, however, remain in office until such member's succes-
53 sor has been appointed and has taken office, or until such member shall
54 have resigned or have been removed from office in the manner hereinafter
55 provided. Should any member resign or be removed from office, the
56 governor shall promptly submit, for senate consent, a successor candi-

1 date to fill the remaining term of the vacated office. A visitor may be
2 removed by the governor for cause after notice and an opportunity for a
3 hearing on the charges. In making appointments to boards of visitors,
4 the governor shall endeavor to ensure that the membership of each such
5 board shall adequately reflect the composition of the community or
6 communities served by the facility, that the membership of each such
7 board includes at least three individuals who are parents or relatives
8 of patients or of former patients and that the remainder includes only
9 those persons, including former patients, who shall have expressed an
10 active interest in, or shall have obtained professional knowledge in the
11 care of [the mentally retarded and developmentally disabled] PERSONS
12 WITH DEVELOPMENTAL DISABILITIES or in [mental retardation and] develop-
13 mental disability endeavors generally.

14 S 20. The section heading of section 13.37 of the mental hygiene law,
15 as amended by chapter 508 of the laws of 2008, is amended to read as
16 follows:

17 Powers of the office and commissioner in relation to the planning and
18 referral of [mentally retarded and developmentally disabled]
19 children WITH DEVELOPMENTAL DISABILITIES for adult services.

20 S 21. The second undesignated paragraph of section 15.01 of the mental
21 hygiene law, such section as renumbered by chapter 978 of the laws of
22 1977, is amended as follows:

23 "in need of care and treatment" means that a person [is mentally
24 retarded] HAS A DEVELOPMENTAL DISABILITY and would benefit from care and
25 treatment as a resident in a school.

26 S 22. Section 15.03 of the mental hygiene law, as amended by chapter
27 296 of the laws of 1996, is amended to read as follows:

28 S 15.03 Admission to a school.

29 Unless otherwise specifically provided for by statute, a [mentally
30 retarded] person WITH A DEVELOPMENTAL DISABILITY shall be admitted to a
31 school as a resident only pursuant to the provisions of this article.
32 The section of the mental hygiene law under which the resident is admit-
33 ted or under which any change of legal status is subsequently effected,
34 shall be stated in the resident's record. For the purposes of this arti-
35 cle, a school does not include a facility licensed as an intermediate
36 care facility, a community residence, or a family care home, except when
37 such a facility is specifically designated as a school by the commis-
38 sioner.

39 S 23. Paragraph 1 of subdivision (a) and subdivision (b) of section
40 15.05 of the mental hygiene law, such section as renumbered by chapter
41 978 of the laws of 1977, are amended to read as follows:

42 1. if he is a relative of the person applying for the admission or of
43 the person alleged to [be mentally retarded] HAVE A DEVELOPMENTAL DISA-
44 BILITY.

45 (b) A certificate, as required by this article, must show that the
46 person [is mentally retarded] HAS A DEVELOPMENTAL DISABILITY and shall
47 be based on an examination of the person alleged to [be mentally
48 retarded] HAVE A DEVELOPMENTAL DISABILITY made within six months prior
49 to the date of admission. The date of the certificate shall be the date
50 of such examination. All certificates shall contain the facts and
51 circumstances upon which the judgment of the examiners is based and
52 shall show that the condition of the person examined is such that he
53 needs care or treatment in a school and such other information as the
54 commissioner may by regulation require.

1 S 24. Subdivision (b) of section 15.13 of the mental hygiene law, as
2 amended by chapter 789 of the laws of 1985, is amended to read as
3 follows:

4 (b) If such voluntary resident gives notice in writing to the direc-
5 tor of the resident's desire to leave the school, the director shall
6 promptly release the resident; provided, however, that if there are
7 reasonable grounds for belief that the resident may be in need of invol-
8 untary care and treatment, the director may retain the resident for a
9 period not to exceed seventy-two hours from receipt of such notice.
10 Before the expiration of such seventy-two hour period, the director
11 shall either release the resident or apply to a court of record in the
12 county where the school is located for an order authorizing the involun-
13 tary retention of such resident. The application and proceedings in
14 connection therewith shall be in the manner prescribed in this article
15 for a court authorization to retain an involuntary resident, except that
16 notice of such application shall be served forthwith and, if a hearing
17 be demanded, the date for hearing to be fixed by the court shall be at a
18 time not later than three days from the date such notice has been
19 received by the court. If it be determined by the court that the resi-
20 dent [is mentally retarded] HAS A DEVELOPMENTAL DISABILITY and IS in
21 need of retention for involuntary care and treatment in the school, the
22 court shall forthwith issue an order authorizing the retention of such
23 resident for care and treatment in the school, or, if requested by the
24 resident, his guardian, or committee, such other non-public school as
25 may be within the financial means of the resident, for a period not
26 exceeding sixty days from the date of such order. Further applications
27 for retention of the resident for periods not exceeding one year, and
28 successive two year periods thereafter, respectively, may thereafter be
29 made in accordance with the provisions of this article.

30 In the case of a resident under eighteen years of age, such notice
31 requesting release of the resident may be given by the resident, by the
32 person who made application for his admission, by a person of equal or
33 closer relationship to the resident, or by the mental hygiene legal
34 service. If such notice be given by any other person, the director may
35 in his discretion refuse to discharge the resident and, in the event of
36 such refusal, such other person or the mental hygiene legal service may
37 apply to the supreme court or to a county court for the release of the
38 resident.

39 S 25. Paragraph 1 of subdivision (a) of section 15.15 of the mental
40 hygiene law, such section as renumbered by chapter 978 of the laws of
41 1977, is amended to read as follows:

42 1. that the school to which he is requesting admission is a school for
43 [the mentally retarded] PERSONS WITH DEVELOPMENTAL DISABILITIES.

44 S 26. Subdivision (a) of section 15.19 of the mental hygiene law, such
45 section as renumbered by chapter 978 of the laws of 1977, is amended to
46 read as follows:

47 (a) It shall be the duty of all state and local officers having duties
48 to perform relating to [the mentally retarded] PERSONS WITH DEVELOP-
49 MENTAL DISABILITIES to encourage any such person suitable therefor and
50 in need of care and treatment for [mental retardation] A DEVELOPMENTAL
51 DISABILITY to apply for admission as a voluntary resident.

52 S 27. Subdivisions (a) and (c) of section 15.25 of the mental hygiene
53 law, subdivision (c) as amended by chapter 789 of the laws of 1985 and
54 such section as renumbered by chapter 978 of the laws of 1977, are
55 amended to read as follows:

1 (a) The director of any school may receive and retain therein as a
2 resident any person in need of care and treatment who does not object
3 thereto and who is so profoundly or severely [mentally retarded] DEVEL-
4 OPMENTALLY DISABLED that he does not have sufficient understanding to
5 make him suitable for admission as a voluntary resident upon an applica-
6 tion, accompanied by a certificate of an examining physician or certi-
7 fied psychologist. The application shall conform to the requirements
8 for an application set forth in section [33.27] 15.27 OF THIS ARTICLE.
9 The certificate of the examining physician or certified psychologist, in
10 addition to the other requirements for such certificate set forth in
11 this article, must show that the person sought to be admitted meets the
12 requirements of this section.

13 (c) If notice in writing that the resident be released from the school
14 is given to the director by the resident or any person on his behalf or
15 by the mental hygiene legal service, the director shall promptly release
16 the resident; provided, however, that, if there are reasonable grounds
17 for belief that the resident may be in need of involuntary care and
18 treatment, the director may retain the resident for a period not to
19 exceed seventy-two hours from the receipt of such notice. Before the
20 expiration of such seventy-two hour period, the director shall either
21 release the resident or apply to a court of record in the county where
22 the school is located for an order authorizing the involuntary retention
23 of such resident. The application and proceedings in connection there-
24 with shall be in the manner prescribed in this article for a court
25 authorization to retain an involuntary resident, except that notice of
26 such application shall be served forthwith and, if a hearing be
27 demanded, the date for hearing to be fixed by the court shall be at a
28 time not later than three days from the date such notice has been
29 received by the court. If it be determined by the court that the resi-
30 dent [is mentally retarded] HAS A DEVELOPMENTAL DISABILITY and IS in
31 need of retention for involuntary care and treatment in the school, the
32 court shall forthwith issue an order authorizing the retention of such
33 resident for care and treatment in the school for a period not exceeding
34 sixty days from the date of such order. Further applications for
35 retention of the resident for periods not exceeding one year, and
36 successive two year periods thereafter, respectively, may thereafter be
37 made in accordance with the provisions of this article.

38 S 28. Subdivision (a), paragraphs 1 and 4 of subdivision (b) and
39 subdivision (c) of section 15.27 of the mental hygiene law, paragraph 4
40 of subdivision (b) as amended by chapter 7 of the laws of 2007 and such
41 section as renumbered by chapter 978 of the laws of 1977, are amended to
42 read as follows:

43 (a) The director of a school may receive and retain therein as a resi-
44 dent any person alleged to [be mentally retarded] HAVE A DEVELOPMENTAL
45 DISABILITY and BE in need of involuntary care and treatment upon the
46 certificates of two examining physicians or of one examining physician
47 and one certified psychologist, accompanied by an application for the
48 admission of such person. The examination may be conducted jointly but
49 each examiner shall execute a separate certificate.

50 1. any person with whom the person alleged to [be mentally retarded]
51 HAVE A DEVELOPMENTAL DISABILITY resides.

52 4. an officer of any well recognized charitable institution or agency
53 or home including but not limited to the superintendent of a correction-
54 al facility, as such term is defined in paragraph (a) of subdivision
55 four of section two of the correction law, in whose institution the

1 person alleged to [be mentally retarded] HAVE A DEVELOPMENTAL DISABILITY
2 resides.

3 (c) Such application shall contain a statement of the facts upon which
4 the allegation of [mental retardation] DEVELOPMENTAL DISABILITY and need
5 for care and treatment are based and shall be executed under penalty of
6 perjury but shall not require the signature of a notary public thereon.

7 S 29. Paragraph 1 of subdivision (b) of section 15.29 of the mental
8 hygiene law, such section as renumbered by chapter 978 of the laws of
9 1977, is amended to read as follows:

10 1. the nearest relative of the person alleged to [be mentally
11 retarded] HAVE A DEVELOPMENTAL DISABILITY, other than the applicant, if
12 there be any such person known to the director.

