

5796

2011-2012 Regular Sessions

I N S E N A T E

June 16, 2011

Introduced by Sen. McDONALD -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the mental hygiene law, in relation to creating an abuse prevention notification system

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

1 Section 1. The mental hygiene law is amended by adding a new section
2 16.34 to read as follows:

3 S 16.34 CERTAIN INFORMATION REGARDING PERSONS WORKING WITH PEOPLE WITH
4 DEVELOPMENTAL DISABILITIES.

5 (A) IF THE OFFICE RECEIVES A REQUEST FOR CRIMINAL HISTORY INFORMATION
6 FOR A PROSPECTIVE EMPLOYEE OR VOLUNTEER PURSUANT TO SECTION EIGHT
7 HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW, AND THE OFFICE HAS ON FILE A
8 SUBSTANTIATED REPORT THAT THE PROSPECTIVE EMPLOYEE OR VOLUNTEER ENGAGED
9 IN BEHAVIOR THAT CONSTITUTED ABUSE OR SERIOUS NEGLECT OF A PATIENT OR
10 CONSUMER IN A PROGRAM LICENSED, OPERATED, OR CERTIFIED BY THE OFFICE,
11 THE OFFICE SHALL FURNISH A SUMMARY OF SUCH REPORT OR REPORTS TOGETHER
12 WITH ANY WRITTEN RESPONSE FROM THE EMPLOYEE OR VOLUNTEER REFERRED TO IN
13 SUBDIVISION (C) OF THIS SECTION, TO THE PROVIDER THAT REQUESTED THE
14 CRIMINAL HISTORY INFORMATION WITH RESPECT TO SUCH PROSPECTIVE EMPLOYEE
15 OR VOLUNTEER. THE OFFICE SHALL PROVIDE SUCH SUMMARY REPORT AND RESPONSE,
16 IF ANY, TO THE AUTHORIZED PERSON AS DEFINED IN PARAGRAPH (B) OF SUBDIVI-
17 SION ONE OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW AND
18 AT THAT SAME TIME FURNISH SUCH DOCUMENTS TO THE PROSPECTIVE EMPLOYEE OR
19 VOLUNTEER AT THE ADDRESS FOR SUCH PERSON LISTED ON THE REQUEST.

20 (B) THE SUMMARY REPORT PROVIDED BY THE OFFICE TO A PROVIDER OF
21 SERVICES PURSUANT TO SUBDIVISION (A) OF THIS SECTION SHALL BE RECEIVED
22 BY THE PROVIDER SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF SUBDIVISION
23 SEVEN OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

24 (C) WHEN THE OFFICE RECEIVES A SUBSTANTIATED REPORT INDICATING THAT AN
25 EMPLOYEE OR VOLUNTEER ENGAGED IN BEHAVIOR THAT CONSTITUTES ABUSE OR

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

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SERIOUS NEGLECT, THE OFFICE SHALL PROVIDE SUCH EMPLOYEE OR VOLUNTEER WITH WRITTEN NOTIFICATION THAT HE OR SHE MAY OBTAIN AND REVIEW THE SUMMARY REPORT AND SUBMIT A WRITTEN STATEMENT IN RESPONSE TO THE SUMMARY REPORT PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE OFFICE. IF THE OFFICE RECEIVES SUCH WRITTEN STATEMENT, THE OFFICE SHALL TRANSMIT SUCH WRITTEN STATEMENT TO ANY PROVIDER TOGETHER WITH THE SUMMARY REPORT PROVIDED PURSUANT TO THIS SECTION.

(D) THE OFFICE SHALL ESTABLISH AN APPEALS PROCESS BY WHICH AN EMPLOYEE OR VOLUNTEER MAY CHALLENGE THE DETERMINATION THAT A REPORT IS SUBSTANTIATED, WITH A DE NOVO STANDARD OF REVIEW. THE APPEALS PROCESS SHALL NOT ADDRESS OR REVERSE ANY TERMINATION OF EMPLOYMENT THAT MAY HAVE OCCURRED DUE TO THE REPORT, BUT SHALL ADDRESS WHETHER FUTURE POTENTIAL EMPLOYERS RECEIVE A SUBSTANTIATED REPORT WHEN REQUESTING CRIMINAL HISTORY INFORMATION.

(E) THE OFFICE SHALL ESTABLISH A PROCESS FOR EXPUNGING A SUBSTANTIATED REPORT FROM A PERSON'S RECORD. A PERSON MAY APPLY FOR EXPUNGING THE SUBSTANTIATED REPORT FROM HIS OR HER RECORD AFTER A PERIOD OF FIVE YEARS FROM THE FILING OF THE REPORT. THE PERSON SHALL AFFIRMATIVELY DEMONSTRATE TO THE COMMISSIONER CLEAR AND CONVINCING EVIDENCE OF REHABILITATION.

