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I N   A S S E M B L Y

January 16, 2014

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

AN ACT to amend the mental hygiene law, in relation to enacting the "people first act of 2014"

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

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "people first act of 2014".  
3     S 2. Legislative findings. It is the intent of the legislature to  
4     ensure that individuals with developmental disabilities who utilize  
5     long-term care services under the medical assistance program and other  
6     long-term care related benefit programs administered by the state have  
7     meaningful and reliable access to a reasonable array of community-based  
8     and institutional program options and to ensure the well-being of indi-  
9     viduals with developmental disabilities, taking into account their  
10    informed and expressed choices. Furthermore, the legislature declares  
11    that it is the policy of the state to ensure that the clinical, habili-  
12    tative, and social needs of individuals with developmental disabilities  
13    who choose to reside in integrated community-based settings can have  
14    those needs met in integrated community-based settings. In order to  
15    meaningfully comply with this policy, the state must have an understand-  
16    ing of the existing capacity in integrated community-based settings,  
17    including direct support professionals and licensed professionals, such  
18    as physicians, dentists, nurse practitioners, nurses, and psychiatrists,  
19    as well as residential capacity to provide for these needs.  
20    It is further the intent of the legislature to support the satisfac-  
21    tion and success of consumers through the delivery of quality services  
22    and supports. Evaluation of the services that consumers receive is a key  
23    aspect to the service system. Utilizing the information that consumers  
24    and their families provide about such services in a reliable and mean-  
25    ingful way is also critical to enable the commissioner of developmental  
26    disabilities to assess the performance of the state's developmental  
27    services system and to improve services for consumers in the future. To  
28    that end, the commissioner of developmental disabilities shall conduct a

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

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1 geographic analysis of supports and services in community settings and  
2 implement an improved, unified quality assessment system, in accordance  
3 with this act.

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

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

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

13 (II) "LICENSED PROFESSIONALS" MEANS, BUT IS NOT LIMITED TO, PHYSI-  
14 CIANS, DENTISTS, DENTAL HYGIENISTS, DENTAL ASSISTANTS, NURSE PRACTITION-  
15 ERS, LICENSED PRACTICAL NURSES, REGISTERED NURSES, PSYCHIATRISTS,  
16 PSYCHOLOGISTS, LICENSED MASTER SOCIAL WORKERS, OR LICENSED CLINICAL  
17 SOCIAL WORKERS, LICENSED TO PRACTICE PURSUANT TO THE EDUCATION LAW AND  
18 OTHER QUALIFIED MENTAL HEALTH PROFESSIONALS.

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

24 (2) SUBJECT TO AVAILABLE APPROPRIATIONS THEREFOR, THE COMMISSIONER  
25 SHALL CONDUCT A GEOGRAPHIC ANALYSIS OF SUPPORTS AND SERVICES IN COMMUNI-  
26 TY SETTINGS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES. THIS ANALY-  
27 SIS SHALL ALSO IDENTIFY GAPS BETWEEN REQUIRED SUPPORTS AND SERVICES BY  
28 REGION OF THE STATE.

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

38 (4) IN CONDUCTING THIS ACTIVITY, THE COMMISSIONER, SUBJECT TO AVAIL-  
39 ABLE APPROPRIATIONS THEREFOR, SHALL DEVELOP AND UTILIZE A WEB-BASED  
40 DATA-BASE WHICH PRIORITIZES THE URGENCY OF NEED FOR SUPPORTS AND  
41 SERVICES. THE INFORMATION COLLECTED SHOULD ALLOW THE COMMISSIONER TO  
42 CATEGORIZE NEEDS FOR DEVELOPMENTAL DISABILITY SERVICES WITHIN A FRAME-  
43 WORK THAT ENCOMPASSES THREE LEVELS OF URGENCY OF NEEDS. THESE LEVEL OF  
44 SUPPORT NEEDS SHOULD INCLUDE: EMERGENCY NEED, FOR THOSE PERSONS WITH  
45 DEVELOPMENTAL DISABILITIES IN NEED OF IMMEDIATE SUPPORT EITHER DAY  
46 SUPPORT OR IN-HOME OR OUT-OF-HOME PLACEMENT; CRITICAL NEED FOR THOSE  
47 INDIVIDUALS WHO WILL HAVE A NEED FOR SUPPORTS OR SERVICES WITHIN ONE  
48 YEAR; AND PLANNING FOR NEED, FOR THOSE INDIVIDUALS WHOSE SUPPORT NEEDS  
49 ARE ONE TO FIVE YEARS AWAY, OR WHERE THE CAREGIVER IS AGE SIXTY OR  
50 OLDER.

51 (5) SUCH AN ANALYSIS SHOULD INCLUDE THE STATEWIDE NUMBER OF INDIVID-  
52 UALS SEEKING SERVICES, INCLUDING AWAITING PLACEMENT BROKEN DOWN INTO THE  
53 TOTAL NUMBER OF INDIVIDUALS FROM WITHIN EACH REGIONAL SERVICES OFFICE'S  
54 GEOGRAPHIC AREA WHO AWAIT RESIDENTIAL PLACEMENT, DAY SERVICE SUPPORT,  
55 HOME AND COMMUNITY-BASED WAIVER SUPPORT, EMPLOYMENT SUPPORT, BEHAVIORAL  
56 HEALTH SERVICES AND SUPPORTS, OR OTHER COMMUNITY-BASED SUPPORT. SUCH

1 INFORMATION SHOULD BE GROUPED BY THE AGE OF THE INDIVIDUAL AWAITING  
2 COMMUNITY SERVICES AND SUPPORTS AND THE AGE OF THEIR CAREGIVER, IF ANY.  
3 SUCH INFORMATION SHOULD ALSO INCLUDE WAITLIST AND PLACEMENT INFORMATION  
4 SUCH AS:

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

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

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

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

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

19 (VI) THE NUMBER OF INDIVIDUALS WHO ARE CURRENTLY RECEIVING SUPPORTS  
20 AND SERVICES, INCLUDING RESIDENTIAL SERVICES, WHOSE CURRENT LIVING SITU-  
21 ATION IS NOT ADEQUATE TO MEET THEIR NEEDS AND WHO ARE AWAITING AN ALTER-  
22 NATIVE PLACEMENT OR ALTERNATIVE SUPPORT AND SERVICE DELIVERY OPTIONS;

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

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

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

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

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

45 (c) (1) Notwithstanding any other provision of law, the commissioner,  
46 or his OR HER designee, may require from any hospital, as defined under  
47 article twenty-eight of the public health law, any information, report,  
48 or record necessary for the purpose of carrying out the functions,  
49 powers and duties of the commissioner related to the investigation of  
50 deaths and complaints of abuse, mistreatment, or neglect concerning  
51 persons with developmental disabilities who receive services, or had  
52 prior to death received services, in a facility as defined in section  
53 1.03 of this chapter, or are receiving medicaid waiver services from the  
54 office for people with developmental disabilities in a non-certified  
55 setting, and have been treated at such hospitals.

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

5 (3) The information, report or record received by the commissioner or  
6 his OR HER designee pursuant to this subdivision shall be subject to  
7 section two thousand eight hundred five-m, section eighteen, as added by  
8 chapter four hundred ninety-seven of the laws of nineteen hundred eight-  
9 y-six, and article twenty-seven-F of the public health law, section  
10 33.13 of this chapter, and any applicable federal statute or regulation.

11 S 5. This act shall take effect immediately.