13 S 30. Subdivision (c) of section 15.31 of the mental hygiene law, as
14 amended by chapter 789 of the laws of 1985, is amended to read as
15 follows:

16 (c) The court which receives such notice shall fix the date of such
17 hearing at a time not later than five days from the date such notice is
18 received by the court and cause the resident, any other person request-
19 ing the hearing, the director, the mental hygiene legal service and such
20 other persons as the court may determine to be advised of such date.
21 Upon such date, or upon such other date to which the proceeding may be
22 adjourned, the court shall hear testimony and examine the person alleged
23 to [be mentally retarded] HAVE A DEVELOPMENTAL DISABILITY if it be
24 deemed advisable in or out of court. If it be determined that the resi-
25 dent is in need of retention, the court shall deny the application for
26 the resident's release. If it appears that the relatives of the resident
27 or a committee of his person are willing and able properly to care for
28 him at some place other than a school, then, upon their written consent,
29 the court may order the transfer of the resident to the care and custody
30 of such relatives or such committee. If it be determined that the resi-
31 dent is not in need of retention, the court shall order the release of
32 the resident.

33 S 31. Section 15.35 of the mental hygiene law, as renumbered by chap-
34 ter 978 of the laws of 1977, is amended to read as follows:

35 S 15.35 Review of court authorization to retain an involuntary resident.

36 If a person who has been denied release or whose retention or contin-
37 ued retention has been authorized pursuant to this article, or any rela-
38 tive or friend in his behalf, be dissatisfied with any such order he
39 may, within thirty days after the making of any such order, obtain a
40 rehearing and a review of the proceedings already had and of such order
41 upon a petition to a justice of the supreme court other than the judge
42 or justice presiding over the court making such order. Such justice
43 shall cause a jury to be summoned and shall try the question of the
44 [mental retardation] DEVELOPMENTAL DISABILITY and the need for retention
45 of the resident so authorized to be retained. Any such resident or the
46 person applying on his behalf for such review may waive the trial of
47 such fact by a jury and consent in writing to trial of such fact by the
48 court. No such petition for rehearing and review may be made by anyone
49 other than the person so authorized to be retained or the father, moth-
50 er, husband, wife, or child of such person, unless the petitioner shall
51 have first obtained the leave of the court upon good cause shown. If the
52 verdict of the jury, or the decision of the court when jury trial has
53 been waived, be that such person is not [mentally retarded] DEVELOP-
54 MENTALLY DISABLED or is not in need of retention the justice shall
55 forthwith discharge him, but if the verdict of the jury, or the decision
56 of the court where a jury trial has been waived, be that such person [is

1 mentally retarded] HAS A DEVELOPMENTAL DISABILITY and IS in need of
2 retention the justice shall certify that fact and make an order author-
3 izing continued retention under the original order. Such order shall be
4 presented, at the time of authorization of continued retention of such
5 [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY, to, and
6 filed with, the director of the school in which the [mentally retarded]
7 person WITH A DEVELOPMENTAL DISABILITY is authorized to be retained, and
8 a copy thereof shall be forwarded to the department by such director and
9 filed in the office thereof. Proceedings under the order shall not be
10 stayed pending an appeal therefrom, except upon an order of a justice of
11 the supreme court, made upon notice and after a hearing, with provisions
12 made therein for such temporary care or confinement of the alleged
13 [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY as may be
14 deemed necessary.

15 S 32. The section heading, subdivisions (a) and (b) and paragraph 1 of
16 subdivision (c) of section 16.01 of the mental hygiene law, as added by
17 chapter 786 of the laws of 1983 and paragraph 1 of subdivision (c) as
18 added by chapter 234 of the laws of 1998, are amended to read as
19 follows:

20 Evaluation of services for [the mentally retarded and developmentally
21 disabled] PERSONS WITH DEVELOPMENTAL DISABILITIES.

22 (a) The commissioner shall ensure that all services provided under
23 this chapter for [the mentally retarded and developmentally disabled]
24 PERSONS WITH DEVELOPMENTAL DISABILITIES are periodically evaluated.

25 (b) The commissioner shall, by regulations, establish and maintain
26 evaluation criteria and methods which assure the utility of data gener-
27 ated in the evaluation of services in different areas of the state
28 provided under this chapter for [the mentally retarded and develop-
29 mentally disabled] PERSONS WITH DEVELOPMENTAL DISABILITIES, including,
30 but not limited to:

31 (1) Uniform definitions of services to [the mentally retarded and
32 developmentally disabled] PERSONS WITH DEVELOPMENTAL DISABILITIES;

33 (2) Uniform standards for all comparable services and programs;

34 (3) Uniform financial reporting procedures for comparable providers;

35 (4) Uniform clinical reporting procedures; and

36 (5) Requirements for the generation and maintenance of uniform data
37 for all individuals receiving services from any provider of services.

38 (1) Notwithstanding any other provision of law, the commissioner, or
39 his designee, may require from any hospital, as defined under article
40 twenty-eight of the public health law, any information, report, or
41 record necessary for the purpose of carrying out the functions, powers
42 and duties of the commissioner related to the investigation of deaths
43 and complaints of abuse, mistreatment, or neglect concerning [mentally
44 retarded or developmentally disabled individuals] PERSONS WITH DEVELOP-
45 MENTAL DISABILITIES who receive services, or had prior to death received
46 services, in a facility as defined in section 1.03 of this chapter, or
47 are receiving medicaid waiver services from the office [of mental retar-
48 dation and] FOR PEOPLE WITH developmental disabilities in a non-certifi-
49 fied setting, and have been treated at such hospitals.

50 S 33. Paragraphs 1, 2 and 3 of subdivision (a) of section 16.03 of the
51 mental hygiene law, as added by chapter 786 of the laws of 1983 and
52 paragraph 3 as amended by chapter 555 of the laws 1993, are amended to
53 read as follows:

54 (1) Operation of a residential facility for the care and treatment of
55 [the mentally retarded or developmentally disabled] PERSONS WITH DEVEL-
56 OPMENTAL DISABILITIES including a family care home.

1 (2) Operation of any distinct part of a general hospital or other
2 facility possessing an operating certificate, pursuant to article twen-
3 ty-eight of the public health law, operated for the primary purpose of
4 providing residential or non-residential services for [the mentally
5 retarded or developmentally disabled] PERSONS WITH DEVELOPMENTAL DISA-
6 BILITIES.

7 (3) Operation of a facility established or maintained by a public
8 agency, board, or commission, or by a corporation or voluntary associ-
9 ation for the rendition of out-patient or non-residential services for
10 [the mentally retarded or developmentally disabled] PERSONS WITH DEVEL-
11 OPMENTAL DISABILITIES; provided, however, that such operation shall not
12 be deemed to include (i) professional practice, within the scope of a
13 professional license or certificate issued by an agency of the state, by
14 an individual practitioner or by a partnership of such individuals or by
15 a professional service corporation duly incorporated pursuant to the
16 business corporation law or by a university faculty practice corporation
17 duly incorporated pursuant to the not-for-profit corporation law or (ii)
18 non-residential services which are licensed, supervised, or operated by
19 another agency of the state and non-residential services which are char-
20 tered or issued a certificate of incorporation pursuant to the education
21 law or (iii) pastoral counseling by a clergyman or minister, including
22 those defined as clergyman or minister by section two of the religious
23 corporations law.

24 S 34. Subdivision (i) of section 16.05 of the mental hygiene law, as
25 amended by chapter 618 of the laws of 1990, is amended to read as
26 follows:

27 (i) In the event that the holder of an operating certificate for a
28 residential facility issued by the commissioner pursuant to this article
29 wishes to cease the operation or conduct of any of the activities, as
30 defined in paragraph one of subdivision (a) of section 16.03 of this
31 article, for which such certificate has been issued or to cease opera-
32 tion of any one or more of facilities for which such certificate has
33 been issued; wishes to transfer ownership, possession or operation of
34 the premises and facilities upon which such activities are being
35 conducted or to transfer ownership, possession or operation of any one
36 or more of the premises or facilities for which such certificate has
37 been issued; or elects not to apply to the commissioner for re-certifi-
38 cation upon the expiration of any current period of certification, it
39 shall be the duty of such certificate holder to give to the commissioner
40 written notice of such intention not less than sixty days prior to the
41 intended effective date of such transaction. Such notice shall set forth
42 a detailed plan which makes provision for the safe and orderly transfer
43 of each [mentally retarded or developmentally disabled] person WITH A
44 DEVELOPMENTAL DISABILITY served by such certificate holder pursuant to
45 such certificate into a program of services appropriate to such person's
46 on-going needs and/or for the continuous provision of a lawfully oper-
47 ated program of such activities and services at the premises and facili-
48 ties to be conveyed by the certificate holder. Such certificate holder
49 shall not cease to provide any such services to any such [mentally
50 retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISA-
51 BILITY under any of the circumstances described in this section until
52 the notice and plan required hereby are received, reviewed and approved
53 by the commissioner. For the purposes of this paragraph, the requirement
54 of prior notice and continuous provision of programs and services by the
55 certificate holder shall not apply to those situations and changes in
56 circumstances directly affecting the certificate holder that are not

1 reasonably foreseeable at the time of occurrence, including, but not
2 limited to, death or other sudden incapacitating disability or infirmi-
3 ty. Written notice shall be given to the commissioner as soon as reason-
4 ably possible thereafter in the manner set forth within this [paragraph]
5 SUBDIVISION.

6 S 35. Subdivision (b) of section 16.11 of the mental hygiene law, as
7 added by chapter 786 of the laws of 1983, is amended to read as follows:

8 (b) The commissioner shall have the power to conduct investigations
9 into the operations of any person or entity which holds an operating
10 certificate issued by the office, into the operation of any facility or
11 program issued an operating certificate by the office and into the oper-
12 ations, related to the provision of services regulated by this chapter,
13 of any person or entity providing a residence for one or more unrelated
14 persons [who are mentally retarded or developmentally disabled] WITH
15 DEVELOPMENTAL DISABILITIES.

