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

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "people first act of 2013".

S 2. Legislative findings. It is the intent of the legislature to ensure that individuals with developmental disabilities who utilize long-term care services under the medical assistance program and other long-term care related benefit programs administered by the state have meaningful access to a reasonable array of community-based and institutional program options and to ensure the well-being of individuals with developmental disabilities, taking into account their informed and expressed choices. Furthermore, the legislature declares that it is the policy of the state to ensure that the clinical, habilitative, and social needs of individuals with developmental disabilities who choose to reside in integrated community-based settings can have those needs met in integrated community-based settings. In order to meaningfully comply with this policy, the state must have an understanding of the existing capacity in integrated-community based settings, including direct support professionals and licensed professionals, such as physicians, dentists, nurse practitioners, nurses, and psychiatrists, as well 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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It is further the intent of the legislature to support the satisfaction and success of consumers through the delivery of quality services and supports. Evaluation of the services that consumers receive is a key aspect to the service system. Utilizing the information that consumers and their families provide about such services in a reliable and meaningful way is also critical to enable the commissioner of developmental disabilities to assess the performance of the state's developmental services system and to improve services for consumers in the future. To that end, the commissioner of developmental disabilities shall conduct a geographic analysis of supports and services in community settings and implement an improved, unified quality assessment system, in accordance with this act.

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

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

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

(II) "LICENSED PROFESSIONALS" MEANS, BUT IS NOT LIMITED TO, PHYSICIANS, DENTISTS, DENTAL HYGIENISTS, DENTAL ASSISTANTS, NURSE PRACTITIONERS, LICENSED PRACTICAL NURSES, REGISTERED NURSES, PSYCHIATRISTS, PSYCHOLOGISTS, LICENSED MASTER SOCIAL WORKERS, OR LICENSED CLINICAL SOCIAL WORKERS, LICENSED TO PRACTICE PURSUANT TO THE EDUCATION LAW AND OTHER QUALIFIED MENTAL HEALTH PROFESSIONALS.

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

(2) SUBJECT TO AVAILABLE APPROPRIATIONS THEREFOR, THE COMMISSIONER SHALL CONDUCT A GEOGRAPHIC ANALYSIS OF SUPPORTS AND SERVICES IN COMMUNITY SETTINGS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES. THIS ANALYSIS SHALL ALSO IDENTIFY GAPS BETWEEN REQUIRED SUPPORTS AND SERVICES BY REGION OF THE STATE.

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

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

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

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

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

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

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

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

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

(VI) THE NUMBER OF INDIVIDUALS WHO ARE CURRENTLY RECEIVING SUPPORTS AND SERVICES, INCLUDING RESIDENTIAL SERVICES, WHOSE CURRENT LIVING SITUATION IS NOT ADEQUATE TO MEET THEIR NEEDS AND WHO ARE AWAITING AN ALTERNATIVE PLACEMENT OR ALTERNATIVE SUPPORT AND SERVICE DELIVERY OPTIONS;

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

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

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

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

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

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

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

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

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

S 5. This act shall take effect immediately.