

991--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities -- recommitted to the Committee on Mental Health and Developmental Disabilities in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the mental hygiene law and the education law, in relation to creating mental health incident review panels

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 31.38 to read as follows:
3 S 31.38 MENTAL HEALTH INCIDENT REVIEW PANELS.
4 (A) THE COMMISSIONER IS AUTHORIZED TO ESTABLISH A MENTAL HEALTH INCI-
5 DENT REVIEW PANEL FOR THE PURPOSES OF REVIEWING THE CIRCUMSTANCES AND
6 EVENTS RELATED TO A SERIOUS INCIDENT INVOLVING A PERSON WITH MENTAL
7 ILLNESS. FOR PURPOSES OF THIS SECTION, A "SERIOUS INCIDENT INVOLVING A
8 PERSON WITH MENTAL ILLNESS" MEANS AN INCIDENT OCCURRING IN THE COMMUNITY
9 IN WHICH A PERSON WITH A SERIOUS MENTAL ILLNESS IS PHYSICALLY INJURED OR
10 CAUSES PHYSICAL INJURY TO ANOTHER PERSON, OR SUFFERS A SERIOUS AND
11 PREVENTABLE MEDICAL COMPLICATION OR BECOMES INVOLVED IN A CRIMINAL INCI-
12 DENT INVOLVING VIOLENCE. A PANEL SHALL CONDUCT A REVIEW OF SUCH SERIOUS
13 INCIDENT IN AN ATTEMPT TO IDENTIFY PROBLEMS OR GAPS IN MENTAL HEALTH
14 DELIVERY SYSTEMS AND TO MAKE RECOMMENDATIONS FOR CORRECTIVE ACTIONS TO
15 IMPROVE THE PROVISION OF MENTAL HEALTH OR RELATED SERVICES, TO IMPROVE
16 THE COORDINATION, INTEGRATION AND ACCOUNTABILITY OF CARE IN THE MENTAL
17 HEALTH SERVICE SYSTEM, AND TO ENHANCE INDIVIDUAL AND PUBLIC SAFETY.
18 (B) A MENTAL HEALTH INCIDENT REVIEW PANEL SHALL INCLUDE, BUT NEED NOT
19 BE LIMITED TO, REPRESENTATIVES FROM THE OFFICE OF MENTAL HEALTH AND THE
20 LOCAL GOVERNMENTAL UNIT WHERE THE SERIOUS INCIDENT INVOLVING A PERSON

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

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1 WITH A MENTAL ILLNESS OCCURRED. A MENTAL HEALTH INCIDENT REVIEW PANEL
2 MAY ALSO INCLUDE, IF DEEMED APPROPRIATE BY THE COMMISSIONER BASED ON THE
3 NATURE OF THE SERIOUS INCIDENT BEING REVIEWED, ONE OR MORE REPRESENTATIVES
4 FROM MENTAL HEALTH PROVIDERS, LOCAL DEPARTMENTS OF SOCIAL
5 SERVICES, HUMAN SERVICES PROGRAMS, HOSPITALS, LOCAL SCHOOLS, EMERGENCY
6 MEDICAL OR MENTAL HEALTH SERVICES, THE OFFICE OF THE COUNTY ATTORNEY,
7 STATE OR LOCAL LAW ENFORCEMENT AGENCIES, THE OFFICE OF THE MEDICAL EXAM-
8 INER OR THE OFFICE OF THE CORONER, OR OTHER APPROPRIATE STATE OR LOCAL
9 OFFICIALS.

10 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY AND TO
11 THE EXTENT CONSISTENT WITH FEDERAL LAW, A MENTAL HEALTH INCIDENT REVIEW
12 PANEL SHALL HAVE ACCESS TO THOSE CLIENT-IDENTIFIABLE MENTAL HEALTH
13 RECORDS, AS WELL AS ALL RECORDS, DOCUMENTATION AND REPORTS RELATING TO
14 THE INVESTIGATION OF AN INCIDENT BY A FACILITY IN ACCORDANCE WITH REGU-
15 LATIONS OF THE COMMISSIONER, WHICH ARE NECESSARY FOR THE INVESTIGATION
16 OF THE INCIDENT AND THE PREPARATION OF A REPORT OF THE INCIDENT, AS
17 PROVIDED IN SUBDIVISION (E) OF THIS SECTION. A MENTAL HEALTH INCIDENT
18 REVIEW PANEL ESTABLISHED PURSUANT TO THIS SECTION SHALL BE PROVIDED WITH
19 ACCESS TO ALL OTHER RECORDS IN THE POSSESSION OF STATE OR LOCAL OFFI-
20 CIALS OR AGENCIES, WITHIN TWENTY-ONE DAYS OF RECEIPT OF A REQUEST,
21 EXCEPT THOSE RECORDS PROTECTED BY SECTION 190.25 OF THE CRIMINAL PROCE-
22 DURE LAW.

