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

630

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:

Section 1. Subdivisions 26, 27 and 28 of section 553 of the executive law, subdivisions 26 and 27 as added by section 3 of part A of chapter 501 of the laws of 2012, subdivision 28 as added by chapter 394 of the laws of 2014 are amended and a new subdivision 29 is added to read as follows:

26. To review the cost effectiveness of mental hygiene programs and procedures provided for by law with particular attention to efficiency, effectiveness and economy in the management, supervision and delivery of such programs. Such review may include but is not limited to: (a) determining reasons for rising costs and possible means of controlling them; (b) analyzing and comparing expenditures in mental hygiene to determine the factors associated with variations in costs; and (c) analyzing and comparing achievements in selected samples to determine the factors associated with variations in program success and their relationship to mental hygiene costs; [and]

27. In its discretion, to review the policies and practices relating to the prevention of abuse or neglect in facilities or provider agencies, including staffing patterns of various service models and the supervision required to help ensure the safety of service recipients[.];

28. To carry out investigations by observing critical protocols and procedures to ensure the safety of a vulnerable person or persons in light of their clinical, personal considerations and the need for the 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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procedures shall be developed by the justice center in consultation with the advisory council established pursuant to section five hundred sixty-one of this article and the appropriate state agency. Protocols and procedures developed jointly by the director of the justice center and the respective state oversight agency shall be considered final upon agreement between the director and any such commissioner and shall not depend on a final agreement between the director of the justice center and all affected agency commissioners. Such protocols and procedures shall include:

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

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

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

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

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

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

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

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

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

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

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