STATE OF NEW YORK

4306

2019-2020 Regular Sessions

IN ASSEMBLY

February 4, 2019

Introduced by M. of A. WEPRIN, LIFTON -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to establishing the office of community living; and to repeal certain provisions of the executive law, the education law and the private housing finance law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new article 19-E to read as follows:

ARTICLE 19-E
OFFICE OF COMMUNITY LIVING

Section 460. Purpose.
461. Office of community living.
462. Director; general responsibilities.
463. Additional powers of the office of community living.
464. Most integrated setting coordinating council.
465. Independent living centers.
466. New York access to home program.
467. Other responsibilities of the office of community living.

§ 460. Purpose. Persons with disabilities comprise a major segment of the state of New York's population and their particular needs and concerns must be considered as an integral part of the planning and implementation of all state programs and services affecting their lives and well-being. The office of community living shall advocate on behalf of persons with disabilities and assure that persons with disabilities are afforded the opportunity to exercise all of the rights and responsibilities accorded to citizens of this state, and will promote and fund services that assist persons with disabilities to live independently in their home communities.

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

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§ 461. Office of community living. There is hereby established within the executive department an office of community living. The office of community living shall advise and assist the governor in developing policies designed to help meet the needs of persons with disabilities and to encourage the full participation of persons with disabilities in society. The office of community living shall be the state's coordinator for implementation of the Americans with Disabilities Act, and, as such, is charged with coordinating state activities which insure that state programs do not discriminate against and are accessible to persons with disabilities. The office of community living shall also coordinate the state's efforts to comply with the United States Supreme Court's Olmstead decision. In its 1999, Olmstead v. L.C. decision, the United States Supreme Court ruled that New York, like all states, in accordance with the Americans with Disabilities Act (ADA), have an obligation to provide services to individuals with disabilities in the most integrated setting appropriate to their needs. A comprehensive Olmstead implementation plan that will address integrated housing, employment, transportation, community services and other important issues will affirm New York's position as a national leader on disability rights. As such, the office of community living will assume responsibility of chairmanship of the most integrated settings coordinating council. The office for community living shall also be responsible for funding services that promote and advocate for independence and community living for persons with disabilities.

§ 462. Director; general responsibilities. The head of the office of community living shall be the director, who shall be appointed by the governor by and with the advice and consent of the senate. The director shall receive a salary to be fixed by the governor within the amount appropriated therefor. The director, subject to rules prescribed by the governor, may appoint and fix the compensation of subordinates and employees of the division within the amounts appropriated therefor.

§ 463. Additional powers of the office of community living. The office of community living shall have the following additional powers:

1. Submission, reviews and recommendations. (a) Each division within the executive department and all other departments of the state shall submit to the office of community living for review proposed legislation, regulations, orders and plans which may significantly affect the lives or well-being of persons with disabilities in the state. Such matters shall, in the case of proposed legislation, be submitted at least thirty days prior to submission to the legislature and, in the case of regulations, orders and plans, at least thirty days prior to the effective date of this article.

(b) The office of community living shall review and report upon all matters of significance submitted to it. The office shall submit reports or other comments where appropriate to the division or department which referred such matter evaluating (i) the impact of the proposed legislation, regulation, order, or plan upon persons with disabilities; (ii) the relationship and impact of such proposals on existing programs affecting persons with disabilities; (iii) the desirability of such proposals; and (iv) modifications that would enhance the impact of the proposal upon persons with disabilities or aid in the implementation of the new proposal.

2. Cooperation. All state agencies contemplating actions that would be subject to review under this order shall inform the office of community living as early as possible in the process of developing such proposals and shall cooperate with the office of community living in carrying out

these responsibilities to assure that appropriate consideration is given the needs and concerns of persons with disabilities.

§ 464. Most integrated setting coordinating council. 1. Legislative findings and intent. The Americans with Disabilities Act requires the state of New York to ensure that people of all ages with disabilities reside and function in the most integrated setting possible. This requirement was recognized and upheld by the Supreme Court in the case of Olmstead, Commissioner, Georgia Department of Human Resources, et al. v. L.C., by Zimring, Guardian ad litem and Next Friend, et al. (138 F. 3d 893). While the state of New York provides community supports for people of all ages with disabilities and while the state of New York does operate a home and community-based waiver Medicaid program, the legislature hereby finds that the state of New York has no centralized mechanism in place to determine whether or not people of all ages with disabilities are residing in the most integrated setting possible. In order to ensure that the state of New York is in compliance with the requirements of the Olmstead decision, the legislature hereby finds that it is incumbent upon the state of New York to develop and implement a plan to reasonably accommodate the desire of people of all ages with disabilities to avoid institutionalization and be appropriately placed in the most integrated setting possible.

2. Definitions. As used in this section the following terms shall have the following meanings:

(a) "Council" means the most integrated setting coordinating council.

(b) "Disability" means, with respect to an individual:

(i) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(ii) a record of such an impairment; or

(iii) being regarded as having such an impairment.

(c) "Most integrated setting" means a setting that is appropriate to the needs of the individual with the disability and enables that individual to interact with nondisabled persons to the fullest extent possible.

3. Most integrated setting coordinating council; organization. (a) The most integrated setting coordinating council is continued within the executive department to have and exercise the functions powers and duties provided by the provisions of this article and any other provision of law. The council shall be comprised of the director of the office of community living, and the commissioners of: the department of health, the office of persons with developmental disabilities, the office of mental health, the department of transportation, the office of children and family services, the office of alcohol and substance abuse services, the department of education, and the division of housing and community renewal. In addition, the council shall consist of the director of the office for the aging, a representative from the justice center for persons with special needs, six consumers of services for individuals with disabilities, two to be appointed by the governor, two to be appointed by the temporary president of the senate, and two to be appointed by the speaker of the assembly, three individuals with expertise in the field of community services for people of all ages with disabilities, one to be appointed by the governor, one to be appointed by the temporary president of the senate, and one to be appointed by the speaker of the assembly, and three individuals with expertise in or recipients of services available to senior citizens with disabilities, one to be appointed by the governor, one to be appointed by the tempo-

rary president of the senate, and one to be appointed by the speaker of the assembly.

