

8294--A

2013-2014 Regular Sessions

I N A S S E M B L Y

December 6, 2013

Introduced by M. of A. LUPARDO, RUSSELL, LIFTON, CROUCH, FRIEND, PALMES-
ANO, McDONOUGH -- read once and referred to the Committee on Mental
Health -- recommitted to the Committee on Mental Health in accordance
with Assembly Rule 3, sec. 2 -- committee discharged, bill amended,
ordered reprinted as amended and recommitted to said committee

AN ACT to amend chapter 56 of the laws of 2012, amending the mental
hygiene law and other laws relating to the office for people with
developmental disabilities and the office of mental health, in
relation to delaying the closure and consolidation of facilities oper-
ated by such offices

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "freeze unsafe closures now act".
3 S 2. Legislative findings. The legislature hereby finds that the state
4 has recently announced its intent to downsize and close numerous facili-
5 ties operated by the office of mental health and the office for people
6 with developmental disabilities. These facilities provide inpatient
7 services to individuals with serious mental illness or developmental
8 disabilities who are very frail, who are dangerous or violent, or who
9 are children and adolescents. The stated purpose of these closures is
10 to achieve full community integration of the mentally ill and develop-
11 mentally disabled individuals residing throughout the state in accord-
12 ance with the Supreme Court decision in *Olmstead*. *Olmstead v. L.C.*, 527
13 U.S. 581 (1999), is a United States Supreme Court case regarding
14 discrimination against people with mental disabilities, which held that
15 under the Americans with Disabilities Act (ADA), individuals with mental
16 disabilities have the right to live in the community rather than in
17 institutions, if in the words of the opinion of the court, "the State's
18 treatment professionals have determined that community placement is
19 appropriate, the transfer from institutional care to a less restrictive

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

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1 setting is not opposed by the affected individual, and the placement can
2 be reasonably accommodated, taking into account the resources available
3 to the State and the needs of others with mental disabilities". The
4 court also stated that "We emphasize that nothing in the ADA or its
5 implementing regulations condones termination of institutional settings
6 for persons unable to handle or benefit from community settings".

7 These closures would result in the loss of much-needed inpatient beds
8 without adequate planning for community-based, state-provided alterna-
9 tives. This plan also reduces innovative programs that include family
10 involvement or behavior modification for the mentally ill and the devel-
11 opmentally disabled. For mentally ill and developmentally disabled
12 consumers, their safety net has been cut. The termination of services
13 to these individuals by the state will have a dramatic unforeseen impact
14 by forcing state employees to move to new communities, disrupting care
15 for fragile consumers, increasing incidents of individuals with violent
16 tendencies to victimize children and others, the overburdening of hospi-
17 tal emergency rooms, and inundating local correctional facilities with
18 many new inmates.

19 The legislature hereby finds that closure of these facilities is not
20 required by the Olmstead decision and other federal mandates to achieve
21 full community integration of the mentally ill and the developmentally
22 disabled. The state will not achieve significant savings by shutting
23 the doors of these vital facilities; unfortunately, there is a very
24 significant chance the individuals being affected by these closures will
25 turn up in our criminal justice system and/or health care facilities.

26 The purpose of this act shall be to postpone action providing for the
27 closure of facilities operated by the office of mental health and the
28 office for people with developmental disabilities until April 1, 2015 so
29 more adequate planning and collaboration can occur.

30 S 3. Sections 20 and 21 of part J of chapter 56 of the laws of 2012,
31 amending the mental hygiene law and other laws relating to the office
32 for people with developmental disabilities and the office of mental
33 health, are amended to read as follows:

34 S 20. The commissioner of [the office for people with] developmental
35 disabilities shall provide notification to the temporary president of
36 the senate and the speaker of the assembly sixty days prior to a
37 reduction in capacity of twenty persons or more or closure of a develop-
38 mental center or other institutional setting which is subject to such
39 reduction or closure pursuant to such commissioner's planned downsizing
40 and closing of institutional capacity. PROVIDED, HOWEVER, THAT NO STATE
41 OPERATED FACILITY SHALL BE REDUCED IN CAPACITY OR CLOSED BY THE OFFICE
42 FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES PURSUANT TO THIS ACT PRIOR TO
43 OCTOBER 1, 2015.

44 S 21. This act shall take effect immediately, provided however, that
45 on or before May 31, 2012 the office for people with developmental disa-
46 bilities shall submit a report to the temporary president of the senate
47 and the speaker of the assembly on implementation related to the
48 restructuring of developmental disabilities services offices. The office
49 shall also publish the report on the office's website. The report shall
50 include but not be limited to: the plan timeline for transition of each
51 of the developmental disabilities service offices into a state oper-
52 ations offices of the office for people with developmental disabilities;
53 the location of each state operations office, its catchment area, and a
54 list of services that will be administered under its jurisdiction; and
55 the location of each developmental disabilities regional office, its
56 catchment area, and a list of programs under its jurisdiction; and

provided further that section twenty of this act shall expire and be deemed repealed on [March 31, 2013] OCTOBER 1, 2015.

