

4838

2013-2014 Regular Sessions

I N   S E N A T E

April 26, 2013

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Introduced by Sens. HANNON, GOLDEN -- read twice and ordered printed,  
and when printed to be committed to the Committee on Mental Health and  
Developmental Disabilities

AN ACT to limit the reduction of the mental health census of adult homes  
and to establish a workgroup to study and report upon the transition  
of persons with serious mental illness into the most integrated  
setting appropriate to their needs

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

1     Section 1. Legislative intent. The legislature hereby finds that the  
2     goals of the state include providing individuals with mental illnesses  
3     the tools necessary to: (a) make informed choices and decisions; and (b)  
4     achieve equality of opportunity, full inclusion and integration in soci-  
5     ety, employment, independent living, and economic and social self-suffi-  
6     ciency. The legislature further finds that such goals are best achieved  
7     by providing individuals with mental illnesses a variety of residential  
8     options that are both integrated and appropriate to the needs of each  
9     person. Therefore, the legislature finds it appropriate and prudent to  
10    continue overseeing the regulation of adult homes as the state develops  
11    community based settings sufficient to meet the desires and needs of  
12    individuals with mental illnesses.

13    S 2. Definitions. For the purposes of this act, the following terms  
14    shall have the following meanings:

15    (a) "Administrative action" means any decision or action by a state  
16    agency, including but not limited to the promulgation, implementation or  
17    enforcement of regulations.

18    (b) "Adult home" means an adult care facility established and oper-  
19    ated, pursuant to article 7 of the social services law, for the purpose  
20    of providing long-term residential care, room, board, housekeeping,  
21    personal care and supervision to five or more adults who are unrelated  
22    to the operator.

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

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(c) "Mental health census" means the number or percentage of residents in a facility who are persons with serious mental illness.

(d) "Persons with serious mental illness" means persons who are in psychiatric crisis; or persons who have a designated diagnosis of mental illness under the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, and whose severity and duration of mental illness results in substantial functional disability.

(e) "Transitional adult home" means an adult home with a licensed capacity of greater than 80 beds and a mental health census of 25 percent or more of the resident population. Notwithstanding any provision of law or regulation to the contrary, an adult home shall not be considered a transitional adult home if it is authorized to operate 55 percent or more of its total licensed capacity as assisted living program beds, pursuant to section 461-1 of the social services law.

S 3. Notwithstanding any provision of law, rule or regulation to the contrary, no state agency shall undertake any administrative action designed to limit or reduce the mental health census of an adult home unless such administrative action:

(a) ensures that all persons with serious mental illness are provided with the opportunity to choose to live in the most integrated setting appropriate to their needs, as determined by individual assessments conducted by managed long term care providers or health homes;

(b) facilitates informed decision making by persons with serious mental illness by requiring that current residents are presented with fair, objective and unbiased information about their housing options;

(c) prohibits the discharge of an adult home resident into community based settings without department certification that appropriate alternative housing options and supportive services are available in such resident's preferred geographic location;

(d) clearly defines "persons with serious mental illness" as persons who have a designated diagnosis of mental illness under the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, and whose severity and duration of mental illness directly results in substantial functional disability; provided that

(1) "designated diagnosis of mental illness" shall not include a diagnosis of Alzheimer's disease, dementia or acquired brain injury; and

(2) "substantial functional disability" shall be substantiated by documentation that an individual has experienced at least two of the four following functional limitations during the past 12 months as a direct result of such mental illness:

(i) marked and prolonged difficulties in self care (personal hygiene, diet, clothing, avoiding injuries, securing health care or complying with medical advice).

(ii) marked and prolonged restriction of activities of daily living (maintaining a residence, using transportation, day to day money management, accessing community services).

(iii) marked and prolonged difficulties in maintaining social functioning (establishing and maintaining social relationships, interpersonal interactions with primary partner, children or other family members, friends, neighbors, social skills, compliance with social norms, appropriate use of leisure time).

