

10068

I N A S S E M B L Y

June 11, 2014

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Abinanti) --
read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to due process
procedures for all adults with mental disabilities

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

1 Section 1. This act shall be known and may be cited as the "protection
2 of adults with mental disabilities act".

3 S 2. Legislative findings and intent. Certain federal and state laws
4 and regulations currently provide various due process protections for
5 certain categories of persons with mental disabilities. For example,
6 the federal Individuals with Disabilities Education Act provides a child
7 or parents of a child with a disability important due process
8 protections, including the right to an impartial hearing to challenge a
9 determination regarding the appropriate setting for a child with a disa-
10 bility. New York state also provides substantial due process protections
11 for the parents of a child with a disability who needs residential care
12 while this child is in school.

13 However, when a mentally disabled individual reaches the age of twen-
14 ty-one, their due process protections become significantly diminished
15 or, in some cases, end completely. Specifically, those developmentally
16 disabled adults in transitional care who reach the age of twenty-one on
17 or before June 30, 1996 have minimal due process protections pursuant to
18 section 13.38 of the mental hygiene law, and those who reached age twen-
19 ty-one on or after July 1, 1996 receive no due process protections. Some
20 of New York's most vulnerable adult populations, including those who
21 remain continuously disabled and continuously in need of residential or
22 other forms of care, thus lose important due process protections simply
23 because of their age.

24 The legislature recognizes that inappropriate or ineffective place-
25 ments and/or services for persons with mental disabilities can have
26 devastating effects for those persons impacted, including abuse, self-
27 harm, improper medication or even death. Additionally, the legislature
28 recognizes the harm a person with mental disabilities can suffer from

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

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1 the disruption to his/her current treatment needs, home life and famil-
2 iar surroundings that an inappropriate change in placement, or an
3 improper change in services, entails. Moreover, it is increasingly the
4 policy of the state of New York to afford persons with disabilities the
5 opportunity to participate in their treatment and residential placement
6 decisions, and to obtain their or their guardian's consent prior to any
7 changes of placement.

8 The legislature hereby finds that New York state must ensure that all
9 mentally disabled adults are afforded necessary and basic due process
10 protections, and fair and meaningful due process proceedings, relating
11 to proposed changes in placement, or proposed changes in services
12 rendered, to those mentally disabled adults under the care of New York
13 state agencies to ensure that appropriate, effective treatment and
14 placements are provided for this highly vulnerable adult population.

15 In order to ensure that New York state is providing the most appropri-
16 ate setting and services for all persons with mental disabilities, the
17 legislature hereby finds that it is incumbent upon New York state to
18 institute uniform minimum due process protections for all persons with
19 mental disabilities age twenty-one and older. These protections provide,
20 in part, for fair and meaningful due process proceedings relating to a
21 proposed change of placement or a proposed change in services by the
22 offices of the department of mental hygiene, and are intended to supple-
23 ment and strengthen the patchwork of various protections for adults with
24 mental disabilities in place under existing laws.

25 S 3. The mental hygiene law is amended by adding a new section 13.36
26 to read as follows:

27 S 13.36 PROTECTION OF ADULTS WITH MENTAL DISABILITIES.

28 1. DEFINITIONS. AS USED IN THIS SECTION, UNLESS OTHERWISE EXPRESSLY
29 STATED OR UNLESS THE CONTEXT OTHERWISE REQUIRES:

30 (A) "ADULTS WITH MENTAL DISABILITIES" MEANS ALL PERSONS WITH A MENTAL
31 DISABILITY, AS THAT TERM IS DEFINED IN SECTION 1.03 OF THIS CHAPTER, AND
32 WHO ARE TWENTY-ONE YEARS OLD OR OLDER, OR THE GUARDIAN OR GUARDIANS OR
33 REPRESENTATIVE OR REPRESENTATIVES OF ANY SUCH PERSON, IF ANY EXIST.

