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I N S E N A T E

February 4, 2016

Introduced by Sen. AKSHAR -- 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:

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 facilities
5 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 developmentally
11 disabled individuals residing throughout the state in accordance with the
12 Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), is a United States Supreme Court case regarding
13 discrimination against people with mental disabilities, which held that
14 under the Americans with Disabilities Act (ADA), individuals with mental
15 disabilities have the right to live in the community rather than in
16 institutions, if in the words of the opinion of the court, "the State's
17 treatment professionals have determined that community placement is
18 appropriate, the transfer from institutional care to a less restrictive
19 setting is not opposed by the affected individual, and the placement can
20 be reasonably accommodated, taking into account the resources available
21 to the State and the needs of others with mental disabilities". The
22 court also stated that "We emphasize that nothing in the ADA or its
23

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

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1 implementing regulations condones termination of institutional settings
2 for persons unable to handle or benefit from community settings".

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

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

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

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

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

40 S 21. This act shall take effect immediately, provided however, that
41 on or before May 31, 2012 the office for people with developmental disa-
42 bilities shall submit a report to the temporary president of the senate
43 and the speaker of the assembly on implementation related to the
44 restructuring of developmental disabilities services offices. The office
45 shall also publish the report on the office's website. The report shall
46 include but not be limited to: the plan timeline for transition of each
47 of the developmental disabilities service offices into a state oper-
48 ations offices of the office for people with developmental disabilities;
49 the location of each state operations office, its catchment area, and a
50 list of services that will be administered under its jurisdiction; and
51 the location of each developmental disabilities regional office, its
52 catchment area, and a list of programs under its jurisdiction; and
53 provided further that section twenty of this act shall expire and be
54 deemed repealed on [March 31, 2013] APRIL 1, 2018.

55 S 4. Sections 2 and 4 of part O of chapter 56 of the laws of 2012,
56 amending the mental hygiene law and other laws relating to the office

1 for people with developmental disabilities and the office of mental
2 health, section 4 as amended by section 2 of part H of chapter 56 of the
3 laws of 2013, are amended to read as follows:

4 S 2. Notwithstanding the provisions of subdivisions (b) and (e) of
5 section 7.17 of the mental hygiene law, section 41.55 of the mental
6 hygiene law, or any other law to the contrary, the office of mental
7 health is authorized, ON AND AFTER APRIL 1, 2018, to close, consolidate,
8 reduce, transfer or otherwise redesign services of hospitals, other
9 facilities and programs operated by the office of mental health, and to
10 implement significant service reductions and reconfigurations according
11 to this section as shall be determined by the commissioner of mental
12 health to be necessary for the cost-effective and efficient operation of
13 such hospitals, other facilities and programs. One of the intents of
14 actions taken that result in closure, consolidation, reduction, transfer
15 or other redesign of services of hospitals is to reinvest savings such
16 that, to the extent practicable, comparable or greater levels of commu-
17 nity based mental health services will be provided to persons with
18 mental illness in need of services within the catchment areas of such
19 hospitals, as determined by the commissioner of mental health with
20 approval from the director of the division of the budget.

21 (a) In addition to the closure, consolidation or merger of one or more
22 facilities, the commissioner of mental health is authorized, ON AND
23 AFTER APRIL 1, 2018, to perform any significant service reductions that
24 would reduce inpatient bed capacity by up to 400 beds, which shall
25 include but not be limited to, closures of wards at a state-operated
26 psychiatric center or the conversion of beds to transitional placement
27 programs, provided that the commissioner provide at least 45 days notice
28 of such reductions to the temporary president of the senate and the
29 speaker of the assembly and simultaneously post such notice upon its
30 public website. In assessing which significant service reductions to
31 undertake, the commissioner shall consider data related to inpatient
32 census, indicating nonutilization or under utilization of beds, and the
33 efficient operation of facilities.

34 (b) At least 75 days prior to the anticipated closure, consolidation
35 or merger of any hospitals named in subdivision (b) of section 7.17 of
36 the mental hygiene law, the commissioner of mental health shall provide
37 notice of such closure, consolidation or merger to the temporary presi-
38 dent of the senate, and speaker of the assembly, the chief executive
39 officer of the county in which the facility is located, and shall post
40 such notice upon its public website. The commissioner shall be author-
41 ized to conduct any and all preparatory actions which may be required to
42 effectuate such closures during such 75 day period. In assessing which
43 of such hospitals to close, the commissioner shall consider the follow-
44 ing factors: (1) the size, scope and type of services provided by the
45 hospital; (2) the relative quality of the care and treatment provided by
46 the hospital, as may be informed by internal or external quality or
47 accreditation reviews; (3) the current and anticipated long-term need
48 for the types of services provided by the facility within its catchment
49 area, which may include, but not be limited to, services for adults or
50 children, or other specialized services, such as forensic services; (4)
51 the availability of staff sufficient to address the current and antic-
52 ipated long term service needs; (5) the long term capital investment
53 required to ensure that the facility meets relevant state and federal
54 regulatory and capital construction requirements, and national accredi-
55 tation standards; (6) the proximity of the facility to other facilities
56 with space that could accommodate anticipated need, the relative cost of

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

11 (c) Any transfers of inpatient capacity or any resulting transfer of
12 functions shall be authorized to be made by the commissioner of mental
13 health and any transfer of personnel upon such transfer of capacity or
14 transfer of functions shall be accomplished in accordance with the
15 provisions of section 70 of the civil service law ON AND AFTER APRIL 15,
16 2018.

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

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