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

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Cal. No. 673

I N S E N A T E

February 18, 2016

Introduced by Sens. HANNON, ORTT, MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the mental hygiene law, in relation to enacting the "fair access to individualized residences (FAIR) act"

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

Section 1. Legislative intent. The legislature hereby finds that many parents and family members of developmentally disabled children have cared for their loved ones for decades and now many of these family caregivers are elderly with their own age related disabilities. Increasingly, they can no longer manage the challenge of caring for an adult child who may have significant and challenging emotional and physical needs. In fact, estimates are that approximately 25% of developmentally disabled New Yorkers, or approximately 50,000 individuals, live with family caregivers who are over the age of 60. Many of these adult children need or will soon need out of home residential placements for living situations which are increasingly untenable. This situation has reached crisis proportions. Complicating matters is the fact that there is a shortage of residential placements and the process for providing those placements to those most in need is not transparent, consistent or uniform across the state. Residential placements are not necessarily allocated based on need. Nor does such allocation take into account the viability of an individual's current residential situation or any recognition of the long-standing contribution and sacrifice family caregivers have made caring for their loved ones at home at considerable savings to the state. Instead, placements are often allocated based on an individual's designation as a member of a particular class or "special population" of people with developmental disabilities.

Therefore, the state must develop and implement a caregiver assessment for ensuring that placements go to individuals most in need. This must

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

LBD14046-06-6

include recognition of the viability of an individual's living situation with a family caregiver as well as the sacrifice that many of these caregivers have made for years or even decades. Families must regain the confidence that the means will exist so that their children will receive care even when they can no longer provide it. The legislature finds that the adoption of this act is an important step toward making this commitment a reality.

S 2. Short title. This act shall be known and may be cited as the "fair access to individualized residences (FAIR) act".

S 3. The mental hygiene law is amended by adding a new section 41.59 to read as follows:

S 41.59 FAMILY CAREGIVER ASSESSMENTS.

1. FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES WHO LIVE AT HOME AND WHO ARE ON THE RESIDENTIAL REQUEST LIST MAINTAINED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, THERE SHALL BE PERFORMED A FAMILY CAREGIVER ASSESSMENT IF A REQUEST FOR SUCH ASSESSMENT HAS BEEN MADE BY THE CAREGIVER OF SUCH AN INDIVIDUAL. SUCH REQUEST MAY ALSO BE MADE, WITH THE APPROVAL OF THE CAREGIVER OR PERSON WITH DEVELOPMENTAL DISABILITIES, BY A PROVIDER OF SERVICES TO PEOPLE WITH DEVELOPMENTAL DISABILITIES OR AN INDIVIDUAL FAMILIAR WITH THE PERSON WITH DEVELOPMENTAL DISABILITIES WHO IS ALSO FAMILIAR WITH THE INDIVIDUAL'S LIVING SITUATION.

(A) THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES SHALL PERFORM THE CAREGIVER ASSESSMENT WITHIN THIRTY DAYS FOLLOWING THE DATE ON WHICH THE REQUEST FOR THE ASSESSMENT WAS RECEIVED BY SUCH COMMISSIONER IN ACCORDANCE WITH PROCEDURES PRESCRIBED BY THE COMMISSIONER.

(B) THE PERFORMANCE OF SUCH ASSESSMENT SHALL NOT PRECLUDE FURTHER SUCH ASSESSMENTS WHICH MAY OCCUR AT SUCH INTERVALS AND UNDER SUCH CONDITIONS AS PRESCRIBED BY THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES.

(C) THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES SHALL PRESCRIBE THROUGH REGULATIONS A PROCEDURE FOR AUTHORIZING AN ASSESSMENT IF IT IS NOT POSSIBLE FOR A CAREGIVER TO REQUEST AN ASSESSMENT OR TO AUTHORIZE ANOTHER PARTY TO REQUEST AN ASSESSMENT ON BEHALF OF THE CAREGIVER.

2. WITH RESPECT TO A PERSON WITH DEVELOPMENTAL DISABILITIES LIVING AT HOME WITH A FAMILY CAREGIVER, THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES SHALL CONDUCT A CAREGIVER ASSESSMENT WHICH SHALL EVALUATE: (A) THE OVERALL NATURE OF THE INDIVIDUAL'S LIVING SITUATION AND THE POTENTIAL FOR ABUSE OR INJURY TO THE CAREGIVER OR TO THE INDIVIDUAL WITH DEVELOPMENTAL DISABILITIES; (B) THE AGE AND PHYSICAL AND EMOTIONAL HEALTH AND/OR ABILITY OF THE FAMILY CAREGIVER TO CONTINUE TO PROVIDE SAFE AND CONSISTENT CARE; (C) THE HISTORICAL CONTRIBUTION THE FAMILY CAREGIVER HAS MADE TO CARING FOR THE INDIVIDUAL WITH DEVELOPMENTAL DISABILITIES, INCLUDING, BUT NOT LIMITED TO, THE LENGTH OF TIME THE FAMILY CAREGIVER HAS CARED FOR SUCH INDIVIDUAL; (D) THE ABILITY OF THE FAMILY CAREGIVER TO SAFELY MANAGE THE INDIVIDUAL'S NEEDS INCLUDING BEHAVIORAL NEEDS; (E) THE LIKELIHOOD THE FAMILY CAREGIVER MUST OR WILL ALTER HIS OR HER LIVING SITUATION SUCH THAT CONTINUED CARE WILL NO LONGER BE PRACTICAL; (F) THE HEALTH OF THE FAMILY CAREGIVER AND ABILITY TO PERFORM DAILY LIVING SKILLS AND TO CONTINUE TO PROVIDE CONSISTENT CARE; AND (G) ANY OTHER FACTORS CRITICAL TO THE CONTINUED SAFETY AND SECURITY OF BOTH THE CAREGIVER AND THE INDIVIDUAL WITH DEVELOPMENTAL DISABILITIES.