16 S 36. The opening paragraph and subparagraph c of paragraph 1 of
17 subdivision (b) of section 16.17 of the mental hygiene law, as amended
18 by chapter 169 of the laws of 1992, are amended to read as follows:

19 An operating certificate may be temporarily suspended or limited with-
20 out a prior hearing for a period not in excess of sixty days upon writ-
21 ten notice to the facility following a finding by the office [of mental
22 retardation and] FOR PEOPLE WITH developmental disabilities that a
23 client's health or safety is in imminent danger. Upon such finding and
24 notice, the power of the commissioner temporarily to suspend or limit an
25 operating certificate shall include, but shall not be limited to, the
26 power to:

27 c. Suspend or limit or cause to be suspended or limited the payment of
28 any governmental funds to the facility provided that such action shall
29 not in any way jeopardize the health, safety and welfare of any [mental-
30 ly retarded or developmentally disabled] person WITH A DEVELOPMENTAL
31 DISABILITY in such program or facility;

32 S 37. The section heading, subdivisions (a), (c) and paragraphs 1 and
33 3 of subdivision (d) of section 16.19 of the mental hygiene law, the
34 section heading and subdivision (a) as amended by chapter 91 of the laws
35 of 1993 and subdivision (c) and paragraphs 1 and 3 of subdivision (d) as
36 amended by chapter 356 of the laws of 2006, are amended to read as
37 follows:

38 Confinement, care and treatment of [the mentally retarded and develop-
39 mentally disabled] PERSONS WITH DEVELOPMENTAL DISABILITIES.

40 (a) No individual who is or appears to [be mentally retarded or devel-
41 opmentally disabled] HAVE A DEVELOPMENTAL DISABILITY shall be detained,
42 deprived of liberty or otherwise confined without lawful authority, or
43 inadequately, unskillfully, cruelly or unsafely cared for or supervised
44 by any person.

45 (c) In addition to any other remedies available under this article,
46 the commissioner may bring an action in the supreme court to enjoin any
47 person from unlawfully subjecting a [mentally retarded or develop-
48 mentally disabled] person WITH A DEVELOPMENTAL DISABILITY to physical,
49 sexual, or emotional abuse, or active, passive or self neglect, or
50 detaining a [mentally retarded or developmentally disabled] person WITH
51 A DEVELOPMENTAL DISABILITY or providing inadequate, unskillful, cruel or
52 unsafe care or supervision for such a person.

53 (1) If, upon receiving a report that any adult thought to have [mental
54 retardation or another] A developmental disability has been subjected to
55 physical, sexual, or emotional abuse, or active, passive or self
56 neglect, and the commissioner has reason to believe that such adult is

1 known by the commissioner to have received services from providers duly
2 authorized by the commissioner and has been subjected to such abuse or
3 neglect, the commissioner shall intervene pursuant to this section or,
4 if such adult has not received services from said authorized providers,
5 the commissioner shall, immediately or as soon as practicable, notify
6 adult protective services established pursuant to section four hundred
7 seventy-three of the social services law. The commissioner shall, within
8 forty-eight hours, forward copies of reports made pursuant to this
9 subdivision to the state commission of quality of care and advocacy for
10 persons with disabilities and indicate if such report was referred to
11 adult protective services.

12 (3) The commissioner and the commissioner of children and family
13 services shall submit a report on the physical, sexual, or emotional
14 abuse, or active, passive or self neglect of adults with [mental retar-
15 dation or other] developmental disabilities to the governor, temporary
16 president of the senate and speaker of the assembly by January first,
17 two thousand seven, and annually thereafter. In consultation with the
18 commission on quality of care and advocacy for persons with disabili-
19 ties, the commissioner and the commissioner of children and family
20 services shall include in such report a description of systemic issues;
21 a summary of strategies used for intervening in such cases; an evalu-
22 ation of the success of such strategies; an evaluation of the implemen-
23 tation of the memorandum of understanding developed pursuant to para-
24 graph two of this subdivision and the specific status of developmental
25 disabilities services offices and local departments of social services,
26 with respect to entering into an agreement as required by paragraph two
27 of this subdivision; and any recommendations the commissioner believes
28 are necessary to protect adults from abuse or mistreatment. The report
29 shall also include the number of reports and a summary of common situ-
30 ations and trends contained in such reports which were:

- 31 a. made to the commissioner pursuant to paragraph one of this subdivi-
32 sion;
33 b. not referred to adult protective services, but in response to which
34 the commissioner intervened, and the outcome of such intervention; and
35 c. referred to adult protective services pursuant to paragraph one of
36 this subdivision and the outcome of such referral.

37 S 38. Subdivision (b) of section 16.29 of the mental hygiene law, as
38 amended by chapter 24 of the laws of 2007, is amended to read as
39 follows:

40 (b) The commissioner shall provide necessary assistance to the state
41 commission on quality of care and advocacy for persons with disabilities
42 in the conduct of investigations pursuant to section 45.07 of this chap-
43 ter, shall consider its recommendations for appropriate preventive and
44 remedial action including legal actions, and shall provide or direct a
45 residential facility licensed or operated by the office [of mental
46 retardation and] FOR PEOPLE WITH developmental disabilities to provide
47 written reports thereon to the commission as to the implementation of
48 plans of prevention and remediation approved by such office.

49 S 39. Paragraph 1 of subdivision (a) of section 16.31 of the mental
50 hygiene law, as added by chapter 618 of the laws of 1990, is amended to
51 read as follows:

52 1. For persons residing in family care, community residences or
53 schools for [the mentally retarded] PERSONS WITH DEVELOPMENTAL DISABILI-
54 TIES, the amount specified in subdivision one of section one hundred
55 thirty-one-o of the social services law.

1 S 40. The section heading of section 16.35 of the mental hygiene law,
2 as added by section 2 of part F of chapter 58 of the laws of 2007, is
3 amended to read as follows:

4 [Mental retardation and developmental] DEVELOPMENTAL disabilities
5 services quality improvement demonstration program.

6 S 41. Subdivision (b) of section 29.07 of the mental hygiene law is
7 amended to read as follows:

8 (b) If the commissioner shall determine that overcrowding exists in
9 the department schools, he may, within the amounts appropriated there-
10 for, authorize admission for care and treatment of any [mentally
11 retarded] person WITH A DEVELOPMENTAL DISABILITY to a designated facili-
12 ty approved for such purposes by the commissioner. The patient and any
13 liable relatives shall be liable for payment of fees in accordance with
14 article forty-three of this chapter.

15 S 42. Subparagraph (v) of paragraph 2 of subdivision (b) of section
16 31.27 of the mental hygiene law, as amended by section 2 of part E of
17 chapter 111 of the laws of 2010, is amended to read as follows:

18 (v) a description of local resources available to the program to
19 prevent unnecessary hospitalizations of persons, which shall include
20 agreements with local mental health, health, substance abuse, alcoholism
21 or alcohol abuse, [mental retardation and] developmental disabilities,
22 or social services agencies to provide appropriate services;

23 S 43. Paragraph 11 of subdivision (a) of section 33.02 of the mental
24 hygiene law, as amended by chapter 306 of the laws of 1995, is amended
25 to read as follows:

26 11. an individualized plan of treatment or services and to participate
27 in the development of that plan including the opportunity for a patient
28 sixteen years of age or older to request a significant individual to
29 himself or herself including any relative, close friend or individual
30 otherwise concerned with such person's welfare to participate in the
31 development of such plan, except that at comprehensive psychiatric emer-
32 gency programs such plan shall be in accordance with the commissioner's
33 regulations and the opportunity for participation by a significant indi-
34 vidual shall be provided where practicable. For the purposes of this
35 paragraph, a written treatment plan may include the program narrative
36 for clients served by an integrated community certified by the office
37 [of mental retardation and] FOR PEOPLE WITH developmental disabilities;

38 S 44. Paragraph 1 of subdivision (d) and paragraphs 1 and 2 of subdi-
39 vision (e) of section 33.03 of the mental hygiene law, as added by chap-
40 ter 57 of the laws of 1988 and paragraphs 1 and 2 of subdivision (e) as
41 added by chapter 210 of the laws of 2008, are amended to read as
42 follows:

43 1. Such standards shall take into account the: medical, psychological,
44 social, vocational, educational and recreational needs of patients
45 including the specialized needs of patients such as those whose mental
46 illness is combined with chemical dependency[, mental retardation] or
47 developmental disability. The standards shall also take into account the
48 type and mix of programs required at a given facility, and the avail-
49 ability of programming at a variety of times and locations.

50 1. Notwithstanding the provisions of subdivisions four and five of
51 section twenty-nine hundred eighty-one of the public health law, the
52 commissioners of health, and [mental retardation and] developmental
53 disabilities may approve and authorize the use of a simplified advance
54 health care directives form by persons receiving supports and services
55 from a provider of services which is authorized to provide services
56 pursuant to article sixteen of this chapter. Such form shall specify, at

1 the option of the principal, what end-of-life treatment the person wish-
2 es to receive; may designate a health care agent consistent with the
3 provisions of this article; and may, at the option of the principal,
4 authorize the health care agent to commence making decisions immediately
5 upon the execution of the proxy, provided that all such decisions made
6 prior to a determination of incapacity pursuant to section twenty-nine
7 hundred eighty-three of the public health law shall be made in direct
8 consultation with the principal and the attending physician; and
9 provided, further, that if, after such consultation, the principal dis-
10 agrees with the agent's proposed decision, the principal's wishes shall
11 prevail; and provided, further, that, in the case of any decision to
12 withhold or withdraw artificial nutrition or hydration, the principal's
13 wishes must have been recorded in the health care directive or stated in
14 the presence of the agent and the attending physician; and further,
15 provided, that the consultation among principal, agent and attending
16 physician must be summarized and recorded in the principal's medical
17 record.

18 2. The simplified advance health care directives form, authorized by
19 paragraph one of this subdivision, shall be developed by the commission-
20 er of [mental retardation and] developmental disabilities, in consulta-
21 tion with the commissioner of health, providers of service authorized to
22 provide services pursuant to article sixteen of this chapter, advocates,
23 including self-advocates, and parents and family members of persons
24 receiving services from such providers.

25 S 45. Section 33.06 of the mental hygiene law, as added by chapter 192
26 of the laws of 2010, is amended to read as follows:

27 S 33.06 Reports of abuse or mistreatment.

28 The commissioner of the office of mental health and the commissioner
29 of the office [of mental retardation and] FOR PEOPLE WITH developmental
30 disabilities shall establish procedures or mechanisms to receive allega-
31 tions or complaints of abuse or mistreatment of individuals served by
32 agencies and providers licensed or operated by the offices, including
33 receipt of anonymous allegations or complaints. Such mechanisms shall
34 include the operation of a toll-free number. Allegations or complaints
35 received shall be evaluated and, if necessary, referred for appropriate
36 corrective action, consistent with laws, regulations and procedures
37 established for the investigation, resolution and response to incident
38 reports to ensure the care and safety of all patients. The inability of
39 the person reporting the abuse to identify the alleged perpetrator
40 shall, in no circumstance, constitute the sole cause to reject such
41 allegation for investigation or fail to refer such allegation for
42 corrective action. When an allegation of abuse or maltreatment of a
43 child is made, the allegation shall be referred to the statewide central
44 register of child abuse and maltreatment, established pursuant to
45 section four hundred twenty-two of the social services law.