S 4. Sections 2 and 4 of part O of chapter 56 of the laws of 2012, amending the mental hygiene law and other laws relating to the office for people with developmental disabilities and the office of mental health, section 4 as amended by section 2 of part H of chapter 56 of the laws of 2013, are amended to read as follows:

S 2. Notwithstanding the provisions of subdivisions (b) and (e) of section 7.17 of the mental hygiene law, section 41.55 of the mental hygiene law, or any other law to the contrary, the office of mental health is authorized, ON AND AFTER OCTOBER 1, 2015, to close, consolidate, reduce, transfer or otherwise redesign services of hospitals, other facilities and programs operated by the office of mental health, and to implement significant service reductions and reconfigurations according to this section as shall be determined by the commissioner of mental health to be necessary for the cost-effective and efficient operation of such hospitals, other facilities and programs. One of the intents of actions taken that result in closure, consolidation, reduction, transfer or other redesign of services of hospitals is to reinvest savings such that, to the extent practicable, comparable or greater levels of community based mental health services will be provided to persons with mental illness in need of services within the catchment areas of such hospitals, as determined by the commissioner of mental health with approval from the director of the division of the budget.

(a) In addition to the closure, consolidation or merger of one or more facilities, the commissioner of mental health is authorized, ON AND AFTER OCTOBER 1, 2015, to perform any significant service reductions that would reduce inpatient bed capacity by up to 400 beds, which shall include but not be limited to, closures of wards at a state-operated psychiatric center or the conversion of beds to transitional placement programs, provided that the commissioner provide at least 45 days notice of such reductions to the temporary president of the senate and the speaker of the assembly and simultaneously post such notice upon its public website. In assessing which significant service reductions to undertake, the commissioner shall consider data related to inpatient census, indicating nonutilization or under utilization of beds, and the efficient operation of facilities.

(b) At least 75 days prior to the anticipated closure, consolidation or merger of any hospitals named in subdivision (b) of section 7.17 of the mental hygiene law, the commissioner of mental health shall provide notice of such closure, consolidation or merger to the temporary president of the senate, and speaker of the assembly, the chief executive officer of the county in which the facility is located, and shall post such notice upon its public website. The commissioner shall be authorized to conduct any and all preparatory actions which may be required to effectuate such closures during such 75 day period. In assessing which of such hospitals to close, the commissioner shall consider the following factors: (1) the size, scope and type of services provided by the hospital; (2) the relative quality of the care and treatment provided by the hospital, as may be informed by internal or external quality or accreditation reviews; (3) the current and anticipated long-term need for the types of services provided by the facility within its catchment area, which may include, but not be limited to, services for adults or children, or other specialized services, such as forensic services; (4) the availability of staff sufficient to address the current and antic-

1 ipated long term service needs; (5) the long term capital investment
2 required to ensure that the facility meets relevant state and federal
3 regulatory and capital construction requirements, and national accredi-
4 tation standards; (6) the proximity of the facility to other facilities
5 with space that could accommodate anticipated need, the relative cost of
6 any necessary renovations of such space, the relative potential operat-
7 ing efficiency of such facilities, and the size, scope and types of
8 services provided by the other facilities; (7) anticipated savings based
9 upon economies of scale or other factors; (8) community mental health
10 services available in the facility catchment area and the ability of
11 such community mental health services to meet the behavioral health
12 needs of the impacted consumers; (9) the obligations of the state to
13 place persons with mental disabilities in community settings rather than
14 in institutions, when appropriate; and (10) the anticipated impact of
15 the closure on access to mental health services.

16 (c) Any transfers of inpatient capacity or any resulting transfer of
17 functions shall be authorized to be made by the commissioner of mental
18 health and any transfer of personnel upon such transfer of capacity or
19 transfer of functions shall be accomplished in accordance with the
20 provisions of section 70 of the civil service law ON AND AFTER OCTOBER
21 15, 2015.

22 S 4. This act shall take effect immediately and shall be deemed to
23 have been in full force and effect on and after April 1, 2012; provided
24 that the date for any closure or consolidation pursuant to this act
25 shall be on a date certified by the commissioner of mental health; and
26 provided further, however, that SECTION TWO OF this act shall expire and
27 be deemed repealed [March 31, 2013] OCTOBER 1, 2015.

28 S 5. This act shall take effect immediately and shall be deemed to
29 have been in full force and effect on and after March 31, 2013.