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2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the executive law, in relation to the powers and duties of the justice center

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

1 Section 1. Subdivisions 26, 27 and 28 of section 553 of the executive
2 law, subdivisions 26 and 27 as added by section 3 of part A of chapter
3 501 of the laws of 2012, subdivision 28 as added by chapter 394 of the
4 laws of 2014 are amended and a new subdivision 29 is added to read as
5 follows:
6 26. To review the cost effectiveness of mental hygiene programs and
7 procedures provided for by law with particular attention to efficiency,
8 effectiveness and economy in the management, supervision and delivery of
9 such programs. Such review may include but is not limited to: (a) deter-
10 mining reasons for rising costs and possible means of controlling them;
11 (b) analyzing and comparing expenditures in mental hygiene to determine
12 the factors associated with variations in costs; and (c) analyzing and
13 comparing achievements in selected samples to determine the factors
14 associated with variations in program success and their relationship to
15 mental hygiene costs; [and]
16 27. In its discretion, to review the policies and practices relating
17 to the prevention of abuse or neglect in facilities or provider agen-
18 cies, including staffing patterns of various service models and the
19 supervision required to help ensure the safety of service recipients[.];
20 28. To carry out investigations by observing critical protocols and
21 procedures to ensure the safety of a vulnerable person or persons in
22 light of their clinical, personal considerations and the need for the
23 timely completion of an effective investigation. Such protocols and

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

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1 procedures shall be developed by the justice center in consultation with
2 the advisory council established pursuant to section five hundred
3 sixty-one of this article and the appropriate state agency. Protocols
4 and procedures developed jointly by the director of the justice center
5 and the respective state oversight agency shall be considered final upon
6 agreement between the director and any such commissioner and shall not
7 depend on a final agreement between the director of the justice center
8 and all affected agency commissioners. Such protocols and procedures
9 shall include:

10 (a) In the event that it is necessary to obtain information in the
11 course of an investigation from a vulnerable person, protocols and
12 procedures shall be established for ascertaining whether or not inter-
13 viewing such person is clinically contraindicated prior to such inter-
14 view taking place. Nothing in this subdivision shall be construed to
15 require a formal clinical assessment prior to interviewing a vulnerable
16 person.

17 (i) For those vulnerable persons subject to an interview, the justice
18 center shall develop appropriate procedures and protocols to ensure that
19 any interview is conducted safely and in a timely fashion in light of
20 relevant clinical, behavioral and other facts relating to the individ-
21 ual's disability, safety and wellbeing. Such protocols and procedures
22 shall also recognize any ability the vulnerable person may have to advo-
23 cate on his or her own behalf by providing information to facilitate an
24 investigation to enhance his or her own safety and wellbeing and the
25 safety and wellbeing of others.

26 (ii) In the event that an interview is clinically contraindicated,
27 despite the provision of appropriate procedures and protocols, including
28 special accommodations for effectively and safely obtaining timely
29 information in light of the person's clinical characteristics such as
30 the presence of a personal representative as defined in section four
31 hundred eighty-eight of the social services law, the vulnerable person
32 shall be exempt from such interview. However, the justice center may
33 determine not to grant such exemption if, in accordance with protocols
34 and procedures developed pursuant to this section, it determines that
35 there exists an overriding health and safety need to proceed with an
36 interview of the vulnerable person and provided that the justice center
37 takes necessary means to protect such vulnerable person's health, safety
38 and wellbeing during such interview.

39 (b) Procedures to inform a vulnerable person and/or their personal
40 representative of the protocols used in an interview and that such
41 interview is voluntary. Further, if applicable as determined by the
42 justice center, the vulnerable person shall be informed that any search
43 of the vulnerable individual's person or property shall also be done
44 voluntarily. Such procedures shall include:

45 (i) Appropriate notification to a vulnerable person as to what to
46 expect in an interview;

47 (ii) An appropriate means of interviewing a vulnerable person given
48 the limitations such individual may have in comprehending questions as
49 well as given linguistic and cultural barriers to such understanding;

50 (iii) Appropriate notification, when at all advisable given the nature
51 of an investigation to a personal representative that a vulnerable
52 person shall be questioned or subject to an interview and to enable such
53 personal representative to provide any information which they believe is
54 necessary to protect the individual;

1 (iv) Procedures for determining under what circumstance a personal
2 representative shall accompany an individual with a disability or a
3 vulnerable person during an interview.

4 (c) Procedures to facilitate the preparation of pertinent information,
5 including clinical information, necessary to safely conduct an investi-
6 gation pursuant to this section, including timely notification by the
7 justice center to the appropriate administrative personnel of the agency
8 serving such vulnerable person that such information will be required.
9 Such information shall be readily available to the justice center on a
10 form it prescribes prior to any contact between the justice center and
11 such individual[.]; AND

12 29. TO DEVELOP GUIDANCE DOCUMENTS RELATING TO THE PROCEDURES FOR
13 REVIEW OF REPORTABLE INCIDENTS ESTABLISHED PURSUANT TO SUBDIVISION THREE
14 OF THIS SECTION. ALL SUCH DOCUMENTS SHALL BE ADDRESSED TO EACH STATE
15 OVERSIGHT AGENCY IDENTIFIED IN SUBDIVISION FOUR OF SECTION FIVE HUNDRED
16 FIFTY OF THIS ARTICLE AND SHALL CONTAIN A UNIQUE SET OF INSTRUCTIONS FOR
17 EACH SUCH AGENCY TAKING INTO CONSIDERATION EACH SUCH AGENCY'S PARTICULAR
18 MISSION AND CONSTITUENCY. EACH SUCH AGENCY SHALL, AT THE REQUEST OF THE
19 JUSTICE CENTER, PRODUCE FOR THE JUSTICE CENTER'S REVIEW, CURRENT PROCE-
20 DURES AND PRACTICES UTILIZED IN RECORDING AND REPORTING REPORTABLE INCI-
21 DENTS. TO ENSURE CONSISTENCY ACROSS STATE AGENCIES, THE JUSTICE CENTER
22 SHALL DEVELOP OR IDENTIFY A UNIFORM SET OF CORE PRINCIPLES TO BE
23 INCLUDED IN ANY GUIDANCE DOCUMENTS PRODUCED.

24 S 2. This act shall take effect on the thirtieth day after it shall
25 have become a law.