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

8024

2013-2014 Regular Sessions

I N A S S E M B L Y

June 14, 2013

Introduced by M. of A. WEISENBERG -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to creating a bill of rights for people with developmental disabilities

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

Section 1. The mental hygiene law is amended by adding two new sections 13.04 and 13.36 to read as follows:

S 13.04 PEOPLE WITH DEVELOPMENTAL DISABILITIES BILL OF RIGHTS.

(A) THE PRINCIPLES ENUNCIATED IN SUBDIVISION (C) OF THIS SECTION ARE DECLARED TO BE THE PUBLIC POLICY OF THE STATE AND A COPY OF SUCH STATEMENT OF RIGHTS SHALL BE POSTED CONSPICUOUSLY IN A PUBLIC PLACE IN EACH RESIDENCE.

(B) THE COMMISSIONER SHALL MAKE AVAILABLE TO EVERY RESIDENCE ON THE OFFICE'S WEBSITE A COPY OF THE STATEMENT OF RIGHTS PROVIDED IN SUBDIVISION (C) OF THIS SECTION IN THE TOP SIX LANGUAGES OTHER THAN ENGLISH SPOKEN IN THE STATE ACCORDING TO THE LATEST AVAILABLE DATA FROM THE U.S. BUREAU OF CENSUS, AND SHALL ADOPT ANY RULES AND REGULATIONS NECESSARY TO ENSURE THAT SUCH QUALIFIED FAMILY MEMBERS AND GUARDIANS ARE TREATED IN ACCORDANCE WITH THE PROVISIONS OF SUCH STATEMENT.

(C) THE STATEMENT OF RIGHTS SHALL CONSIST OF THE FOLLOWING:

"PEOPLE WITH DEVELOPMENTAL DISABILITIES BILL OF RIGHTS"

PEOPLE WITH DEVELOPMENTAL DISABILITIES SHALL HAVE THE FOLLOWING RIGHTS:

YOU HAVE THE RIGHT TO DIGNITY, RESPECT AND A COMFORTABLE LIVING ENVIRONMENT.

YOU HAVE THE RIGHT TO QUALITY OF CARE AND TREATMENT WITHOUT DISCRIMINATION.

YOU HAVE THE RIGHT OF FREEDOM OF CHOICE TO MAKE YOUR OWN INDEPENDENT DECISIONS, IF ABLE AND IF UNABLE, THEN A PARENT OR LEGAL GUARDIAN HAS THE RIGHT TO MAKE THEM FOR YOU.

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

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YOU HAVE THE RIGHT TO SAFEGUARD YOUR PROPERTY AND MONEY.

YOU HAVE THE RIGHT TO SAFEGUARDS IN YOUR ADMISSION, TRANSFER AND DISCHARGE.

YOU HAVE THE RIGHT TO PRIVACY IN COMMUNICATIONS.

YOU HAVE THE RIGHT TO PARTICIPATE IN ORGANIZATIONS AND ACTIVITIES OF YOUR CHOICE.

YOU HAVE THE RIGHT TO AN EASY TO USE AND RESPONSIVE COMPLAINT PROCEDURE. THIS PROCEDURE SHALL ALSO BE AVAILABLE TO YOUR PARENT OR LEGAL GUARDIANS.

YOU HAVE THE RIGHT TO EXERCISE ALL OF YOUR RIGHTS WITHOUT FEAR OF REPRISALS.

YOU HAVE THE RIGHT TO FREEDOM FROM ALL FORMS OF ABUSE INCLUDING PHYSICAL, SEXUAL AND PSYCHOLOGICAL.

YOU HAVE THE RIGHT OF FREEDOM FROM UNAUTHORIZED USE OF RESTRAINTS OR SECLUSION.

YOU HAVE THE RIGHT TO NEVER BE RESTRAINED WITH ANY TYPE OF RESTRAINT THAT RESTRICTS BREATHING FOR ANY REASON.

YOU HAVE THE RIGHT, IN THE CASE OF ANY ALLEGATION OF ABUSE OR NEGLECT, TO BE SEEN BY A COMPLETELY INDEPENDENT MEDICAL FACILITY, DOCTOR OR HOSPITAL.

YOU HAVE THE RIGHT TO RECEIVE TREATMENT WITHOUT DISCRIMINATION AS TO RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, DISABILITY, SEXUAL ORIENTATION, SOURCE OF PAYMENT OR AGE.

YOU HAVE THE RIGHT TO RECEIVE CONSIDERATE AND RESPECTFUL CARE IN A CLEAN AND SAFE ENVIRONMENT FREE OF UNNECESSARY RESTRAINTS.

YOU HAVE THE RIGHT TO RECEIVE EMERGENCY CARE WHEN NECESSARY.

YOU HAVE THE RIGHT TO ENSURE PROPER MEDICAL CARE IS ALWAYS PROVIDED.

YOU HAVE THE RIGHT TO A LIVING ENVIRONMENT THAT IS SMOKE FREE.