46 S 46. Subdivisions (f), (h) and (i) of section 33.07 of the mental
47 hygiene law, as added by section 2 of part A of chapter 111 of the laws
48 of 2010, are amended to read as follows:

49 (f) The commissioners of mental health, [mental retardation and]
50 developmental disabilities, and alcoholism and substance abuse services
51 shall post on the offices' respective websites, in a prominent location,
52 the applicable standards, regulations and/or policies established pursu-
53 ant to this section.

54 (h) The office of mental health and the office [of mental retardation
55 and] FOR PEOPLE WITH developmental disabilities and mental hygiene legal
56 service shall collaboratively review, at least annually, the management

1 of funds which a department facility director receives as a represen-
2 tative payee or of funds received pursuant to section 29.23 of this
3 title. In such review, the office of mental health and the office [of
4 mental retardation and] FOR PEOPLE WITH developmental disabilities shall
5 make available final federal reviews regarding facility directors'
6 handling of federal benefits and other related documents to aid the
7 proper conduct of such review.

8 (i) The office of mental health and the office [of mental retardation
9 and] FOR PEOPLE WITH developmental disabilities shall, by the fifteenth
10 day of December of each year, commencing on December fifteenth, two
11 thousand eleven, submit and publish on its official website, a report to
12 the governor, speaker of the assembly, temporary president of the
13 senate, chair of the assembly committee on mental health, and the chair
14 of the senate committee on mental health, detailing how persons' federal
15 benefits are being utilized.

16 S 47. Subparagraph (ii) of paragraph 13 of subdivision (c) of section
17 33.13 of the mental hygiene law, as amended by chapter 491 of the laws
18 of 2008, is amended to read as follows:

19 (ii) providing information to the criminal justice information
20 services division of the federal bureau of investigation by the commis-
21 sioner of mental health or the commissioner of [mental retardation and]
22 developmental disabilities, for the purposes of responding to queries to
23 the national instant criminal background check system regarding attempts
24 to purchase or otherwise take possession of firearms, in accordance with
25 applicable federal laws or regulations.

26 S 48. Paragraphs 3 and 6 of subdivision (a) and paragraph 2 of subdi-
27 vision (b) of section 33.16 of the mental hygiene law, paragraph 3 of
28 subdivision (a) as amended by chapter 571 of the laws of 2005, paragraph
29 6 of subdivision (a) as separately amended by chapters 226 and 233 of
30 the laws of 1991 and paragraph 2 of subdivision (b) as amended by chap-
31 ter 233 of the laws of 1991, are amended to read as follows:

32 3. "Facility" means a facility as defined in section 1.03 of this
33 chapter, a program requiring approval for operation pursuant to article
34 thirty-two of this chapter, institutions offering training in psychoth-
35 erapy, psychoanalysis and related areas chartered pursuant to section
36 two hundred sixteen of the education law, or, notwithstanding section
37 1.03 of this chapter, any provider of services for persons with mental
38 illness[, mental retardation] or developmental disabilities which is
39 operated by, under contract with, receives funding from, or is otherwise
40 approved to render services by, a director of community services pursu-
41 ant to article forty-one of this chapter or one or both of the offices,
42 including any such provider which is exempt from the requirement for an
43 operating certificate under article sixteen or article thirty-one of
44 this chapter.

45 6. "Qualified person" means any properly identified patient or client,
46 guardian of a [mentally retarded or developmentally disabled] person
47 WITH A DEVELOPMENTAL DISABILITY appointed pursuant to article seven-
48 teen-A of the surrogate's court procedure act, or committee for an
49 incompetent appointed pursuant to [article seventy-eight of] this chap-
50 ter or a parent of an infant, or a guardian of an infant appointed
51 pursuant to article seventeen of the surrogate's court procedure act or
52 other legally appointed guardian of an infant who may be entitled to
53 request access to a clinical record pursuant to paragraph three of
54 subdivision (b) of this section, or a parent, spouse or adult child of
55 an adult patient or client who may be entitled to request access to a

1 clinical record pursuant to paragraph four of subdivision (b) of this
2 section.

3 2. Subject to the provisions of subdivision (c) of this section, upon
4 the written request of a committee for an incompetent appointed pursuant
5 to [article seventy-eight of] this chapter or a guardian of the person
6 of a [mentally retarded or developmentally disabled] person WITH A
7 DEVELOPMENTAL DISABILITY appointed pursuant to article seventeen-A of
8 the surrogate's court procedure act, a facility shall provide an oppor-
9 tunity, within ten days, for the committee or such guardian to inspect
10 any clinical record concerning the patient or client in the possession
11 of such facility. Provided, however, in the case of any such request by
12 such a guardian to inspect the clinical record concerning a client eigh-
13 teen years of age or older, the facility shall notify such client of
14 such request.

15 S 49. Section 41.01 of the mental hygiene law, as amended by chapter
16 978 of the laws of 1977, the closing paragraph as amended by section 6
17 of part E of chapter 111 of the laws of 2010, is amended to read as
18 follows:

19 S 41.01 Declaration of purpose.

20 This article is designed to enable and encourage local governments to
21 develop in the community preventive, rehabilitative, and treatment
22 services offering continuity of care; to improve and to expand existing
23 community programs for [the mentally ill, the mentally retarded and the
24 developmentally disabled] PERSONS WITH MENTAL ILLNESS, DEVELOPMENTAL
25 DISABILITIES, and those suffering from the diseases of alcoholism and
26 substance abuse; to plan for the integration of community and state
27 services and facilities for [the mentally disabled] INDIVIDUALS WITH
28 MENTAL DISABILITIES; and to cooperate with other local governments and
29 with the state in the provision of joint services and sharing of manpow-
30 er resources.

31 Effective implementation of this article requires the direction and
32 administration, by each local governmental unit, of a local comprehen-
33 sive planning process for its geographic area in which all providers of
34 services shall participate and cooperate in the provision of all neces-
35 sary information. It also initiates a planning effort involving the
36 state, local governments and other providers of service for the purpose
37 of promoting continuity of care through the development of integrated
38 systems of care and treatment for [the mentally ill, mentally retarded
39 and developmentally disabled] INDIVIDUALS WITH MENTAL ILLNESS, DEVELOP-
40 MENTAL DISABILITIES, and for those suffering from the diseases of alco-
41 holism and substance abuse.

42 S 50. Subdivisions 3, 4, 6 and 9 of section 41.03 of the mental
43 hygiene law, subdivision 3 as amended by chapter 746 of the laws of
44 1986, subdivisions 4 and 9 as amended by chapter 223 of the laws of
45 1992, subdivision 6 as amended by chapter 520 of the laws of 1981 and
46 subdivisions 4, 6 and 9 as renumbered by section 7 of part E of chapter
47 111 of the laws of 2010, are amended to read as follows:

48 3. "local services" includes services for [the mentally ill, the
49 mentally retarded, the developmentally disabled] INDIVIDUALS WITH MENTAL
50 ILLNESS OR DEVELOPMENTAL DISABILITIES whose conditions, including but
51 not limited to cerebral palsy and epilepsy, are associated with mental
52 disabilities, and those suffering from alcoholism, alcohol abuse,
53 substance abuse or substance dependence, which are provided by a local
54 government or by a voluntary agency pursuant to a contract with a local
55 governmental unit or the office of mental health.

1 4. "local facility" means a facility offering local services and
2 includes a community mental health and [retardation] DEVELOPMENTAL DISA-
3 BILITIES facility as defined in section three of the facilities develop-
4 ment corporation act and, for the purposes of this article, a mental
5 hygiene facility, as defined in said section, to be made available for
6 use in providing local services under lease, sublease, license or permit
7 from the facilities development corporation to one or more local govern-
8 mental units or to a voluntary agency at the request of a commissioner
9 of an office in the department.

10 6. "board" means a community services board for services to [the
11 mentally ill, mentally retarded and developmentally disabled] INDIVID-
12 UALS WITH MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES, those suffering
13 from alcoholism, alcohol abuse, substance abuse or substance dependence.

14 9. (a) "operating costs" means expenditures, excluding capital costs,
15 incurred in the operation and maintenance of the community mental
16 health, [mental retardation] DEVELOPMENTAL DISABILITIES, and alcoholism
17 services board and of local facilities in accordance with this article
18 and the regulations of the commissioner, by a local government or by a
19 voluntary agency pursuant to a contract with a local governmental unit.

20 (b) Subject to the regulations of the commissioner, operating costs
21 shall include that part of rental costs paid to those community mental
22 health, [mental retardation] DEVELOPMENTAL DISABILITIES, alcoholism, or
23 substance abuse services companies, which represents interest accrued
24 after January first, nineteen hundred eighty-one and is paid on obli-
25 gations incurred by such companies, organized pursuant to article seven-
26 ty-five of this chapter and which participated in mortgage financing in
27 accordance with chapter one thousand thirty-four of the laws of nineteen
28 hundred sixty-nine, (ii) rentals paid to the facilities development
29 corporation, (iii) salaries of or per diem compensation to board
30 members, (iv) costs for which state aid or reimbursement is claimed
31 under provisions of law other than this article.

32 (c) Operating costs may include interest incurred on any obligation
33 which is necessarily related to the efficient and economic delivery of
34 approved services to persons with alcoholism, substance abuse addiction,
35 mental illness or [mental retardation and] developmental disabilities,
36 subject to the commissioner's certification of the reasonableness of the
37 interest expense. Interest as authorized by this subdivision shall only
38 include reasonable and competitive rates of interest incurred in accord-
39 ance with regulations promulgated by the commissioner.

40 (d) Subject to the regulations of the commissioner, operating costs
41 shall include rent incurred, or depreciation and interest expenditures
42 incurred, in connection with the design, construction, acquisition,
43 reconstruction, rehabilitation or improvement of a local facility;
44 provided that where the rent, financing or refinancing of the design,
45 construction, acquisition, reconstruction, rehabilitation or improvement
46 of a local facility is through the facilities development corporation,
47 operating costs shall include the debt service to be paid to amortize
48 obligations, including principal and interest, issued by the New York
49 state medical care facilities finance agency to finance or refinance the
50 capital costs of such facilities.

