

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

9613--A

I N A S S E M B L Y

March 20, 2012

Introduced by M. of A. WEISENBERG, GUNTHER, McKEVITT, SWEENEY, SCHIMEL, TITUS -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, CROUCH, DUPREY, GOTTFRIED, McDONOUGH, McENENY, RA, ROBINSON -- read once and referred to the Committee on Mental Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the mental hygiene law, in relation to duties of providers of services for the developmentally disabled

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

1 Section 1. Subdivision 2 of section 31.11 of the mental hygiene law,
2 as amended by chapter 558 of the laws of 2011, is amended to read as
3 follows:
4 2. (A) making such reports as are necessary to provide IMMEDIATE
5 notification to the district attorney or other appropriate law enforce-
6 ment official and the commissioner or his or her authorized represen-
7 tative as soon as possible, [or in any event within three working days,]
8 if it appears that a crime may have been committed against a patient
9 receiving services from such provider, unless it appears that the crime
10 includes an employee, intern, volunteer, consultant, contractor, or
11 visitor and the alleged conduct caused physical injury or the patient
12 was subject to unauthorized sexual contact, or if it appears the crime
13 is endangering the welfare of an incompetent or physically disabled
14 person pursuant to section 260.25 of the penal law, or if the crime was
15 any felony under state or federal law, then the district attorney or
16 other appropriate law enforcement official must be contacted immediate-
17 ly, and in any event no later than twenty-four hours and such other
18 reports, uniform and otherwise, as are required by the commissioner or
19 his or her authorized representative with respect to its operations. If
20 there is reasonable cause to believe that the crime against the client
21 may have occurred in a facility or program of any other service provider
22 licensed, certified, funded or operated by a state agency, the adminis-
23 trator or chief executive officer of such other service provider shall
24 also be notified as soon as possible, or in any event within three work-

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

LBD14977-02-2

1 ing days. Provided however, nothing herein shall require such report to
2 an administrator or chief executive officer of a provider who is alleged
3 to have committed the crime. The commissioner may execute a memorandum
4 of understanding with the commissioners of other appropriate state agen-
5 cies to ensure the coordination and cooperation of such agencies and
6 providers of services with regard to the conduct of any investigation
7 and prevention of unnecessary duplicative investigations resulting from
8 the report of an alleged crime that may have occurred in a facility or
9 program of another service provider. Information obtained by the commis-
10 sioner or the commission on quality of care for the mentally disabled
11 from the records of patients receiving services shall be kept confiden-
12 tial in accordance with the provisions of this chapter.

13 (B) ANY AND ALL STATE OR PRIVATE DIRECT CARE EMPLOYEES OR ANY OTHER
14 OFFICIAL, EMPLOYEE OR VOLUNTEER WITHIN ANY FACILITY OPERATED BY, CERTI-
15 FIED, LICENSED, FUNDED OR OTHERWISE AUTHORIZED BY THE DEPARTMENT THAT
16 WITNESSES AND REPORTS ANY ALLEGATION OF ABUSE, NEGLECT, MALTREATMENT,
17 UNAUTHORIZED USE OF RESTRAINTS OR SECLUSION, OR ANY OTHER SUSPICIOUS
18 ACTS, OR PREMATURE DEATHS PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION
19 SHALL BE PROTECTED FROM ANY AND ALL RETRIBUTION, SUSPENSION OR TERMI-
20 NATION BY THE FACILITY, ITS EMPLOYEES OR THE DEPARTMENT FOR REPORTING
21 SUCH. ANY PERSON THAT TREATS A WHISTLEBLOWER WRONGFULLY, SUSPENDS A
22 WHISTLEBLOWER OR FIRES A WHISTLEBLOWER FOR HIS OR HER ACTIONS SHALL BE
23 SUBJECT TO TERMINATION AND SHALL NOT BE ENTITLED TO ABSOLUTE OR QUALI-
24 FIED IMMUNITY IN A CAUSE OF ACTION FOR CIVIL LIABILITY.

25 S 2. This act shall take effect immediately.