3. A FAMILY CAREGIVER ASSESSMENT SHALL, ACCORDING TO STANDARDS DEVELOPED BY THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES, RESULT IN A DETERMINATION BY SUCH COMMISSIONER AS TO WHETHER THE INDIVIDUAL WITH DEVELOPMENTAL DISABILITIES REPRESENTS A CURRENT NEED, SUBSTANTIAL NEED OR EMERGENCY NEED AS DEFINED BY THE COMMISSIONER. THE COMMISSIONER SHALL PROVIDE AN EXPLANATION OF SUCH DETERMINATION TO THE FAMILY CAREGIVER AND

THE PERSON WITH DEVELOPMENTAL DISABILITIES WITHIN THIRTY DAYS OF THE COMPLETION OF THE ASSESSMENT ACCORDING TO PROCEDURES PRESCRIBED BY THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES.

4. IN THE EVENT THAT THE FAMILY CAREGIVER ASSESSMENT DETERMINES THAT THERE IS AN EMERGENCY NEED, THE INDIVIDUAL WITH DEVELOPMENTAL DISABILITIES SHALL BE ELIGIBLE FOR IMMEDIATE OUT OF HOME PLACEMENT INTO AN APPROPRIATE RESIDENTIAL SETTING OR, AT THE REQUEST OF THE FAMILY CAREGIVER, APPROPRIATE AND ADEQUATE IN-HOME SERVICES AND SUPPORTS.

5. IF THE CAREGIVER OR PERSON WITH A DEVELOPMENTAL DISABILITY IS NOT SATISFIED WITH THE COMMISSIONER'S DECISION PURSUANT TO SUBDIVISION THREE OF THIS SECTION, SUCH PERSON MAY APPEAL SUCH DECISION WITHIN TEN DAYS TO THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES, WHO WILL ISSUE A FINAL WRITTEN DECISION WITHIN FOURTEEN DAYS OF THE APPEAL. THE COMMISSIONER AT HIS OR HER DISCRETION MAY SEND THE MATTER BACK TO A HEARING OFFICER FOR FURTHER REVIEW UNDER SUCH TERMS AS SUCH COMMISSIONER SHALL PRESCRIBE.

DURING THE PERIOD THAT AN OBJECTION IS UNDERGOING ADMINISTRATIVE REVIEW: (A) A PERSON SHALL PARTICIPATE IN PROGRAMMING MUTUALLY AGREEABLE TO THE OBJECTING PARTY, THE AGENCY, THE PERSON, AND HIS OR HER PARENT, GUARDIAN, CORRESPONDENT OR ADVOCATE; (B) EVERY EFFORT FEASIBLE SHALL BE MADE TO MAINTAIN THE PERSON IN AT LEAST HIS OR HER CURRENT LEVEL OF PROGRAMMING; AND (C) IN ORDER TO PROTECT A PERSON'S HEALTH, SAFETY OR WELFARE, OR THE HEALTH, SAFETY OR WELFARE OF OTHERS, NOTHING IN THIS SECTION SHALL PRECLUDE A CHANGE IN PROGRAMMING FOR, OR THE RELOCATION OR DISCHARGE OF A PERSON. HOWEVER, WHILE AN OBJECTION TO PLACEMENT OR DISCHARGE IS UNDERGOING ADMINISTRATIVE REVIEW, RELOCATION OR DISCHARGE SHALL ONLY TAKE PLACE WITH THE COMMISSIONER'S APPROVAL.

6. THE ABSENCE OF A CAREGIVER ASSESSMENT SHALL NOT PRECLUDE AN INDIVIDUAL LIVING AT HOME FROM RECEIVING AN OUT OF HOME RESIDENTIAL PLACEMENT OR ANY OTHER SERVICES.

7. THE ASSESSMENT PURSUANT TO THIS SECTION AND OTHER MATTERS NECESSARY TO IMPLEMENT THIS SECTION SHALL BE DEVELOPED BY THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES, IN CONSULTATION WITH THE DEVELOPMENTAL DISABILITIES, ADVISORY COUNCIL ESTABLISHED PURSUANT TO SECTION 13.05 OF THIS CHAPTER, AND SUCH OTHER INTERESTED PARTIES AS THE COMMISSIONER DEEMS APPROPRIATE.

S 4. This act shall take effect immediately, and any rules and regulations necessary to implement the provisions of this act shall be adopted before and take effect on March 1, 2017.