(F) FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "ABUSE" SHALL MEAN PHYSICAL ABUSE, SEXUAL ABUSE, OR PSYCHOLOGICAL ABUSE; AND

2. "SERIOUS NEGLECT" SHALL MEAN THE INTENTIONAL ACTS OR OMISSIONS THAT ENDANGER THE LIFE OR HEALTH OF A PERSON RECEIVING SERVICES.

3. "SUBSTANTIATED REPORT" SHALL MEAN THAT, AFTER INVESTIGATION, THE COMMISSION ON QUALITY CARE AND ADVOCACY FOR PERSONS WITH DISABILITIES OR THE OFFICE HAS DETERMINED, IN WRITING, THAT A REPORT FILED BY SUCH COMMISSION, BY THE OFFICE, OR BY A PROVIDER CERTIFIED BY THE OFFICE, MEETS THE CRITERIA OF ABUSE OR SERIOUS NEGLECT, AS DEFINED IN THIS SECTION, OF A PATIENT OR CONSUMER IN A PROGRAM LICENSED, OPERATED, OR CERTIFIED BY THE OFFICE AND THAT THE REPORT AND CREDIBLE INFORMATION SUBMITTED SUPPORT THE RELEVANT ALLEGATIONS IN THE REPORT.

(G) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO LIMIT THE OFFICE'S ABILITY TO INVESTIGATE ABUSE, NEGLECT OR MALTREATMENT, WHETHER INTENTIONAL OR UNINTENTIONAL, UNDER CURRENT LAW OR REGULATIONS.

S 2. Section 16.19 of the mental hygiene law is amended by adding a new subdivision (e) to read as follows:

(E) THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS REQUIRING THAT WHEN THE OFFICE OR A PROVIDER LICENSED, CERTIFIED OR OPERATED BY THE OFFICE CONDUCTS AN INVESTIGATION REGARDING POTENTIAL ABUSE, MALTREATMENT OR NEGLECT OF A PERSON RECEIVING SERVICES, ANY AFFECTED EMPLOYEE OR VOLUNTEER SHALL BE PROVIDED A COPY OF REGULATIONS AND PROCEDURES GOVERNING SUCH INVESTIGATIONS AND, IN WRITING, NOTIFY THE EMPLOYEE OR VOLUNTEER SUBJECT OF THE INVESTIGATION OF THE RIGHT AND PROCEDURES FOR OBTAINING AND RESPONDING TO ANY REPORT FILED BY THE PROVIDER WITH THE OFFICE IN ACCORDANCE WITH THIS SECTION.

S 3. Paragraph 1 of subdivision (c) of section 45.07 of the mental hygiene law, as amended by chapter 192 of the laws of 2010, is amended to read as follows:

1. Establish procedures to assure effective investigation of complaints of patients and their parents or legal guardians and employees of mental hygiene facilities affecting such patients including allegations of patient abuse or mistreatment, including all reports of abuse or neglect of children in residential care as defined in paragraphs (g),

1 (h) and (i) of subdivision four of section four hundred twelve-a of the
2 social services law, except such facilities or programs enumerated in
3 paragraph (j) of subdivision four of such section, and made pursuant to
4 title six of article six of such law. Such procedures shall include but
5 not be limited to receipt of written complaints, interviews of persons,
6 patients and employees and on-site monitoring of conditions. In addi-
7 tion, the commission shall establish procedures for the speedy and
8 impartial review of patient abuse and mistreatment allegations called to
9 its attention. No complaint, report or allegation shall be declined by
10 the commission solely because the complaint, report or allegation is
11 made anonymously. WHEN CONDUCTING AN INVESTIGATION PURSUANT TO THIS
12 SECTION, THE COMMISSION SHALL PROVIDE ANY AFFECTED EMPLOYEE OR VOLUNTEER
13 WITH A COPY OF THIS SECTION AND THE REGULATIONS AND PROCEDURES GOVERNING
14 SUCH INVESTIGATIONS AND, IN WRITING, NOTIFY THE EMPLOYEE OR VOLUNTEER OF
15 THE INVESTIGATION AND OF THE RIGHT AND PROCEDURES FOR OBTAINING AND
16 RESPONDING TO ANY REPORT FILED BY THE COMMISSION WITH THE APPLICABLE
17 OFFICE IN ACCORDANCE WITH THIS SECTION.

18 S 4. This act shall take effect on the first of January next succeed-
19 ing the date on which it shall have become a law; provided, however,
20 that effective immediately the commissioner of developmental disabili-
21 ties and the commissioner of mental health may adopt, amend, suspend or
22 repeal rules or regulations and take other actions prior to and in prep-
23 aration for the timely implementation of this act on its effective date.