51 S 51. Subdivision (b) of section 41.05 of the mental hygiene law, as
52 amended by chapter 978 of the laws of 1977, is amended to read as
53 follows:

54 (b) Each local governmental unit shall have a community services board
55 for services to [the mentally ill, the mentally retarded and develop-
56 mentally disabled] INDIVIDUALS WITH MENTAL ILLNESS, DEVELOPMENTAL DISA-

1 BILITIES and those suffering from alcoholism and substance abuse which
2 shall have separate subcommittees for mental health, [mental retardation
3 and] developmental disabilities, and alcoholism, except that, at the
4 discretion of the local government, a subcommittee for alcoholism and
5 substance abuse may be substituted for a subcommittee for alcoholism.

6 S 52. Subdivisions (a) and (b) of section 41.11 of the mental hygiene
7 law, as amended by section 12 of part E of chapter 111 of the laws of
8 2010, are amended to read as follows:

9 (a) In all local governments with a population less than one hundred
10 thousand, community services boards, at the option of the local govern-
11 ment, shall have either nine or fifteen members appointed by the local
12 government. In all other local governments, a community services board
13 shall have fifteen members appointed by the local government.

14 Whenever practicable at least one member shall be a licensed physician
15 and one member shall be a certified psychologist and otherwise at least
16 two members shall be licensed physicians, such members to have demon-
17 strated an interest in the field of services for [the mentally disabled]
18 PERSONS WITH MENTAL DISABILITIES. The other members shall represent the
19 community interest in all the problems of [the mentally disabled]
20 PERSONS WITH MENTAL DISABILITIES and shall include representatives from
21 community agencies for [the mentally ill, the mentally retarded and
22 developmentally disabled] PERSONS WITH MENTAL ILLNESS, DEVELOPMENTAL
23 DISABILITIES, and those suffering from alcoholism and substance abuse.
24 The community services board shall have separate subcommittees for
25 mental health, [mental retardation and] developmental disabilities, and
26 alcoholism or, at the discretion of the local government, alcoholism and
27 substance abuse. Each separate subcommittee shall have no more than nine
28 members appointed by the local government, except that each subcommittee
29 for mental health shall have no more than eleven members appointed by
30 the local government. Three of each such subcommittee shall be members
31 of the board. Each separate subcommittee shall be composed of persons
32 who have demonstrated an interest in the field of services for the
33 particular class of mentally disabled and shall include former patients,
34 parents or relatives of such [mentally disabled] persons WITH MENTAL
35 DISABILITIES and community agencies serving the particular class of
36 mentally disabled, except that each subcommittee for mental health shall
37 include at least two members who are or were consumers of mental health
38 services, and at least two members who are parents or relatives of
39 persons with mental illness. Each separate subcommittee shall advise the
40 community services board and the director of community services regard-
41 ing the exercise of all policy-making functions vested in such board or
42 director, as such functions pertain to the field of services for the
43 particular class of mentally disabled individuals represented by such
44 subcommittee. In addition, each subcommittee for mental health shall be
45 authorized to annually evaluate the local services plan, and shall be
46 authorized to report on the consistency of such plan with the needs of
47 persons with serious mental illness, including children and adolescents
48 with serious emotional disturbances. Any such report shall be forwarded
49 annually to the community services board and the director of community
50 services and a copy shall also be sent to the commissioner prior to the
51 submission of the local services plan, provided, however, that the
52 provisions of this paragraph shall not apply to cities of over a million
53 in population.

54 (b) In cities of over a million a community services board shall
55 consist of fifteen members to be appointed by the mayor. There shall be
56 at least two residents of each county within such cities on the board.

1 At least one shall be a licensed physician and at least one shall be a
2 certified psychologist. The other members shall represent the community
3 interest in all of the problems of the mentally disabled and shall
4 include representatives from community agencies for [the mentally ill,
5 the mentally retarded and developmentally disabled] PERSONS WITH MENTAL
6 ILLNESS AND DEVELOPMENTAL DISABILITIES, and those suffering from alco-
7 holism and substance abuse. The community services board shall have
8 separate subcommittees for mental health, [mental retardation and]
9 developmental disabilities, and alcoholism or, at the discretion of the
10 local government, alcoholism and substance abuse. Each separate subcom-
11 mittee shall have no more than nine members appointed by the local
12 government, except that each subcommittee for mental health shall have
13 no more than eleven members appointed by the local government. Three
14 members of each such subcommittee shall be members of the board. Each
15 separate subcommittee shall be composed of persons who have demonstrated
16 an interest in the field of services for the particular class of mental-
17 ly disabled and shall include former patients, parents or relatives of
18 such [mentally disabled] persons WITH MENTAL DISABILITIES and community
19 agencies serving the particular class of mentally disabled, except that
20 each subcommittee for mental health shall include at least two members
21 who are or were consumers of mental health services, and two members who
22 are parents or relatives of persons with mental illness. Each separate
23 subcommittee shall advise the community services board and the director
24 of community services regarding the exercise of all policy-making func-
25 tions vested in such board or director, as such functions pertain to the
26 field of services for the particular class of [mentally disabled] indi-
27 viduals WITH MENTAL DISABILITIES represented by such subcommittee. In
28 addition, each subcommittee for mental health shall be authorized to
29 annually evaluate the local services plan, and shall be authorized to
30 report on the consistency of such plan with the needs of persons with
31 serious mental illness, including children and adolescents with serious
32 emotional disturbances. Any such report shall be forwarded annually to
33 the community services board and the director of community services, and
34 a copy shall also be sent to the commissioner prior to the submission of
35 the local services plan.

36 S 52-a. Subdivisions (a) and (b) of section 41.11 of the mental
37 hygiene law, subdivision (a) as amended by chapter 672 of the laws of
38 1982 and subdivision (b) as amended by chapter 206 of the laws of 1989,
39 are amended to read as follows:

40 (a) In all local governments with a population less than one hundred
41 thousand, community services board, at the option of the local govern-
42 ment, shall have either nine or fifteen members appointed by the local
43 government. In all other local governments, a community services board
44 shall have fifteen members appointed by the local government.

45 Whenever practicable at least one member shall be a licensed physician
46 and one member shall be a certified psychologist and otherwise at least
47 two members shall be licensed physicians, such members to have demon-
48 strated an interest in the field of services for the mentally disabled.
49 The other members shall represent the community interest in all the
50 problems of the mentally disabled and shall include representatives from
51 community agencies for [the mentally ill, the mentally retarded and
52 developmentally disabled] INDIVIDUALS WITH MENTAL ILLNESS, DEVELOPMENTAL
53 DISABILITIES, and those suffering from alcoholism and substance abuse.
54 The community services board shall have separate subcommittees for
55 mental health, [mental retardation and] developmental disabilities, and
56 alcoholism or, at the discretion of the local government, alcoholism and

1 substance abuse. Each separate subcommittee shall have no more than nine
2 members appointed by the local government. Three of each such subcom-
3 mittee shall be members of the board. Each separate subcommittee shall
4 be composed of persons who have demonstrated an interest in the field of
5 services for the particular class of mentally disabled and shall include
6 former patients, parents or relatives of such mentally disabled persons
7 and community agencies serving the particular class of mentally disa-
8 bled. Each separate subcommittee shall advise the community services
9 board and the director of community services regarding the exercise of
10 all policy-making functions vested in such board or director, as such
11 functions pertain to the field of services for the particular class of
12 [mentally disabled] individuals WITH MENTAL DISABILITIES represented by
13 such subcommittee. Provided however that the provisions of this para-
14 graph shall not apply to cities of over a million in population.

15 (b) In cities of over a million a community services board shall
16 consist of fifteen members to be appointed by the mayor. There shall be
17 at least two residents of each county within such cities on the board.
18 At least one shall be a licensed physician and at least one shall be a
19 certified psychologist. The other members shall represent the community
20 interest in all of the problems of [the mentally disabled] PERSONS WITH
21 MENTAL DISABILITIES and shall include representatives from community
22 agencies for [the mentally ill, the mentally retarded and develop-
23 mentally disabled] PERSONS WITH MENTAL ILLNESS, DEVELOPMENTAL DISABILI-
24 TIES, and those suffering from alcoholism and substance abuse. The
25 community services board shall have separate subcommittees for mental
26 health, [mental retardation and] developmental disabilities, and alco-
27 holism or, at the discretion of the local government, alcoholism and
28 substance abuse. Each separate subcommittee shall have no more than nine
29 members appointed by the local government. Three members of each such
30 subcommittee shall be members of the board. Each separate subcommittee
31 shall be composed of persons who have demonstrated an interest in the
32 field of services for the particular class of mentally disabled and
33 shall include former patients, parents or relatives of such [mentally
34 disabled] persons WITH MENTAL DISABILITIES and community agencies serv-
35 ing the particular class of mentally disabled. Each separate subcommit-
36 tee shall advise the community services board and the director of commu-
37 nity services regarding the exercise of all policy-making functions
38 vested in such board or director, as such functions pertain to the field
39 of services for the particular class of [mentally disabled individuals]
40 PERSONS WITH MENTAL DISABILITIES represented by such subcommittee.

41 S 53. Paragraph 5 of subdivision (c) of section 41.34 of the mental
42 hygiene law, as amended by chapter 1024 of the laws of 1981, is amended
43 to read as follows:

44 (5) In the event the municipality objects to establishment of a facil-
45 ity in the municipality because to do so would result in such a concen-
46 tration of community residential facilities for [the mentally disabled]
47 PERSONS WITH MENTAL DISABILITIES or combination of such facilities and
48 other facilities licensed by other state agencies that the nature and
49 character of areas within the municipality would be substantially
50 altered; or the sponsoring agency objects to the establishment of a
51 facility in the area or areas suggested by the municipality; or in the
52 event that the municipality and sponsoring agency cannot agree upon a
53 site, either the sponsoring agency or the municipality may request an
54 immediate hearing before the commissioner to resolve the issue. The
55 commissioner shall personally or by a hearing officer conduct such a
56 hearing within fifteen days of such a request.