(iv) frequent and consistent deficiencies of concentration, persistence or pace resulting in failure to complete tasks in a timely manner (ability to complete tasks commonly found in work settings or in structured activities that take place in home or school settings; individuals may exhibit limitations in these areas when they repeatedly are unable

1 to complete simple tasks within an established time period, make  
2 frequent errors in tasks, or require assistance in the completion of  
3 tasks);

4 (e) provides adequate timeframes to transition persons with serious  
5 mental illness into the most integrated setting appropriate to their  
6 needs, and does not impose penalties or restrictions on adult home oper-  
7 ators making good faith efforts during the transition of such residents;

8 (f) comports with the state goal of providing persons with serious  
9 mental illness with care in the most integrated setting appropriate to  
10 their needs by permitting discharges from inpatient psychiatric centers  
11 or facilities, that are subject to the provisions of article 28 of the  
12 public health law, with in-patient psychiatric services to adult homes,  
13 where no less-restrictive and appropriate housing alternative is avail-  
14 able;

15 (g) is subsequent to the award of assisted living program beds pursu-  
16 ant to paragraph (j) of subdivision 3 of section 461-1 of the social  
17 services law; and

18 (h) applies only to transitional adult homes.

19 S 4. Within thirty days of the effective date of this act, the commis-  
20 sioner of health and the commissioner of mental health, shall jointly  
21 convene a workgroup to address the transition of persons with serious  
22 mental illness into the most integrated setting appropriate to their  
23 needs. The workgroup shall be co-chaired by such commissioners, and  
24 shall include: a representative sample of adult home operators, includ-  
25 ing operators of assisted living program beds; representatives of asso-  
26 ciations of adult home operators; members of adult home resident coun-  
27 cils; advocacy organizations working on behalf of adult home residents;  
28 individuals with mental illness; providers of alternative housing accom-  
29 modations and other support services; and institutions that make refer-  
30 rals to adult homes, including hospitals and local governmental units.

31 (a) The workgroup shall provide recommendations for legislative and  
32 regulatory actions, which shall address the following:

33 (1) the need to promote and respect informed choice by individuals  
34 with serious mental illness, through means including the performance of  
35 independent assessments and the provision of objective information;

36 (2) the appropriate scope of regulations, including the propriety of  
37 definitions of "persons with serious mental illness" and "transitional  
38 adult home";

39 (3) a reasonable time period for compliance with regulations, which  
40 shall take into account the need to discharge inpatients into less-res-  
41 trictive settings, and the availability of alternative housing accommo-  
42 dations and other support services. Alternative housing shall include,  
43 but not be limited to, supported housing, supportive housing, community  
44 residences, enriched housing and other housing alternatives that may be  
45 appropriate for impacted residents;

46 (4) an examination of possible costs related to transitioning resi-  
47 dents of impacted adult homes, as well as strategies by which such costs  
48 may be mitigated;

49 (5) the ability of an impacted adult home to provide appropriate  
50 accommodations and services for its residents;

51 (6) the development of long-term quality improvement for all adult  
52 home residents; and

53 (7) the financial impact of regulations on adult homes, and other  
54 licensure options or models of care to which transitional adult homes  
55 may transition.

1 (b) The workgroup shall submit a report of its findings and recommen-  
2 dations to the governor, the temporary president of the senate, the  
3 speaker of the assembly, and the chairs of the senate and assembly  
4 health committees no later than October 1, 2013.

5 S 5. Notwithstanding any provision of law, rule or regulation to the  
6 contrary, no state agency shall undertake any administrative action  
7 designed to limit or reduce the mental health census of an adult home  
8 authorized to operate 55 percent or more of its total licensed capacity  
9 of beds as assisted living program beds, pursuant to section 461-1 of  
10 the social services law, until 120 days after submission of the work-  
11 group report pursuant to section four of this act.

12 S 6. The commissioner of health shall permit a transitional adult home  
13 to request to amend a previously submitted or approved compliance plan  
14 by December 1, 2013, to reflect recommendations made by the workgroup.  
15 Such request shall be granted if, in the discretion of such commission-  
16 er, the compliance plan, as amended, would constitute an approvable plan  
17 and the amendment would not cause an undue and substantial delay in  
18 progress.

19 S 7. This act shall take effect immediately.