34 (B) "SERVICES" MEANS ANY AND ALL CARE AND TREATMENT RENDERED TO ADULTS
35 WITH MENTAL DISABILITIES (I) WHO ARE UNDER THE CARE, AUTHORITY, JURIS-
36 DICTION, SUPERVISION OR CONTROL OF THE VARIOUS OFFICES OF THE DEPART-
37 MENT, AND/OR (II) WHICH ARE FUNDED IN ANY PART BY ANY OFFICE OF THE
38 DEPARTMENT. AS USED IN THIS SECTION, "SERVICES" INCLUDES, BUT IS NOT
39 LIMITED TO, "SERVICES FOR THE MENTALLY DISABLED" AS THAT TERM IS DEFINED
40 IN SECTION 1.03 OF THIS CHAPTER, AS WELL AS ANY OTHER TREATMENT OF ANY
41 FORM OR TYPE.

42 (C) "TRIGGERING EVENT" MEANS ANY PROPOSED ACTION, OR DENIAL, BY THE
43 DEPARTMENT OR ANY OF ITS OFFICES, AS DESCRIBED IN SUBPARAGRAPH (I) OF
44 PARAGRAPH (A) OR SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWO OF
45 THIS SECTION.

46 2. ROLE OF DEPARTMENT; TRIGGERING EVENTS. THE DEPARTMENT, THROUGH ITS
47 VARIOUS OFFICES AND IN CONJUNCTION WITH ANY OTHER NECESSARY STATE AGENCY
48 OR OFFICE, WHERE APPLICABLE, SHALL DEVELOP, IMPLEMENT, AND ENSURE A
49 SYSTEM OF MEANINGFUL DUE PROCESS PROTECTIONS FOR ADULTS WITH MENTAL
50 DISABILITIES, AND SHALL DEVELOP AND PROMULGATE REGULATIONS, POLICIES AND
51 PROCEDURES NECESSARY TO RESOLVE OBJECTIONS BY OR ON BEHALF OF ADULTS
52 WITH MENTAL DISABILITIES IN CONFORMANCE WITH THIS SECTION. SUCH DUE
53 PROCESS PROTECTIONS SHALL BE AFFORDED TO ADULTS WITH MENTAL DISABILITIES
54 WHEN:

55 (A) ANY OFFICE OF THE DEPARTMENT INITIATES A PROPOSAL WHICH MAY RESULT
56 IN:

1 (I) A CHANGE IN PLACEMENT FOR AN ADULT WITH MENTAL DISABILITIES,
2 INCLUDING ANY PROPOSED DISCHARGE OR RELOCATION FROM A FACILITY WHERE
3 SERVICES ARE BEING PROVIDED; OR

4 (II) A REDUCTION, SUSPENSION OR TERMINATION OF SPECIFIC SERVICES OR
5 FUNDING WHICH IS BEING PROVIDED TO AN ADULT WITH MENTAL DISABILITIES
6 PURSUANT TO AN INDIVIDUALIZED TREATMENT PLAN, INCLUDING AN INDIVIDUAL-
7 IZED SERVICES PLAN; AND,

8 (III) A TIMELY OBJECTION TO SUCH PROPOSAL OR PROPOSALS AND A REQUEST
9 FOR AN ADMINISTRATIVE APPEAL IS MADE BY OR ON BEHALF OF AN ADULT WITH
10 MENTAL DISABILITIES; OR,

11 (B) ANY OFFICE OF THE DEPARTMENT:

12 (I) DENIES AN ADULT WITH MENTAL DISABILITIES SPECIFIC SERVICES OR A
13 SPECIFIC PLACEMENT WHICH IS RECOMMENDED FOR THAT INDIVIDUAL PURSUANT TO
14 AN INDIVIDUALIZED TREATMENT PLAN, INCLUDING AN INDIVIDUALIZED SERVICES
15 PLAN; AND,

16 (II) A TIMELY OBJECTION TO SUCH DENIAL OR DENIALS AND A REQUEST FOR AN
17 ADMINISTRATIVE APPEAL IS MADE BY OR ON BEHALF OF AN ADULT WITH MENTAL
18 DISABILITIES.

