

4069--B

2013-2014 Regular Sessions

I N A S S E M B L Y

January 30, 2013

Introduced by M. of A. GABRYSZAK, GUNTHER, WALTER, BARRETT, CORWIN --
Multi-Sponsored by -- M. of A. CERETTO, McDONALD -- read once and
referred to the Committee on Mental Health -- committee discharged,
bill amended, ordered reprinted as amended and recommitted to said
committee -- reported and referred to the Committee on Rules --
reported and referred to the Committee on Ways and Means -- committee
discharged, bill amended, ordered reprinted as amended and recommitted
to said committee

AN ACT to amend the mental hygiene law, in relation to enacting the
"people first act of 2013"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "people first act of 2013".
3 S 2. Legislative findings. It is the intent of the legislature to
4 ensure that individuals with developmental disabilities who utilize
5 long-term care services under the medical assistance program and other
6 long-term care related benefit programs administered by the state have
7 meaningful access to a reasonable array of community-based and institu-
8 tional program options and to ensure the well-being of individuals with
9 developmental disabilities, taking into account their informed and
10 expressed choices. Furthermore, the legislature declares that it is the
11 policy of the state to ensure that the clinical, habilitative, and
12 social needs of individuals with developmental disabilities who choose
13 to reside in integrated community-based settings can have those needs
14 met in integrated community-based settings. In order to meaningfully
15 comply with this policy, the state must have an understanding of the
16 existing capacity in integrated-community based settings, including
17 direct support professionals and licensed professionals, such as physi-
18 cians, dentists, nurse practitioners, nurses, and psychiatrists, as well
19 as residential capacity to provide for these needs.

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

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1 It is further the intent of the legislature to support the satisfac-
2 tion and success of consumers through the delivery of quality services
3 and supports. Evaluation of the services that consumers receive is a key
4 aspect to the service system. Utilizing the information that consumers
5 and their families provide about such services in a reliable and mean-
6 ingful way is also critical to enable the commissioner of developmental
7 disabilities to assess the performance of the state's developmental
8 services system and to improve services for consumers in the future. To
9 that end, the commissioner of developmental disabilities shall conduct a
10 geographic analysis of supports and services in community settings and
11 implement an improved, unified quality assessment system, in accordance
12 with this act.

13 S 3. Section 13.15 of the mental hygiene law is amended by adding a
14 new subdivision (d) to read as follows:

15 (D) (1) FOR PURPOSES OF THIS SUBDIVISION, THE FOLLOWING TERMS SHALL
16 HAVE THE FOLLOWING MEANINGS:

17 (I) "DIRECT SUPPORT PROFESSIONALS" MEANS DIRECT SUPPORT WORKERS,
18 DIRECT CARE WORKERS, PERSONAL ASSISTANTS, PERSONAL ATTENDANTS, AND PARA-
19 PROFESSIONALS THAT PROVIDE ASSISTANCE TO INDIVIDUALS WITH DEVELOPMENTAL
20 DISABILITIES IN THE FORM OF DAILY LIVING, AND PROVIDE THE HABILITATION,
21 REHABILITATION, AND TRAINING NEEDS OF THESE INDIVIDUALS.

22 (II) "LICENSED PROFESSIONALS" MEANS, BUT IS NOT LIMITED TO, PHYSI-
23 CIANS, DENTISTS, DENTAL HYGIENISTS, DENTAL ASSISTANTS, NURSE PRACTITION-
24 ERS, LICENSED PRACTICAL NURSES, REGISTERED NURSES, PSYCHIATRISTS,
25 PSYCHOLOGISTS, LICENSED MASTER SOCIAL WORKERS, OR LICENSED CLINICAL
26 SOCIAL WORKERS, LICENSED TO PRACTICE PURSUANT TO THE EDUCATION LAW AND
27 OTHER QUALIFIED MENTAL HEALTH PROFESSIONALS.

28 (III) "SUPPORTS AND SERVICES" MEANS DIRECT SUPPORT PROFESSIONALS,
29 LICENSED PROFESSIONALS, AND RESIDENTIAL SERVICES, INCLUDING, BUT NOT
30 LIMITED TO, PRIVATE RESIDENCES, COMMUNITY-INTEGRATED LIVING ARRANGE-
31 MENTS, SUPPORTED RESIDENTIAL PROGRAMS, SUPERVISED RESIDENTIAL PROGRAMS,
32 OR SUPPORTIVE HOUSING PROGRAMS.

33 (2) SUBJECT TO AVAILABLE APPROPRIATIONS THEREFOR, THE COMMISSIONER
34 SHALL CONDUCT A GEOGRAPHIC ANALYSIS OF SUPPORTS AND SERVICES IN COMMUNI-
35 TY SETTINGS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES. THIS ANALY-
36 SIS SHALL ALSO IDENTIFY GAPS BETWEEN REQUIRED SUPPORTS AND SERVICES BY
37 REGION OF THE STATE.