YOU HAVE THE RIGHT TO RECEIVE COMPLETE INFORMATION ABOUT YOUR DIAGNOSIS, TREATMENT AND PROGNOSIS. THIS INFORMATION SHALL ALSO BE AVAILABLE TO YOUR PARENT AND/OR LEGAL GUARDIAN.

YOU HAVE THE RIGHT TO RECEIVE ALL THE INFORMATION NEEDED TO GIVE INFORMED CONSENT FOR AN ORDER NOT TO RESUSCITATE. ONLY A LEGAL GUARDIAN THAT IS A FAMILY MEMBER CAN SIGN OFF ON AN ORDER NOT TO RESUSCITATE, IF THE PERSON WITH THE DISABILITY IS UNABLE TO.

YOU HAVE THE RIGHT TO REFUSE TO TAKE PART IN RESEARCH; IF THE CLIENT IS UNABLE TO CONSENT, ANY APPROVAL MUST BE BY A FAMILY MEMBER.

YOU HAVE THE RIGHT TO PRIVACY AND CONFIDENTIALITY OF ALL INFORMATION AND RECORDS REGARDING CLIENT EXCEPT FOR PARENTS, LEGAL GUARDIANS, THOSE ALLOWED PER JONATHAN'S LAW, LAW ENFORCEMENT AGENCIES OR DISTRICT ATTORNEYS.

YOU HAVE THE RIGHT TO VIEW AND OBTAIN COPIES OF YOUR MEDICAL RECORDS AT ANY TIME WITHOUT CHARGE.

YOU HAVE THE RIGHT TO COMPLAIN WITHOUT FEAR OF REPRISALS ABOUT THE CARE AND SERVICES YOU ARE RECEIVING.

YOU HAVE THE RIGHT TO AUTHORIZE THOSE FAMILY MEMBERS AND OTHER ADULTS WHO WILL BE GIVEN PRIORITY TO VISIT CONSISTENT WITH YOUR ABILITY TO RECEIVE VISITORS.

YOU HAVE THE SAME RIGHT AS ANY OTHER CITIZEN OR RESIDENT THAT IF AN ALLEGED CRIME IS COMMITTED AGAINST YOU, IT IS IMMEDIATELY REQUIRED TO BE REPORTED TO 911 AND YOUR PARENT AND/OR LEGAL GUARDIAN MUST BE NOTIFIED.

YOU HAVE THE RIGHT TO A FEE SHIFTING CAUSE OF ACTION THAT ALLOWS YOU AND/OR YOUR PARENT OR LEGAL GUARDIAN TO ENFORCE YOUR RIGHTS IN STATE COURT.

ALL THE ABOVE ARE YOUR RIGHTS. IF THE RESIDENTIAL FACILITY DOES NOT HONOR THESE RIGHTS YOU CAN SEEK HELP BY CONTACTING THE NEW YORK STATE DEPARTMENT OF HEALTH OR BY CONTACTING THE RESIDENTIAL FACILITY.

(D) THE COMMISSIONER SHALL ESTABLISH A PUBLIC EDUCATION PROGRAM TO DISSEMINATE INFORMATION REGARDING IMPLEMENTATION OF THIS SECTION. SUCH INFORMATION SHALL INCLUDE, BUT NOT BE LIMITED TO, PUBLICATION OF THE PEOPLE WITH DEVELOPMENTAL DISABILITIES BILL OF RIGHTS AS SPECIFIED IN SUBDIVISION (C) OF THIS SECTION AND PUBLICATION OF CERTAIN PROVISIONS RELATING TO MEDICAID WAIVERS OBTAINED BY THE STATE.

S 13.36 PRIVATE ACTIONS BY PEOPLE WITH DEVELOPMENTAL DISABILITIES IN FACILITIES.

(A) ANY FACILITY THAT DEPRIVES ANY PERSON WITH A DEVELOPMENTAL DISABILITY OF ANY RIGHT OR BENEFIT, AS HEREINAFTER DEFINED, SHALL BE LIABLE TO SAID PERSON FOR INJURIES SUFFERED AS A RESULT OF SAID DEPRIVATION. FOR PURPOSES OF THIS SECTION, A "RIGHT OR BENEFIT" OF A PERSON WITH A DEVELOPMENTAL DISABILITY IN A FACILITY SHALL MEAN ANY RIGHT OR BENEFIT CREATED OR ESTABLISHED FOR THE WELL-BEING OF THE DISABLED PERSON BY THE TERMS OF ANY CONTRACT, BY ANY STATE STATUTE, CODE, RULE OR REGULATION (INCLUDING SECTION 13.04 OF THIS ARTICLE), OR BY ANY APPLICABLE FEDERAL STATUTE, CODE, RULE OR REGULATION. FOR THE PURPOSES OF THIS SECTION, "INJURY" SHALL INCLUDE, BUT NOT BE LIMITED TO, PHYSICAL HARM, EMOTIONAL HARM, DEATH, AND/OR FINANCIAL LOSS TO A PERSON WITH A DEVELOPMENTAL DISABILITY.