19 3. MINIMUM DUE PROCESS PROTECTIONS. DUE PROCESS PROTECTIONS FOR ADULTS
20 WITH MENTAL DISABILITIES IMPLEMENTED BY THE DEPARTMENT AND ITS OFFICES
21 SHALL INCLUDE, AT A MINIMUM, THE RIGHTS OF ADULTS WITH MENTAL DISABILI-
22 TIES:

23 (A) TO BE PROVIDED WITH ADVANCE WRITTEN NOTICE BY THE RELEVANT OFFICE
24 OF THE DEPARTMENT OF ANY TRIGGERING EVENT, WHETHER IT BE A PROPOSED
25 ACTION OR A DENIAL BY SUCH OFFICE OF THE DEPARTMENT, WHICH NOTICE SHALL
26 SET FORTH ALL REASONS AND DOCUMENTATION, IF ANY, IN SUPPORT OF THE
27 DETERMINATION BY THE RELEVANT OFFICE OF THE DEPARTMENT, AND WHICH SHALL
28 SPECIFICALLY ADVISE AN ADULT WITH MENTAL DISABILITIES AS TO HIS OR HER
29 RIGHT TO FORMALLY OBJECT IN WRITING AND TO REQUEST AN ADMINISTRATIVE
30 HEARING WITHIN THIRTY (30) DAYS OF RECEIPT OF NOTICE OF THE TRIGGERING
31 EVENT, AND AS TO THEIR OTHER RIGHTS AS PROVIDED WITHIN THIS SECTION;

32 (B) TO BE REPRESENTED IN ANY PROCEEDINGS BEFORE THE RELEVANT OFFICE OF
33 THE DEPARTMENT BY ANY PERSON INCLUDING, BUT NOT LIMITED TO, A PARENT,
34 GUARDIAN, CORRESPONDENT, ADVOCATE, LEGAL REPRESENTATIVE, THEMSELVES, OR
35 ANY OTHER PERSON OR REPRESENTATIVE;

36 (C) TO REQUEST, AND TO BE PROVIDED WITH, AN OPPORTUNITY TO PRESENT, IN
37 A MEANINGFUL FASHION AND AT A REASONABLE TIME NOT LESS THAN FOURTEEN
38 (14) DAYS FROM THE DATE A WRITTEN REQUEST FOR AN ADMINISTRATIVE HEARING
39 IS MADE, ANY OBJECTION TO A TRIGGERING EVENT BY THE RELEVANT OFFICE OF
40 THE DEPARTMENT TO AN IMPARTIAL DECISION MAKER IN THE CONTEXT OF AN
41 EVIDENTIARY HEARING;

42 (D) TO DISCOVER AND OBTAIN, AND HAVE A MEANINGFUL OPPORTUNITY TO
43 REVIEW IN ADVANCE OF THE EVIDENTIARY HEARING, ANY DOCUMENTS TO BE USED
44 BY THE RELEVANT OFFICE OF THE DEPARTMENT IN SUPPORT OF ITS DETERMINATION
45 AT SUCH HEARING;

46 (E) TO PRESENT AND ELICIT EVIDENCE AND WITNESSES, AND CONFRONT AND
47 CROSS-EXAMINE EVIDENCE AND WITNESSES AT SUCH EVIDENTIARY HEARING;

48 (F) TO OBTAIN A REASONABLY PROMPT WRITTEN DETERMINATION BY THE IMPAR-
49 TIAL HEARING OFFICER, WHICH SHALL BE BASED ON THE EVIDENCE AND TESTIMONY
50 INTRODUCED AND RENDERED AT THE HEARING, AND IN WHICH IT IS DETERMINED
51 WHETHER THE TRIGGERING EVENT TAKEN OR PROPOSED BY THE RELEVANT OFFICE OF
52 THE DEPARTMENT, IF ULTIMATELY ALLOWED, WOULD BE (I) IN THE OVERALL BEST,
53 INDIVIDUAL INTERESTS OF THE ADULT WITH MENTAL DISABILITIES, (II) RESULT
54 IN APPROPRIATE, EFFECTIVE SERVICES AND/OR PLACEMENT FOR SUCH INDIVIDUAL,
55 AND (III) SO AS TO BEST ENABLE THEIR PERSONAL DEVELOPMENT;