1 In reviewing any such objections, the need for such facilities in the
2 municipality shall be considered as shall the existing concentration of
3 such facilities and other similar facilities licensed by other state
4 agencies in the municipality or in the area in proximity to the site
5 selected and any other facilities in the municipality or in the area in
6 proximity to the site selected providing residential services to a
7 significant number of persons who have formerly received in-patient
8 mental health services in facilities of the office of mental health or
9 the office [of mental retardation and] FOR PEOPLE WITH developmental
10 disabilities. The commissioner shall sustain the objection if he deter-
11 mines that the nature and character of the area in which the facility is
12 to be based would be substantially altered as a result of establishment
13 of the facility. The commissioner shall make a determination within
14 thirty days of the hearing.

15 S 54. The opening paragraph of subdivision (b) of section 41.35 of the
16 mental hygiene law, as amended by chapter 658 of the laws of 1977, is
17 amended to read as follows:

18 The demonstration programs required to be developed pursuant to this
19 section shall include at least one single system program for comprehen-
20 sive services for all mentally disabled persons or all services to one
21 or more of the following classes of mentally disabled: [the mentally
22 ill; the mentally retarded and developmentally disabled] PERSONS WITH
23 MENTAL ILLNESS, A DEVELOPMENTAL DISABILITY; those suffering from alcohol
24 abuse or alcoholism; or alcoholics, alcohol abusers and substance abus-
25 ers. Such comprehensive services provided pursuant to a single system
26 program shall be provided by a local governmental unit or group of local
27 government units or an approved non-governmental agent or a combination
28 of providers of service and a local governmental unit or units.

29 S 55. Subdivision (d) of section 41.36 of the mental hygiene law, as
30 amended by section 18 of part E of chapter 111 of the laws of 2010, is
31 amended to read as follows:

32 (d) Each local governmental unit shall include in its annual local
33 plan a review of existing community residential facilities providing
34 reimbursable services and a recommendation of anticipated needs for the
35 development of such facilities, consistent with the needs of [the
36 mentally retarded and developmentally disabled] PERSONS WITH DEVELOP-
37 MENTAL DISABILITIES within the jurisdiction of the local governmental
38 unit.

39 S 56. The opening paragraph of subdivision (a) of section 41.37 of the
40 mental hygiene law, as amended by chapter 218 of the laws of 1988, is
41 amended to read as follows:

42 The commissioner of the office of mental health or the commissioner of
43 the office [of mental retardation and] FOR PEOPLE WITH developmental
44 disabilities is authorized, within appropriations made therefor, to make
45 grants to local governmental units and voluntary nonprofit agencies
46 developing a community residence as defined in subdivision twenty-eight
47 of section 1.03 of this chapter. The commissioner of the office of
48 mental health is authorized, within appropriations made therefor, to
49 make grants to voluntary nonprofit agencies developing a residential
50 treatment facility for children and youth. Such grants shall be limited
51 to the development costs incurred prior to the operation of a community
52 residence or a residential treatment facility for children and youth, or
53 for development costs incurred to expand the capacity to provide
54 services at such residences and facilities.

1 S 57. The opening paragraph of section 41.40 of the mental hygiene
2 law, as added by chapter 445 of the laws of 1989, is amended to read as
3 follows:

4 The commissioner of the office [of mental retardation and] FOR PEOPLE
5 WITH developmental disabilities is directed to submit to the governor
6 and the legislature no later than January first, nineteen hundred nine-
7 ty-one, a report and recommendations of actions necessary to encourage
8 the development of small community residential programs including
9 programs of ten beds or less. Such report and recommendations shall
10 consider:

11 S 58. The section heading, subdivision 1 and paragraph (p) of subdivi-
12 sion 2 of section 41.41 of the mental hygiene law, as added by chapter
13 225 of the laws of 1984, are amended to read as follows:

14 Rights of [mentally retarded and developmentally disabled] PERSONS WITH
15 DEVELOPMENTAL DISABILITIES.

16 1. Each person who resides in a community residence has the same basic
17 and legal rights as all other persons of the same age. Such rights are
18 in no way diminished by the fact that such persons who [are mentally
19 retarded or otherwise developmentally disabled] HAVE A DEVELOPMENTAL
20 DISABILITY live in a community residence.

21 (p) The right to vote; and the right to participate in activities that
22 educate [the mentally retarded and developmentally disabled] PERSONS
23 WITH DEVELOPMENTAL DISABILITIES in their civic responsibilities.

24 S 59. Subdivision (d) of section 41.43 of the mental hygiene law, as
25 amended by chapter 552 of the laws of 1992, is amended to read as
26 follows:

27 (d) The [mental retardation and] developmental disabilities advisory
28 council created by section 13.05 of this chapter shall establish a
29 committee pursuant to the provisions of paragraph one of subdivision (c)
30 of section 13.05 of this chapter, comprised of members selected by the
31 commissioner, to be called the committee on family support services. The
32 committee shall (i) provide information to the commissioner on the needs
33 of families caring at home for a family member with a developmental
34 disability; (ii) advise the commissioner on policies related to family
35 supports and services; and (iii) offer advice to the commissioner on the
36 design, implementation and monitoring of family support services.
37 Members of the committee shall include persons with a developmental
38 disability, family members of persons with a developmental disability,
39 and professionals and others with an interest in the care of persons
40 with developmental disabilities. A majority of the committee shall be
41 family members of persons with developmental disabilities. Members shall
42 only receive reimbursement for expenses incurred in connection with
43 their duties on the committee.

44 S 60. Subdivisions 4, 5, 6, 9 and 12 of section 43.04 of the mental
45 hygiene law, subdivision 4 as amended and subdivision 12 as added by
46 chapter 41 of the laws of 1992 and subdivisions 5, 6 and 9 as added by
47 chapter 938 of the laws of 1990, are amended to read as follows:

48 4. Gross receipts received from all services rendered within the
49 service categories set forth in subdivision one of this section shall
50 include, without limitation, all monies received on account of such
51 services pursuant to rates of reimbursement established by the office
52 [of mental retardation and] FOR PEOPLE WITH developmental disabilities
53 and paid by the state, and shall not include, subject to the provisions
54 of subdivision twelve of this section, charitable contributions, grants,
55 donations, bequests and income from non-service related fund raising
56 activities and governmental deficit financing.

1 5. Estimated payments by or on behalf of providers of services to the
2 commissioner of the office [of mental retardation and] FOR PEOPLE WITH
3 developmental disabilities of funds due from the assessments pursuant to
4 subdivision two of this section shall be made on a monthly basis. Esti-
5 mated payments shall be due on or before the fifteenth day following the
6 end of a calendar month to which an assessment applies.

7 6. (a) If an estimated payment made for a month to which an assessment
8 applies is less than seventy percent of an amount the commissioner of
9 the office [of mental retardation and] FOR PEOPLE WITH developmental
10 disabilities determines is due, based on evidence of prior period moneys
11 received by a provider of services or evidence of moneys received by
12 such provider of services for that month, such commissioner may estimate
13 the amount due from such provider of services and may collect the defi-
14 ciency pursuant to paragraph (c) of this subdivision.

15 (b) If an estimated payment made for a month to which an assessment
16 applies is less than ninety percent of an amount the commissioner of the
17 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
18 bilities determines is due, based on evidence of prior period moneys
19 received by a provider of service or evidence of monies received by such
20 provider of services for that month, and at least two previous estimated
21 payments within the preceding six months were less than ninety percent
22 of the amount due, based on similar evidence, such commissioner may
23 estimate the amount due from such provider of services and may collect
24 the deficiency pursuant to paragraph (c) of this subdivision.

25 (c) Upon receipt of notification from the commissioner of the office
26 [of mental retardation and] FOR PEOPLE WITH developmental disabilities
27 of a provider of service's delinquency under this section, the comp-
28 troller or a fiscal intermediary designated by the director of the budg-
29 et, or the commissioner of social services, shall withhold from the
30 amount of any payment to be made by the state to a provider of services
31 the amount of the deficiency determined under paragraph (a) or (b) of
32 this subdivision or paragraph (d) of subdivision seven of this section.
33 Upon withholding such amount, the comptroller or a designated fiscal
34 intermediary, or the commissioner of social services, shall pay the
35 commissioner of the office [of mental retardation and] FOR PEOPLE WITH
36 developmental disabilities, or his designee, such amount withheld on
37 behalf of the provider of services.

38 (d) The commissioner of the office [of mental retardation and] FOR
39 PEOPLE WITH developmental disabilities shall provide a provider of
40 services with notice of any estimate of an amount due for an assessment
41 pursuant to paragraph (a) or (b) of this subdivision or paragraph (d) of
42 subdivision seven of this section at least three days prior to
43 collection of such amount by such commissioner. Such notice shall
44 contain the financial basis for such commissioner's estimate.

45 (e) In the event a provider of services objects to an estimate by the
46 commissioner of the office [of mental retardation and] FOR PEOPLE WITH
47 developmental disabilities pursuant to paragraph (a) or (b) of this
48 subdivision or paragraph (d) of subdivision seven of this section of the
49 amount due for an assessment, the provider of services, within sixty
50 days of notice of an amount due, may request a hearing. If a hearing is
51 requested, such commissioner shall provide the provider of services an
52 opportunity to be heard and to present evidence bearing on the amount
53 due for an assessment within thirty days after collection of an amount
54 due or receipt of a request for a hearing, whichever is later. An admin-
55 istrative hearing is not a prerequisite to seeking judicial relief.

1 (f) The commissioner of the office [of mental retardation and] FOR
2 PEOPLE WITH developmental disabilities may direct that a hearing be held
3 without any request by a provider of services.

4 9. Funds accumulated, including income from invested funds, from the
5 assessments specified in this section, including interest and penalties,
6 shall be deposited by the commissioner of the office [of mental retarda-
7 tion and] FOR PEOPLE WITH developmental disabilities and credited to the
8 general fund.

