

S T A T E O F N E W Y O R K

3542--A

2013-2014 Regular Sessions

I N A S S E M B L Y

January 28, 2013

Introduced by M. of A. WEISENBERG, GUNTHER, SCHIMEL, SWEENEY, TITUS, McKEVITT, BARRON, JAFFEE, GIBSON, COLTON, ROBERTS -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, CROUCH, DUPREY, GOTTFRIED, GRAF, McDONOUGH, RA, ROBINSON -- read once and referred to the Committee on Mental Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the mental hygiene law, in relation to duties of providers of services for the developmentally disabled

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

1 Section 1. Subdivision 2 of section 31.11 of the mental hygiene law,
2 as amended by chapter 558 of the laws of 2011, is amended to read as
3 follows:
4 2. (A) making such reports as are necessary to provide IMMEDIATE
5 REPORTING AND notification to 911 BY THE MANDATED REPORTER, the district
6 attorney or other appropriate law enforcement official and the commis-
7 sioner or his or her authorized representative as soon as possible, [or
8 in any event within three working days,] if it appears that a crime may
9 have been committed against a patient receiving services from such
10 provider, unless it appears that the crime includes an employee, intern,
11 volunteer, consultant, contractor, or visitor and the alleged conduct
12 caused physical injury or the patient was subject to unauthorized sexual
13 contact, or if it appears the crime is endangering the welfare of an
14 incompetent or physically disabled person pursuant to section 260.25 of
15 the penal law, or if the crime was any felony under state or federal
16 law, then the district attorney or other appropriate law enforcement
17 official must be contacted immediately[, and in any event no later than
18 twenty-four hours and such] . SUCH other reports, uniform and otherwise,
19 as are required by the commissioner or his or her authorized represen-
20 tative with respect to its operations. If there is reasonable cause to
21 believe that the crime against the client may have occurred in a facili-

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

LBD07649-04-3

1 ty or program of any other service provider licensed, certified, funded
2 or operated by a state agency, the administrator or chief executive
3 officer of such other service provider shall also be notified AND ALSO
4 HAS THE RESPONSIBILITY TO ENSURE THAT 911 WAS NOTIFIED as soon as possi-
5 ble[, or in any event within three working days]. Provided however,
6 nothing herein shall require such report to an administrator or chief
7 executive officer of a provider who is alleged to have committed the
8 crime. [The commissioner may execute a memorandum of understanding with
9 the commissioners of other appropriate state agencies to ensure the
10 coordination and cooperation of such agencies and providers of services
11 with regard to the conduct of any investigation and prevention of unnec-
12 essary duplicative investigations resulting from the report of an
13 alleged crime that may have occurred in a facility or program of another
14 service provider.] Information obtained by the commissioner or the
15 commission on quality of care for the mentally disabled from the records
16 of patients receiving services shall be kept confidential in accordance
17 with the provisions of this chapter.

18 (B) ANY AND ALL STATE OR PRIVATE DIRECT CARE EMPLOYEES OR ANY OTHER
19 OFFICIAL, EMPLOYEE OR VOLUNTEER WITHIN ANY FACILITY OPERATED BY, CERTI-
20 FIED, LICENSED, FUNDED OR OTHERWISE AUTHORIZED BY THE DEPARTMENT THAT
21 WITNESSES AND REPORTS ANY ALLEGATION OF ABUSE, NEGLECT, MALTREATMENT,
22 UNAUTHORIZED USE OF RESTRAINTS OR SECLUSION, OR ANY OTHER SUSPICIOUS
23 ACTS, OR PREMATURE DEATHS PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION
24 SHALL BE PROTECTED FROM ANY AND ALL RETRIBUTION, SUSPENSION OR TERMI-
25 NATION BY THE FACILITY, ITS EMPLOYEES OR THE DEPARTMENT FOR REPORTING
26 SUCH. ANY PERSON THAT TREATS A WHISTLEBLOWER WRONGFULLY, SUSPENDS A
27 WHISTLEBLOWER OR FIRES A WHISTLEBLOWER FOR HIS OR HER ACTIONS SHALL BE
28 SUBJECT TO TERMINATION AND SHALL NOT BE ENTITLED TO ABSOLUTE OR QUALI-
29 FIED IMMUNITY IN A CAUSE OF ACTION FOR CIVIL LIABILITY.

30 S 2. This act shall take effect immediately.