23 (D) MENTAL HEALTH INCIDENT REVIEW PANELS, MEMBERS OF THE REVIEW PANELS
24 AND PERSONS WHO PRESENT INFORMATION TO A REVIEW PANEL SHALL HAVE IMMUNI-
25 TY FROM CIVIL AND CRIMINAL LIABILITY FOR ALL REASONABLE AND GOOD FAITH
26 ACTIONS TAKEN PURSUANT TO THIS SECTION, AND SHALL NOT BE QUESTIONED IN
27 ANY CIVIL OR CRIMINAL PROCEEDING REGARDING ANY OPINIONS FORMED AS A
28 RESULT OF A MEETING OF SUCH REVIEW PANEL. NOTHING IN THIS SECTION SHALL
29 BE CONSTRUED TO PREVENT A PERSON FROM TESTIFYING AS TO INFORMATION
30 OBTAINED INDEPENDENTLY OF A MENTAL HEALTH INCIDENT REVIEW PANEL, OR
31 INFORMATION WHICH IS PUBLIC.

32 (E) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ALL
33 MEETINGS CONDUCTED, ALL REPORTS AND RECORDS MADE AND MAINTAINED AND ALL
34 BOOKS AND PAPERS OBTAINED BY A MENTAL HEALTH INCIDENT REVIEW PANEL SHALL
35 BE CONFIDENTIAL, AND SHALL NOT BE OPEN OR MADE AVAILABLE, EXCEPT BY
36 COURT ORDER OR AS SET FORTH IN SUBDIVISION (G) OF THIS SECTION. EACH
37 MENTAL HEALTH INCIDENT REVIEW PANEL SHALL DEVELOP A REPORT OF THE INCI-
38 DENT INVESTIGATED. SUCH REPORT SHALL NOT CONTAIN ANY INDIVIDUALLY IDEN-
39 TIFIABLE INFORMATION, AND IT SHALL BE PROVIDED TO THE OFFICE OF MENTAL
40 HEALTH UPON COMPLETION. SUCH REPORTS MUST BE APPROVED BY THE OFFICE OF
41 MENTAL HEALTH PRIOR TO BECOMING FINAL.

42 (F) IF QUALITY PROBLEMS OF PARTICULAR MENTAL HEALTH PROGRAMS ARE IDEN-
43 TIFIED BASED ON SUCH REVIEWS, THE COMMISSIONER IS AUTHORIZED, PURSUANT
44 TO THE RELEVANT PROVISIONS OF THIS CHAPTER, TO TAKE APPROPRIATE ACTIONS
45 REGARDING THE LICENSURE OF PARTICULAR PROVIDERS, TO REFER THE ISSUE TO
46 OTHER RESPONSIBLE PARTIES FOR INVESTIGATION, OR TO TAKE OTHER APPROPRI-
47 ATE ACTION.

48 (G) IN HIS OR HER DISCRETION, THE COMMISSIONER SHALL BE AUTHORIZED TO
49 PROVIDE THE FINAL REPORT OF A REVIEW PANEL OR PORTIONS THEREOF TO ANY
50 INDIVIDUAL OR ENTITY FOR WHOM THE REPORT MAKES RECOMMENDATIONS FOR
51 CORRECTIVE OR OTHER APPROPRIATE ACTIONS THAT SHOULD BE TAKEN.

52 (H) THE COMMISSIONER SHALL SUBMIT AN ANNUAL CUMULATIVE REPORT TO THE
53 GOVERNOR AND THE LEGISLATURE INCORPORATING THE DATA IN THE MENTAL HEALTH
54 INCIDENT REVIEW PANEL REPORTS AND INCLUDING A SUMMARY OF THE FINDINGS
55 AND RECOMMENDATIONS MADE BY SUCH REVIEW PANELS. THE ANNUAL CUMULATIVE
56 REPORTS MAY THEREAFTER BE MADE AVAILABLE TO THE PUBLIC.

