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

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2015-2016 Regular Sessions

I N S E N A T E

January 22, 2015

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

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 operated by such offices

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 "freeze unsafe closures now act".

S 2. Legislative findings. The legislature hereby finds that the state has recently announced its intent to downsize and close numerous facilities operated by the office of mental health and the office for people with developmental disabilities. These facilities provide inpatient services to individuals with serious mental illness or developmental disabilities who are very frail, who are dangerous or violent, or who are children and adolescents. The stated purpose of these closures is to achieve full community integration of the mentally ill and developmentally disabled individuals residing throughout the state in accordance with the Supreme Court decision in Olmstead. Olmstead v. L.C., 527 U.S. 581 (1999), is a United States Supreme Court case regarding discrimination against people with mental disabilities, which held that under the Americans with Disabilities Act (ADA), individuals with mental disabilities have the right to live in the community rather than in institutions, if in the words of the opinion of the court, "the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available

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

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to the State and the needs of others with mental disabilities". The court also stated that "We emphasize that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings".

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

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

The purpose of this act shall be to postpone action providing for the closure of facilities operated by the office of mental health and the office for people with developmental disabilities until April 1, 2018 so more adequate planning and collaboration can occur.

S 3. Sections 20 and 21 of part J 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, are amended to read as follows:

S 20. The commissioner of [the office for people with] developmental disabilities shall provide notification to the temporary president of the senate and the speaker of the assembly sixty days prior to a reduction in capacity of twenty persons or more or closure of a developmental center or other institutional setting which is subject to such reduction or closure pursuant to such commissioner's planned downsizing and closing of institutional capacity. PROVIDED, HOWEVER, THAT NO STATE OPERATED FACILITY SHALL BE REDUCED IN CAPACITY OR CLOSED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES PURSUANT TO THIS ACT PRIOR TO APRIL 1, 2018.

S 21. This act shall take effect immediately, provided however, that on or before May 31, 2012 the office for people with developmental disabilities shall submit a report to the temporary president of the senate and the speaker of the assembly on implementation related to the restructuring of developmental disabilities services offices. The office shall also publish the report on the office's website. The report shall include but not be limited to: the plan timeline for transition of each of the developmental disabilities service offices into a state operations offices of the office for people with developmental disabilities; the location of each state operations office, its catchment area, and a list of services that will be administered under its jurisdiction; and the location of each developmental disabilities regional office, its 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] APRIL 1, 2018.

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 APRIL 1, 2018, 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 APRIL 1, 2018, 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 anticipated long term service needs; (5) the long term capital investment required to ensure that the facility meets relevant state and federal regulatory and capital construction requirements, and national accredi-

tation standards; (6) the proximity of the facility to other facilities with space that could accommodate anticipated need, the relative cost of any necessary renovations of such space, the relative potential operating efficiency of such facilities, and the size, scope and types of services provided by the other facilities; (7) anticipated savings based upon economies of scale or other factors; (8) community mental health services available in the facility catchment area and the ability of such community mental health services to meet the behavioral health needs of the impacted consumers; (9) the obligations of the state to place persons with mental disabilities in community settings rather than in institutions, when appropriate; and (10) the anticipated impact of the closure on access to mental health services.

(c) Any transfers of inpatient capacity or any resulting transfer of functions shall be authorized to be made by the commissioner of mental health and any transfer of personnel upon such transfer of capacity or transfer of functions shall be accomplished in accordance with the provisions of section 70 of the civil service law ON AND AFTER APRIL 15, 2018.

S 4. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2012; provided that the date for any closure or consolidation pursuant to this act shall be on a date certified by the commissioner of mental health; and provided further, however, that section two of this act shall expire and be deemed repealed [March 31, 2013] APRIL 1, 2018.

S 5. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after March 31, 2014.