1 (G) TO APPEAL, IF NECESSARY, THE WRITTEN DETERMINATION RENDERED BY THE
2 IMPARTIAL HEARING OFFICER TO THE COMMISSIONER OF THE RELEVANT OFFICE OF
3 THE DEPARTMENT, WHO MAY REMAND THE MATTER TO THE HEARING OFFICER FOR
4 FURTHER REVIEW OR FINDINGS, IF NECESSARY, AND WHO SHALL, AFTER REVIEW OF
5 THE MATTER, ISSUE A FURTHER WRITTEN DETERMINATION WHICH SHALL BE BINDING
6 ON THE RELEVANT OFFICE OF THE DEPARTMENT AS ITS FINAL ADMINISTRATIVE
7 DETERMINATION;

8 (H) TO APPEAL, IF NECESSARY, THE FINAL WRITTEN DETERMINATION RENDERED
9 BY THE COMMISSIONER ON BEHALF OF THE RELEVANT OFFICE OF THE DEPARTMENT
10 BY WAY OF A PROCEEDING PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL
11 PRACTICE LAW AND RULES; AND

12 (I) TO CONTINUED SERVICES, PROGRAMMING, FUNDING AND PLACEMENT BY THE
13 RELEVANT OFFICE OF THE DEPARTMENT, OF THE SAME LEVEL AND TYPE AS THAT
14 PROVIDED BY SUCH OFFICE PRIOR TO THE TRIGGERING EVENT, DURING THE PERIOD
15 THAT AN OBJECTION BY AN ADULT WITH MENTAL DISABILITIES IS UNDERGOING
16 ADMINISTRATIVE AND/OR APPELLATE REVIEW, UNLESS AS OTHERWISE AGREED TO BY
17 SUCH OFFICE AND SUCH ADULT WITH MENTAL DISABILITIES OR HIS OR HER GUARD-
18 IAN OR REPRESENTATIVE.

19 4. NOTHING IN THIS SECTION SHALL PREVENT THE DEPARTMENT AND ITS
20 OFFICES FROM DESIGNING AND IMPLEMENTING DISPUTE RESOLUTION MECHANISMS
21 WHICH ARE NOT INCONSISTENT WITH THE DUE PROCESS PROTECTIONS FOR ADULTS
22 WITH MENTAL DISABILITIES SET FORTH BY THIS SECTION, INCLUDING EXPEDITED,
23 OR INFORMAL (NON-BINDING), DISPUTE RESOLUTION MECHANISMS THAT MAY BE
24 AGREED TO BY THE RELEVANT OFFICE OF THE DEPARTMENT AND SUCH ADULT WITH
25 MENTAL DISABILITIES OR HIS OR HER GUARDIAN OR REPRESENTATIVE.

26 5. THE MINIMUM DUE PROCESS PROTECTIONS FOR ADULTS WITH MENTAL DISABIL-
27 ITIES SET FORTH WITHIN THIS SECTION SHALL SERVE TO SUPPLEMENT AND REIN-
28 FORCE ANY AND ALL OTHER LAWS OR AUTHORITIES WHICH PROVIDE FOR CERTAIN
29 RIGHTS FOR THE DEVELOPMENTALLY DISABLED ADULT POPULATION, INCLUDING THE
30 STATE ADMINISTRATIVE PROCEDURE ACT OR APPLICABLE FEDERAL REQUIREMENTS,
31 IF ANY, PERTAINING TO DUE PROCESS PROTECTIONS FOR SUCH INDIVIDUALS. IN
32 THE ABSENCE OF REGULATIONS, THE PROVISIONS OF THE STATE ADMINISTRATIVE
33 PROCEDURE ACT SHALL CONTROL THE HEARING PROCESS WHERE NOT INCONSISTENT
34 WITH THE PROVISIONS OF THIS SECTION. THE DEPARTMENT, THROUGH ITS
35 OFFICES, SHALL TAKE ALL ACTIONS NECESSARY TO ENSURE THE CONTINUED
36 COMPLIANCE WITH ANY APPLICABLE FEDERAL AUTHORITIES TO THE EXTENT THAT
37 ANY PROVISION OF THIS SECTION MAY BE DEEMED TO CONFLICT WITH SUCH
38 AUTHORITIES.

39 S 4. This act shall take effect immediately.