1 S 2. Subdivision (c) of section 33.13 of the mental hygiene law is
2 amended by adding a new paragraph 17 to read as follows:

3 17. TO A MENTAL HEALTH INCIDENT REVIEW PANEL, OR MEMBERS THEREOF,
4 ESTABLISHED BY THE COMMISSIONER PURSUANT TO SECTION 31.38 OF THIS TITLE,
5 IN CONNECTION WITH INCIDENT REVIEWS CONDUCTED BY SUCH PANEL.

6 S 3. Subdivision 3 of section 6527 of the education law, as amended by
7 chapter 257 of the laws of 1987, is amended to read as follows:

8 3. No individual who serves as a member of (a) a committee established
9 to administer a utilization review plan of a hospital, including a
10 hospital as defined in article twenty-eight of the public health law or
11 a hospital as defined in subdivision ten of section 1.03 of the mental
12 hygiene law, or (b) a committee having the responsibility of the inves-
13 tigation of an incident reported pursuant to section 29.29 of the mental
14 hygiene law or the evaluation and improvement of the quality of care
15 rendered in a hospital as defined in article twenty-eight of the public
16 health law or a hospital as defined in subdivision ten of section 1.03
17 of the mental hygiene law, or (c) any medical review committee or
18 subcommittee thereof of a local, county or state medical, dental, podia-
19 try or optometrical society, any such society itself, a professional
20 standards review organization or an individual when such committee,
21 subcommittee, society, organization or individual is performing any
22 medical or quality assurance review function including the investigation
23 of an incident reported pursuant to section 29.29 of the mental hygiene
24 law, either described in clauses (a) and (b) of this subdivision,
25 required by law, or involving any controversy or dispute between (i) a
26 physician, dentist, podiatrist or optometrist or hospital administrator
27 and a patient concerning the diagnosis, treatment or care of such
28 patient or the fees or charges therefor or (ii) a physician, dentist,
29 podiatrist or optometrist or hospital administrator and a provider of
30 medical, dental, podiatric or optometrical services concerning any
31 medical or health charges or fees of such physician, dentist, podiatrist
32 or optometrist, or (d) a committee appointed pursuant to section twen-
33 ty-eight hundred five-j of the public health law to participate in the
34 medical and dental malpractice prevention program, or (e) any individual
35 who participated in the preparation of incident reports required by the
36 department of health pursuant to section twenty-eight hundred five-l of
37 the public health law, or (f) a committee established to administer a
38 utilization review plan, or a committee having the responsibility of
39 evaluation and improvement of the quality of care rendered, in a health
40 maintenance organization organized under article forty-four of the
41 public health law or article forty-three of the insurance law, including
42 a committee of an individual practice association or medical group
43 acting pursuant to a contract with such a health maintenance organiza-
44 tion, OR (G) A MENTAL HEALTH INCIDENT REVIEW PANEL CONVENED PURSUANT TO
45 SECTION 31.38 OF THE MENTAL HYGIENE LAW, shall be liable in damages to
46 any person for any action taken or recommendations made, by him OR HER
47 within the scope of his OR HER function in such capacity provided that
48 (a) such individual has taken action or made recommendations within the
49 scope of his OR HER function and without malice, and (b) in the reason-
50 able belief after reasonable investigation that the act or recommenda-
51 tion was warranted, based upon the facts disclosed.

52 Neither the proceedings nor the records relating to performance of a
53 medical or a quality assurance review function or participation in a
54 medical and dental malpractice prevention program nor any report
55 required by the department of health pursuant to section twenty-eight
56 hundred five-l of the public health law described herein, including the

1 investigation of an incident reported pursuant to section 29.29 of the
2 mental hygiene law OR REVIEWED PURSUANT TO SECTION 31.38 OF THE MENTAL
3 HYGIENE LAW, shall be subject to disclosure under article thirty-one of
4 the civil practice law and rules except as hereinafter provided or as
5 provided by any other provision of law. No person in attendance at a
6 meeting when a medical or a quality assurance review or a medical and
7 dental malpractice prevention program or an incident reporting function
8 described herein was performed, including the investigation of an inci-
9 dent reported pursuant to section 29.29 of the mental hygiene law OR AN
10 INCIDENT REVIEWED PURSUANT TO SECTION 31.38 OF THE MENTAL HYGIENE LAW,
11 shall be required to testify as to what transpired thereat. The prohibi-
12 tion relating to discovery of testimony shall not apply to the state-
13 ments made by any person in attendance at such a meeting who is a party
14 to an action or proceeding the subject matter of which was reviewed at
15 such meeting.

16 S 4. This act shall take effect on the thirtieth day after it shall
17 have become a law.