38 (3) IN ORDER TO PERFORM THE GEOGRAPHIC ANALYSIS OR TO GATHER DATA FOR
39 PURPOSES OF PERFORMING THE GEOGRAPHIC ANALYSIS, THE COMMISSIONER MAY
40 WORK IN COOPERATION AND AGREEMENT WITH OTHER OFFICES, DEPARTMENTS OR
41 AGENCIES OF THE STATE, LOCAL OR FEDERAL GOVERNMENT, OR OTHER ORGANIZA-
42 TIONS AND INDIVIDUALS, WHICH MAY INCLUDE PROVIDERS OF SERVICES FOR
43 PERSONS WITH DEVELOPMENTAL DISABILITIES, REPRESENTATIVES FROM EMPLOYEE
44 ORGANIZATIONS REPRESENTING DIRECT CARE WORKERS, CONSUMER REPRESENTATIVES
45 INCLUDING PERSONS WITH DEVELOPMENTAL DISABILITIES, OR THEIR PARENTS OR
46 GUARDIANS.

47 (4) IN CONDUCTING THIS ACTIVITY, THE COMMISSIONER, SUBJECT TO AVAIL-
48 ABLE APPROPRIATIONS THEREFOR, SHALL DEVELOP AND UTILIZE A WEB-BASED
49 DATA-BASE WHICH PRIORITIZES THE URGENCY OF NEED FOR SUPPORTS AND
50 SERVICES. THE INFORMATION COLLECTED SHOULD ALLOW THE COMMISSIONER TO
51 CATEGORIZE NEEDS FOR DEVELOPMENTAL DISABILITY SERVICES WITHIN A FRAME-
52 WORK THAT ENCOMPASSES THREE LEVELS OF URGENCY OF NEEDS. THESE LEVEL OF
53 SUPPORT NEEDS SHOULD INCLUDE: EMERGENCY NEED, FOR THOSE PERSONS WITH
54 DEVELOPMENTAL DISABILITIES IN NEED OF IMMEDIATE SUPPORT EITHER DAY
55 SUPPORT OR IN-HOME OR OUT-OF-HOME PLACEMENT; CRITICAL NEED FOR THOSE
56 INDIVIDUALS WHO WILL HAVE A NEED FOR SUPPORTS OR SERVICES WITHIN ONE

1 YEAR; AND PLANNING FOR NEED, FOR THOSE INDIVIDUALS WHOSE SUPPORT NEEDS
2 ARE ONE TO FIVE YEARS AWAY, OR WHERE THE CAREGIVER IS AGE SIXTY OR
3 OLDER.

4 (5) SUCH AN ANALYSIS SHOULD INCLUDE THE STATEWIDE NUMBER OF INDIVID-
5 UALS SEEKING SERVICES, INCLUDING AWAITING PLACEMENT BROKEN DOWN INTO THE
6 TOTAL NUMBER OF INDIVIDUALS FROM WITHIN EACH REGIONAL SERVICES OFFICE'S
7 GEOGRAPHIC AREA WHO AWAIT RESIDENTIAL PLACEMENT, DAY SERVICE SUPPORT,
8 HOME AND COMMUNITY-BASED WAIVER SUPPORT, EMPLOYMENT SUPPORT, BEHAVIORAL
9 HEALTH SERVICES AND SUPPORTS, OR OTHER COMMUNITY-BASED SUPPORT. SUCH
10 INFORMATION SHOULD BE GROUPED BY THE AGE OF THE INDIVIDUAL AWAITING
11 COMMUNITY SERVICES AND SUPPORTS AND THE AGE OF THEIR CAREGIVER, IF ANY.
12 SUCH INFORMATION SHOULD ALSO INCLUDE WAITLIST AND PLACEMENT INFORMATION
13 SUCH AS:

14 (I) THE TYPE OF SUPPORTS AND SERVICES SUCH INDIVIDUALS ARE EXPECTED TO
15 REQUIRE DIVIDED INTO CERTIFIED OUT-OF-HOME, SUPERVISED, SUPPORTIVE
16 PLACEMENT NEEDS AND OTHER NON-PLACEMENT NEEDS AND THE NUMBER OF SUCH
17 PERSONS WHO ARE MEDICALLY FRAIL REQUIRING INTENSIVE MEDICAL CARE;

18 (II) NON-CERTIFIED RESIDENTIAL PLACEMENTS OUTSIDE THE PARENT'S OR
19 PARENTS' OR OTHER CAREGIVER'S HOME;

20 (III) THE NUMBER OF INDIVIDUALS EXPECTED TO REQUIRE HOME AND COMMUNITY
21 SERVICES WAIVER-FUNDED HABILITATION SERVICES AT HOME;