9 12. Each exclusion of sources of gross receipts received from the
10 assessments effective on or after April first, nineteen hundred ninety-
11 two established pursuant to this section shall be contingent upon
12 either: (a) qualification of the assessments for waiver pursuant to
13 federal law and regulation; or (b) consistent with federal law and regu-
14 lation, not requiring a waiver by the secretary of the department of
15 health and human services related to such exclusion; in order for the
16 assessments under this section to be qualified as a broad-based health
17 care related tax for purposes of the revenues received by the state
18 pursuant to the assessments not reducing the amount expended by the
19 state as medical assistance for purposes of federal financial partic-
20 ipation. The commissioner of the office [of mental retardation and] FOR
21 PEOPLE WITH developmental disabilities shall collect the assessments
22 relying on such exclusions, pending any contrary action by the secretary
23 of the department of health and human services. In the event the secre-
24 tary of the department of health and human services determines that the
25 assessments do not so qualify based on any such exclusion, then the
26 exclusion shall be deemed to have been null and void as of April first,
27 nineteen hundred ninety-two, and the commissioner of the office [of
28 mental retardation and] FOR PEOPLE WITH developmental disabilities shall
29 collect any retroactive amount due as a result, without interest or
30 penalty provided the provider of services pays the retroactive amount
31 due within ninety days of notice from the commissioner of the office [of
32 mental retardation and] FOR PEOPLE WITH developmental disabilities to
33 the provider of services that an exclusion is null and void. Interest
34 and penalties shall be measured from the due date of ninety days follow-
35 ing notice from the commissioner of the office [of mental retardation
36 and] FOR PEOPLE WITH developmental disabilities to the provider of
37 services.

38 S 60-a. Subdivision 7, paragraphs (a) and (b) of subdivision 8 and
39 subdivision 11 of section 43.04 of the mental hygiene law, subdivision 7
40 as added by chapter 938 of the laws of 1990, the opening paragraph of
41 paragraph (a) and paragraphs (c) and (d) of subdivision 7, paragraph (b)
42 of subdivision 8 and subdivision 11 as amended by chapter 41 of the laws
43 of 1992, paragraph (a) of subdivision 8 as amended by section 21 of
44 subpart D of part V-1 of chapter 57 of the laws of 2009 and paragraphs
45 (b) and (c) of subdivision 11 as amended by section 212 of part A of
46 chapter 389 of the laws of 1997, are amended to read as follows:

47 7. (a) Every provider of services shall submit reports on a cash basis
48 of actual gross receipts received from all services rendered within the
49 services categories set forth in subdivision one of this section to
50 persons with developmental disabilities and operating income for each
51 month as follows:

52 (i) for the period January first, nineteen hundred ninety-one through
53 January thirtieth, nineteen hundred ninety-one, the report shall be
54 filed on or before March fifteenth, nineteen hundred ninety-one.

55 (ii) for the period January first, nineteen hundred ninety-one through
56 March thirty-first, nineteen hundred ninety-one and each quarter there-

1 after, the report shall be filed on or before the forty-fifth day after
2 the end of the quarter.

3 (b) Every provider of services shall submit a certified annual report
4 on a cash basis of gross receipts received in such calendar year from
5 all services to persons with developmental disabilities and operating
6 income. The reports shall be in such form as may be prescribed by the
7 commissioner of the office [of mental retardation and] FOR PEOPLE WITH
8 developmental disabilities to accurately disclose information required
9 to implement this section.

10 (c) Final payments shall be due for all providers of services for the
11 assessments pursuant to subdivision two of this section upon the due
12 date for submission of the applicable quarterly report.

13 (d) The commissioner of the office [of mental retardation and] FOR
14 PEOPLE WITH developmental disabilities may recoup deficiencies in final
15 payments pursuant to paragraph (c) of subdivision six of this section.

16 (a) If an estimated payment made for a month to which an assessment
17 applies is less than ninety percent of the actual amount due for such
18 month, interest shall be due and payable to the commissioner of the
19 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
20 bilities on the difference between the amount paid and the amount due
21 from the day of the month the estimated payment was due until the date
22 of payment. The rate of interest shall be twelve percent per annum or at
23 the rate of interest set by the commissioner of taxation and finance
24 with respect to underpayments of tax pursuant to subsection (e) of
25 section one thousand ninety-six of the tax law minus four percentage
26 points. Interest under this paragraph shall not be paid if the amount
27 thereof is less than one dollar. Interest, if not paid by the due date
28 of the following month's estimated payment, may be collected by the
29 commissioner of the office [of mental retardation and] FOR PEOPLE WITH
30 developmental disabilities pursuant to paragraph (c) of subdivision six
31 of this section in the same manner as an assessment pursuant to subdivi-
32 sion two of this section.

33 (b) If an estimated payment made for a month to which an assessment
34 applies is less than seventy percent of the actual amount due for such
35 month, a penalty shall be due and payable to the commissioner of the
36 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
37 bilities of five percent of the difference between the amount paid and
38 the amount due for such month when the failure to pay is for a duration
39 of not more than one month after the due date of the payment with an
40 additional five percent for each additional month or fraction thereof
41 during which such failure continues, not exceeding twenty-five percent
42 in the aggregate. A penalty may be collected by such commissioner pursu-
43 ant to paragraph (c) of subdivision six of this section in the same
44 manner as an assessment pursuant to subdivision two of this section.

45 11. [(b)] (A) The assessment shall not be collected in excess of six
46 million two hundred thousand dollars from providers of services speci-
47 fied in subdivision two of this section for the period of April first,
48 nineteen hundred ninety-seven through March thirty-first, nineteen
49 hundred ninety-eight. The amount of the assessment collected pursuant to
50 subdivision two of this section in excess of six million two hundred
51 thousand dollars for the period of April first, nineteen hundred nine-
52 ty-seven through March thirty-first, nineteen hundred ninety-eight shall
53 be refunded to providers of services by the commissioner of the office
54 [of mental retardation and] FOR PEOPLE WITH developmental disabilities
55 based on the ratio which a provider of services' assessment for such

1 period bears to the total of the assessments for such period paid by
2 such providers of services.

3 [(c)] (B) The additional assessment shall not be collected in excess
4 of thirty-six million one hundred thousand dollars from providers of
5 services specified in subdivision two of this section for the period of
6 April first, nineteen hundred ninety-seven through March thirty-first,
7 nineteen hundred ninety-eight. The amount of the additional assessment
8 collected pursuant to subdivision two of this section in excess of thir-
9 ty-six million one hundred thousand dollars for the period of April
10 first, nineteen hundred ninety-seven through March thirty-first, nine-
11 teen hundred ninety-eight shall be refunded to providers of services by
12 the commissioner of the office [of mental retardation and] FOR PEOPLE
13 WITH developmental disabilities based on the ratio which a provider of
14 services' additional assessment for such period bears to the total of
15 the additional assessments for such period paid by such providers of
16 services.

17 S 61. Subparagraph e of paragraph 2 and paragraph 9 of subdivision
18 (c), paragraph 1 of subdivision (k) and subdivision (w) of section 45.07
19 of the mental hygiene law, subparagraph e of paragraph 2 and paragraph 9
20 of subdivision (c) as amended by chapter 323 of the laws of 2008, para-
21 graph 1 of subdivision (k) as amended by section 6 of part H of chapter
22 58 of the laws of 2005 and subdivision (w) as added by chapter 536 of
23 the laws of 2005, are amended to read as follows:

24 e. upon receipt of such report of child abuse or neglect, commence
25 within twenty-four hours, an appropriate investigation which shall
26 include but not be limited to an evaluation of the residential care
27 facility in which the child resides who is named in the report and a
28 determination of the risk to such child if he or she continues to remain
29 in the existing residential care facility as well as a determination of
30 the nature, extent and cause of any condition enumerated in such report
31 and, after seeing to the safety of the child and, to the maximum extent
32 feasible, the other children in the facility forthwith: (i) notify the
33 subject of the report and other persons named in the report in writing
34 of the existence of the report and their respective rights pursuant to
35 title six of article six of the social services law in regard to amend-
36 ment; and (ii) notify the director or operator of the residential facil-
37 ity and the office of mental health, the office [of mental retardation
38 and] FOR PEOPLE WITH developmental disabilities or the office of alco-
39 holism and substance abuse services of the existence of such report
40 including the name of any child alleged to be abused or neglected, the
41 name of the subject of the report of child abuse or neglect, and any
42 other information which may be necessary to assure the health and safety
43 of the children in the residential care facility;

44 9. The commission shall prepare an annual report to the governor and
45 legislature on the protection of children in residential care from abuse
46 and neglect, including the implementation of the provisions of this
47 paragraph and other applicable provisions of law, including reports
48 received, results of investigations by types of facilities, remedial
49 actions taken, and efforts undertaken by the office of mental health,
50 the office [of mental retardation and] FOR PEOPLE WITH developmental
51 disabilities, and the office of alcoholism and substance abuse services
52 to provide training pursuant to standards established by such offices
53 pursuant to section 16.29, 31.30 or 32.11 of this chapter.

54 1. Establish an adult home and residence for adults resident advocacy
55 program to assist residents, who have at any time received or are
56 receiving services from a mental hygiene provider, of adult homes and

1 residences for adults, as defined in section two of the social services
2 law, where at least twenty-five percent or twenty-five residents, which-
3 ever is less, have at any time received or are receiving services from a
4 mental hygiene provider which is licensed, operated or funded by the
5 office of mental health or office [of mental retardation and] FOR PEOPLE
6 WITH developmental disabilities, in understanding their legal rights,
7 and to promote and protect the rights of such residents. Based on the
8 level of appropriations made available therefor, the chair of the
9 commission shall determine the feasibility of establishing such program
10 on a statewide basis or, if not so feasible, the chair, after consulta-
11 tion with the commissioner of the department of health, shall designate
12 those regions in which such program may be established.

13 (w) Receive and review reports required pursuant to section 16.19 of
14 this chapter and take any action as required by law. The commission
15 shall also assist the commissioner of [the office of mental retardation
16 and] developmental disabilities in developing and preparing recommenda-
17 tions required by paragraph four of subdivision (d) of section 16.19 of
18 this chapter for submission to the governor, temporary president of the
19 senate and speaker of the assembly.