(B) UPON A FINDING THAT A PERSON WITH A DEVELOPMENTAL DISABILITY HAS BEEN DEPRIVED OF A RIGHT OR BENEFIT AND HAS BEEN INJURED AS A RESULT, COMPENSATORY DAMAGES SHALL BE ASSESSED IN AN AMOUNT SUFFICIENT TO COMPENSATE SUCH PATIENT FOR SUCH INJURY. IN ADDITION, WHERE THE DEPRIVATION OF ANY SUCH RIGHT OR BENEFIT IS FOUND TO HAVE BEEN WILLFUL OR IN RECKLESS DISREGARD OF THE LAWFUL RIGHTS OF THE PATIENT, PUNITIVE DAMAGES MAY BE ASSESSED.

(C) A PERSON WITH A DEVELOPMENTAL DISABILITY DEPRIVED OF A RIGHT OR BENEFIT BY A FACILITY MAY ALSO MAINTAIN AN ACTION PURSUANT TO THIS SECTION FOR ANY OTHER TYPE OF RELIEF, INCLUDING INJUNCTIVE AND DECLARATORY RELIEF, PERMITTED BY LAW.

(D) ANY DAMAGES OR OTHER RELIEF RECOVERABLE PURSUANT TO THIS SECTION MAY BE RECOVERED IN ANY ACTION WHICH A COURT MAY AUTHORIZE TO BE BROUGHT AS A CLASS ACTION PURSUANT TO ARTICLE NINE OF THE CIVIL PRACTICE LAW AND RULES. THE REMEDIES PROVIDED IN THIS SECTION ARE IN ADDITION TO AND CUMULATIVE WITH ANY OTHER REMEDIES AVAILABLE TO A PERSON WITH A DEVELOPMENTAL DISABILITY, AT LAW OR IN EQUITY OR BY ADMINISTRATIVE PROCEEDINGS, INCLUDING TORT CAUSES OF ACTION, AND MAY BE GRANTED REGARDLESS OF WHETHER SUCH OTHER REMEDIES ARE AVAILABLE OR ARE SOUGHT. EXHAUSTION OF ANY AVAILABLE ADMINISTRATIVE REMEDIES SHALL NOT BE REQUIRED PRIOR TO COMMENCEMENT OF SUIT HEREUNDER.

(E) THE AMOUNT OF ANY DAMAGES RECOVERED BY A PERSON WITH A DEVELOPMENTAL DISABILITY, IN AN ACTION BROUGHT PURSUANT TO THIS SECTION SHALL BE EXEMPT FOR PURPOSES OF DETERMINING INITIAL OR CONTINUING ELIGIBILITY FOR MEDICAL ASSISTANCE UNDER TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW AND SHALL NEITHER BE TAKEN INTO CONSIDERATION NOR REQUIRED TO BE APPLIED TOWARD THE PAYMENT OR PART PAYMENT OF THE COST OF MEDICAL CARE OR SERVICES AVAILABLE UNDER SAID TITLE ELEVEN.

(F) IF JUDGMENT IN AN ACTION MAINTAINED UNDER THIS SECTION IS RENDERED IN FAVOR OF THE PLAINTIFF, THE COURT SHALL AWARD REASONABLE ATTORNEYS' FEES AND COSTS TO THE PLAINTIFF.

(G) ANY WAIVER BY A PERSON WITH A DEVELOPMENTAL DISABILITY OR HIS LEGAL REPRESENTATIVE OF THE RIGHT TO COMMENCE AN ACTION UNDER THIS

SECTION, WHETHER ORAL OR IN WRITING, SHALL BE NULL AND VOID AND WITHOUT LEGAL FORCE OR EFFECT.

(H) ANY PARTY TO AN ACTION BROUGHT UNDER THIS SECTION SHALL BE ENTITLED TO A TRIAL BY JURY AND ANY WAIVER OF THE RIGHT TO A TRIAL BY A JURY, WHETHER ORAL OR IN WRITING, PRIOR TO THE COMMENCEMENT OF AN ACTION, SHALL BE NULL AND VOID, AND WITHOUT LEGAL FORCE OR EFFECT.

(I) 1. NO PERSON OR ENTITY SHALL DISCRIMINATE AGAINST ANY PERSON WITH A DEVELOPMENTAL DISABILITY, OR AGAINST AN EMPLOYEE OF A FACILITY, BECAUSE SUCH PERSON (OR SUCH PERSON'S REPRESENTATIVE) HAS MADE A CHARGE, TESTIFIED, ASSISTED, INITIATED, OR PARTICIPATED IN ANY MANNER IN AN INVESTIGATION, PROCEEDING, OR HEARING ARISING FROM AN ALLEGED DEPRIVATION OF A RIGHT OR BENEFIT DEFINED UNDER THIS SECTION.

2. ANY PERSON INJURED AS A RESULT OF DISCRIMINATION VIOLATING PARAGRAPH ONE OF THIS SUBDIVISION SHALL HAVE A CAUSE OF ACTION AS SET FORTH IN SUBDIVISIONS (A) THROUGH (H) OF THIS SECTION.

S 2. This act shall take effect immediately.