22 (IV) THE TOTAL NUMBER OF INDIVIDUALS, WHO HAVE BEEN IDENTIFIED AS IN
23 NEED OF SUPPORTS AND SERVICES WHO HAVE RECEIVED THESE SUPPORTS AND
24 SERVICES AND ANY GAP BETWEEN REQUIRED SUPPORTS AND SERVICES AND THE
25 SUPPORTS AND SERVICES PROVIDED;

26 (V) THE NUMBER OF EMERGENCY NEED RESIDENTIAL PLACEMENTS FOR THE PAST
27 YEAR AND OTHER SUPPORTS AND SERVICES PROVIDED ON AN EMERGENCY BASIS;

28 (VI) THE NUMBER OF INDIVIDUALS WHO ARE CURRENTLY RECEIVING SUPPORTS
29 AND SERVICES, INCLUDING RESIDENTIAL SERVICES, WHOSE CURRENT LIVING SITU-
30 ATION IS NOT ADEQUATE TO MEET THEIR NEEDS AND WHO ARE AWAITING AN ALTER-
31 NATIVE PLACEMENT OR ALTERNATIVE SUPPORT AND SERVICE DELIVERY OPTIONS;

32 (VII) PROJECTED FUNDING REQUIREMENTS FOR INDIVIDUALS IDENTIFIED AS IN
33 NEED OF SERVICES PURSUANT TO PARAGRAPH FOUR OF THIS SUBDIVISION;

34 (VIII) AN UPDATED FIVE YEAR PROJECTION OF INDIVIDUALS WHO WILL REQUIRE
35 EITHER ADDITIONAL IN-HOME SUPPORTS AND SERVICES AND/OR OUT-OF-HOME RESI-
36 DENTIAL PLACEMENTS; AND

37 (IX) ANY OTHER INFORMATION DEEMED NECESSARY BY THE COMMISSIONER.

38 (6) THE COMMISSIONER SHALL PREPARE ANNUALLY FOR THE GOVERNOR, THE
39 LEGISLATURE AND THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH
40 SPECIAL NEEDS A WRITTEN EVALUATION REPORT CONCERNING THE DELIVERY OF
41 SUPPORTS AND SERVICES IN THE COMMUNITY. ON OR BEFORE MARCH FIRST, IN
42 EACH YEAR, THE COMMISSIONER SHALL SUBMIT A COPY OF SUCH REPORT, AND SUCH
43 RECOMMENDATION AS HE OR SHE DEEMS APPROPRIATE, TO THE GOVERNOR, THE
44 TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE
45 RESPECTIVE MINORITY LEADERS OF EACH SUCH HOUSE, AND THE CHAIR OF THE
46 STATE COMMISSION ON QUALITY OF CARE FOR THE MENTALLY DISABLED. THE FIRST
47 SUCH REPORT SHALL BE DUE BY NO LATER THAN MARCH FIRST, TWO THOUSAND
48 FIFTEEN. THE REPORT SHALL ALSO BE MADE AVAILABLE TO THE PUBLIC AND SHALL
49 BE PUBLISHED ON THE OFFICE'S WEBSITE IN AN APPROPRIATE LOCATION AT THE
50 SAME TIME AS ITS SUBMISSION TO STATE OFFICIALS.

51 S 4. Subdivision (c) of section 16.01 of the mental hygiene law, as
52 added by chapter 234 of the laws of 1998, paragraph 1 as amended by
53 chapter 37 of the laws of 2011, is amended to read as follows:

54 (c) (1) Notwithstanding any other provision of law, the commissioner,
55 or his OR HER designee, may require from any hospital, as defined under
56 article twenty-eight of the public health law, any information, report,

1 or record necessary for the purpose of carrying out the functions,
2 powers and duties of the commissioner related to the investigation of
3 deaths and complaints of abuse, mistreatment, or neglect concerning
4 persons with developmental disabilities who receive services, or had
5 prior to death received services, in a facility as defined in section
6 1.03 of this chapter, or are receiving medicaid waiver services from the
7 office for people with developmental disabilities in a non-certified
8 setting, and have been treated at such hospitals.

9 (2) Any information, report, or record requested by the commissioner
10 or his OR HER designee pursuant to this subdivision shall be limited to
11 that information that the commissioner determines necessary for the
12 completion of this investigation.

13 (3) The information, report or record received by the commissioner or
14 his OR HER designee pursuant to this subdivision shall be subject to
15 section two thousand eight hundred five-m, section eighteen, as added by
16 chapter four hundred ninety-seven of the laws of nineteen hundred eight-
17 y-six, and article twenty-seven-F of the public health law, section
18 33.13 of this chapter, and any applicable federal statute or regulation.

19 S 5. This act shall take effect immediately.