20 S 62. Subdivision (a) of section 45.09 of the mental hygiene law, as
21 amended by section 7 of part H of chapter 58 of the laws of 2005, is
22 amended to read as follows:

23 (a) The commission, any member or any employee designated by the
24 chair, must be granted access at any and all times to any mental hygiene
25 facility, or adult home or residence for adults in which at least twen-
26 ty-five percent or twenty-five residents, whichever is less, have at any
27 time received or are receiving services from a mental hygiene provider
28 which is licensed, operated or funded by the office of mental health, or
29 the office [of mental retardation and] FOR PEOPLE WITH developmental
30 disabilities in order to carry out the functions of the commission as
31 provided for by section 45.10 of this article, or part thereof, and to
32 all books, records, and data pertaining to any such facility deemed
33 necessary for carrying out the commission's functions, powers and
34 duties. The commission, any members or any employee designated by the
35 chair may require from the officers or employees of such facility or
36 from the commissioners of the offices of the department of mental
37 hygiene or in the case of an adult home or residence for adults, from
38 the officers or employees of an adult home or residence for adults or
39 from the department of health any information deemed necessary for the
40 purpose of carrying out the commission's functions, powers and duties.
41 The commission, any member, or any employee designated by the chair may
42 require from any hospital, as defined under article twenty-eight of the
43 public health law, any information, report or record necessary for the
44 purpose of carrying out the functions, powers and duties of the commis-
45 sion related to the investigation of deaths and complaints of abuse or
46 mistreatment concerning patients or former patients of mental hygiene
47 facilities who have been treated at such hospitals, and from any adult
48 care facility as defined in paragraph twenty-one of section two of the
49 social services law, such information, report or record, including
50 access to such facility necessary for the purpose of carrying out the
51 functions, powers and duties of the commission related to the investi-
52 gation of deaths, as provided for by section 45.17 of this article,
53 concerning patients of mental hygiene facilities who resided at such
54 residential care facilities at the time of their death or were former
55 residents of such residential care facilities and the commission deter-
56 mines that such information, report or record is necessary for the

1 completion of its investigation. The results of investigations involving
2 such residents of adult care facilities shall be provided promptly to
3 the commissioner of the department of health and shall be treated as a
4 record or personal information within the meaning of section ninety-six
5 of the public officers law and shall not be disclosed except in accord-
6 ance with such section ninety-six. Information, books, records or data
7 which are confidential as provided by law shall be kept confidential by
8 the commission and by non-profit organizations receiving contracts
9 pursuant to subdivision (k) of section 45.07 of this article and any
10 limitations on the release thereof imposed by law upon the party
11 furnishing the information, books, records or data shall apply to the
12 commission and such non-profit organizations receiving contracts pursu-
13 ant to subdivision (k) of section 45.07 of this article.

14 S 63. The opening paragraph of subdivision (a) of section 45.10 of the
15 mental hygiene law, as amended by section 8 of part H of chapter 58 of
16 the laws of 2005, is amended to read as follows:

17 The commission shall have the following authority with respect to
18 adult homes or residences for adults, as defined by section two of the
19 social services law, where at least twenty-five percent or twenty-five
20 of the residents, whichever is less, are persons who have at any time
21 received or are receiving services from a mental hygiene provider which
22 is licensed, operated or funded by the office of mental health or the
23 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
24 bilities.

25 S 64. Subdivision (a) of section 61.01 of the mental hygiene law is
26 amended to read as follows:

27 (a) The commissioner or his authorized representative may receive,
28 use, or distribute federal financial or technical assistance to support
29 construction, research, staffing, or other programs or activities in
30 mental health, [mental retardation,] developmental disabilities, alco-
31 holism, or drug addiction appropriated under federal health, mental
32 health, or [mental retardation] DEVELOPMENTAL DISABILITIES legislation
33 or regulations or under other federal legislation or regulations which
34 provide assistance to the mentally disabled, including but not limited
35 to vocational rehabilitation programs, alcoholism programs, drug
36 addiction programs, poverty programs, or special programs for children
37 or the aged.

38 S 65. Section 61.03 of the mental hygiene law is amended to read as
39 follows:

40 S 61.03 Department is authorized state agency.

41 The department shall be the authority, when designated by the gover-
42 nor, to supervise and administer financial or technical assistance as
43 the designee under a state plan or as may be required by federal legis-
44 lation making such assistance available for programs or activities in
45 mental health, [mental retardation,] developmental disabilities, alco-
46 holism, drug addiction, and other areas under the department's jurisdic-
47 tion and control.

48 S 66. Section 61.05 of the mental hygiene law is amended to read as
49 follows:

50 S 61.05 Advancement of state mental health and [mental retardation]
51 DEVELOPMENTAL DISABILITIES programs through intergovernmental
52 cooperation.

53 The commissioner may promote state programs or activities in mental
54 health, [mental retardation] DEVELOPMENTAL DISABILITIES, alcoholism,
55 drug addiction, and other areas within the scope of the department's
56 activities and may cooperate with the federal government, local govern-

1 ments, other state governments, other state agencies, and nongovern-
2 mental organizations to fulfill the objectives and purposes of this
3 chapter.

4 S 67. Subdivision (a) of section 67.03 of the mental hygiene law is
5 amended to read as follows:

6 (a) For the purposes of this article any person who resides in the
7 state continuously for one year, and any person under the age of sixteen
8 or any [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY whose
9 parents or persons having legal custody of him have resided in the state
10 continuously for one year, shall be considered a state resident. Resi-
11 dence so acquired continues until the resident has remained away from
12 the state for one year.

13 S 68. Section 75.01 of the mental hygiene law is amended to read as
14 follows:

15 S 75.01 Short title.

16 This article shall be known and may be cited and referred to as the
17 "community mental health services and [mental retardation] DEVELOPMENTAL
18 DISABILITIES services companies law".

19 S 69. Paragraph 5 of subdivision (b) and subparagraph (iii) of para-
20 graph 3 of subdivision (c) of section 75.13 of the mental hygiene law
21 are amended to read as follows:

22 5. To construct, reconstruct, rehabilitate, improve, alter, repair,
23 lease, manage, or operate and otherwise provide community mental health
24 services or [mental retardation] DEVELOPMENTAL DISABILITIES services
25 projects;

26 (iii) Enter into any contracts relating to the management or operation
27 of community mental health services or [mental retardation] DEVELOP-
28 MENTAL DISABILITIES services projects;

29 S 70. Subdivision (b) of section 80.03 of the mental hygiene law, as
30 amended by chapter 198 of the laws of 2008, is amended to read as
31 follows:

32 (b) "A patient in need of surrogate decision-making" means a patient
33 as defined in subdivision twenty-three of section 1.03 of this chapter
34 who is: a resident of a mental hygiene facility including a resident of
35 housing programs funded by an office of the department or whose federal
36 funding application was approved by an office of the department or for
37 whom such facility maintains legal admission status therefor; or,
38 receiving home and community-based services for persons with mental
39 disabilities provided pursuant to section 1915 of the federal social
40 security act; or receiving individualized support services; or, case
41 management or service coordination funded, approved, or provided by the
42 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
43 bilities; and, for whom major medical treatment is proposed, and who is
44 determined by the surrogate decision-making committee to lack the abili-
45 ty to consent to or refuse such treatment, but shall not include minors
46 with parents or persons with legal guardians, committees or conservators
47 who are legally authorized, available and willing to make such health
48 care decisions. Once a person is eligible for surrogate decision-mak-
49 ing, such person may continue to receive surrogate decision-making as
50 authorized by this section regardless of a change in residential status.

51 S 71. Paragraph 6 of subdivision (c) of section 81.09 of the mental
52 hygiene law, as amended by chapter 438 of the laws of 2004, is amended
53 to read as follows:

54 6. interviewing or consulting with professionals having specialized
55 knowledge in the area of the person's alleged incapacity including but

1 not limited to [mental retardation,] developmental disabilities, alcohol
2 and substance abuse, and geriatrics.

3 S 72. Subdivision 2 of section 3 of section 1 of chapter 359 of the
4 laws of 1968 constituting the facilities development corporation act, as
5 amended by chapter 723 of the laws of 1993, is amended to read as
6 follows:

7 2. "Community mental health and [retardation] DEVELOPMENTAL DISABILI-
8 TIES facility" shall mean a building, a unit within a building, a labo-
9 ratory, a classroom, a housing unit, a dining hall, an activities
10 center, a library, or any structure on or improvement to real property,
11 or an interest in real property, including an interest in, and proprie-
12 tary lease from, an organization formed for the purpose of cooperative
13 ownership of real property, of any kind or description, including
14 fixtures and equipment which are an integral part of such building, unit
15 or structure or improvement, a walkway, a roadway or a parking lot and
16 improvements and connections for water, sewer, gas, electrical, tele-
17 phone, heating, air conditioning and other utility services, or a combi-
18 nation of any of the foregoing, whether for patient care and treatment
19 or staff, staff family or service use, located in a city, or in a county
20 not wholly included within a city, authorized to provide community
21 mental health services in accordance with the provisions of article
22 [forty-one] 41 of the mental hygiene law, which is utilized or to be
23 utilized for the administration and conduct of programs for [the mental-
24 ly ill or the mentally retarded] PERSONS WITH MENTAL ILLNESS OR DEVELOP-
25 MENTAL DISABILITIES, or both, and for the provision of services there-
26 for, or utilized or to be utilized in the performance of services
27 benefitting or assisting the care, treatment, rehabilitation or mainte-
28 nance of persons with mental disabilities, and approved to provide such
29 services, pursuant to a written agreement with the appropriate commis-
30 sioner of an office of the department of mental hygiene. Nothing in this
31 subdivision shall be deemed to supercede the provisions of article 41 of
32 the mental hygiene law, where applicable. A community mental health and
33 [retardation] DEVELOPMENTAL DISABILITIES facility shall also mean and
34 include a residential facility to be operated as a community residence
35 for persons with mental disabilities and a treatment facility for use in
36 the conduct of an alcoholism treatment program or of a substance abuse
37 treatment program as defined in the mental hygiene law.

38 S 73. This act shall take effect immediately; provided, however,
39 that:

40 (a) the amendments to subdivision (b) of section 31.27 of the mental
41 hygiene law made by section forty-two of this act shall not affect the
42 repeal of such section and shall be deemed repealed therewith;

43 (b) the amendments to subdivision (e) of section 33.03 of the mental
44 hygiene law made by section forty-four of this act shall take effect on
45 the same date and in the same manner as section 1 of chapter 210 of the
46 laws of 2008 takes effect; and shall not affect the repeal of such
47 subdivision and shall be deemed repealed therewith;

48 (c) the amendments to subdivisions (f), (h) and (i) of section 33.07
49 of the mental hygiene law made by section forty-six of this act shall
50 not affect the repeal of such subdivisions and shall be deemed repealed
51 therewith; and

52 (d) the amendments to subdivisions (a) and (b) of section 41.11 of the
53 mental hygiene law made by section fifty-two of this act shall be
54 subject to the expiration and reversion of such subdivisions pursuant to
55 section 7 of part R2 of chapter 62 of the laws of 2003, as amended, when

1 upon such date the provisions of section fifty-two-a of this act shall
2 take effect.