(b) The director of the office of community living shall be the chairperson of the council.

(c) The council shall meet as necessary to carry out its functions, powers and duties, but such meetings shall occur at least once each quarter.

4. Functions, powers and duties of the council. (a) The council shall develop, update and oversee the implementation of a comprehensive statewide plan for providing services to individuals of all ages with disabilities in the most integrated setting. Such plan shall include, but not be limited to:

(i) the number of individuals of all ages with disabilities who are currently institutionalized and are eligible for services in community-based settings, the number of individuals residing in the community who are dependent on the assistance of community-based services to avoid institutionalization and any improvements necessary to be made to current data collection systems or any new data collection initiatives necessary to obtain such information;

(ii) the current assessment procedures utilized to identify individuals of all ages with disabilities who could benefit from services in a more integrated setting and the development of a single assessment process for individuals of all ages with disabilities in need of services, to be implemented by one community-based agency in each county with expertise in community-based services for people of all ages with disabilities through the use of a uniform assessment tool;

(iii) the identification of what community-based services are available to individuals of all ages with disabilities in the state of New York and an assessment of the extent to which these programs are able to serve people in the most integrated settings;

(iv) the identification of what improvements need to be made to the system of community-based services to ensure that the system is comprehensive, accessible, meets the needs of persons who are likely to require assistance in order to live in the community and provides high quality, adequate supports for individuals of all ages with disabilities;

(v) an evaluation of the supports and services available to assist individuals of all ages with disabilities who reside in their own homes with the presence of other family members or other informal caregivers and an evaluation of the supports and services available to address the needs of individuals of all ages with disabilities who reside in their own homes without family members or other informal caregivers;

(vi) an examination of how the identified community-based supports and services integrate individuals of all ages with disabilities into the community;

(vii) a review of what funding sources are available to increase the availability of community-based services and an analysis of how the varied funding sources available to meet the needs of individuals of all ages with disabilities in the most integrated setting can be organized into a coherent system of long term care which affords people reasonable and timely access to community-based services;

(viii) an assessment of how well the current service system works for different populations, including but not limited to, elderly people with disabilities, people with physical disabilities, people with developmental disabilities, people with mental illness, and people with HIV and

AIDS, and a review of changes that might be desirable to make services a reality in the most integrated setting for all populations;

(ix) an examination of waiting lists for community-based services and what might be done to ensure that waiting lists are created and accurately maintained and that people are able to come off waiting lists and receive needed community-based services at a reasonable pace;

(x) an examination of what information, education, outreach and referral systems might be useful to ensure that individuals of all ages with disabilities receive the information necessary to make informed choices regarding how their needs can best be met, including the evaluation of the creation of a toll free hotline with information on community-based services for individuals of all ages with disabilities;

(xi) an evaluation of how quality assurance and quality improvement can be conducted effectively as more people of all ages with disabilities live in community settings; and

(xii) an examination of how the overall system of health and long term care can best be managed so that placement in the most integrated setting becomes the norm.

(b) The council shall contract with an independent organization with expertise in the provision of community-based services for individuals of all ages with disabilities and with expertise in the area of program evaluation research to conduct an evaluation of the council's plan created pursuant to subdivision one of this section and the implementation of such plan.

(c) Each commissioner and director serving on the council shall ensure that his or her agency implements every aspect of the plan developed pursuant to subdivision one of this section which falls under the responsibilities of his or her agency. The council shall oversee the implementation of the plan created pursuant to subdivision one of this section and shall update such plan as necessary to ensure that waiting lists for community-based services for people of all ages with disabilities are moving at a reasonable pace and to ensure that the state of New York is developing a system of long term care that allows individuals of all ages with disabilities to reside and function in the most integrated setting.

(d) The council shall provide an annual report to the governor, the temporary president of the senate and the speaker of the assembly. Such report shall detail the plan developed pursuant to subdivision one of this section, any changes made to such plan, all steps taken to implement such plan and their outcome, and any future actions planned.

(e) The plan to be developed under this article shall not be construed to increase, decrease, or change the statutory authority of any person or entity and shall be implemented consistent with all otherwise applicable law.

§ 465. Independent living centers. 1. Declaration of intent. Independent living centers greatly assist persons with disabilities to integrate and live more independently in the community. Since their inception, service centers for independent living have enhanced the ability of persons with disabilities to pursue an independent and active lifestyle within their community. In order to achieve this, it is necessary for the state to provide funding to maintain existing service centers designed to promote independent living and to encourage the establishment of new centers. To maximize the effectiveness of these centers in promoting independent living for persons with disabilities, and to optimally utilize independent living centers in helping the state to meet its obligations to persons with disabilities, the responsibility for

independent living should be transferred from the education department to the office of community living.

2. Independent living centers; purpose and duties. An independent living center shall be a community-based, non-residential program designed to promote independent living for persons with disabilities.

(a) Such center shall:

(i) be a private not-for-profit corporation, pursuant to subparagraph five of paragraph a of section one hundred two of the not-for-profit corporation law; provided, however, that persons with disabilities comprise at least fifty-one percent of the membership of the board of directors;

(ii) be staffed by persons with persons with disabilities and other persons experienced in assisting persons with disabilities;

(iii) provide services designed to meet the needs of persons with disabilities, including such services as assisting persons with disabilities to obtain housing, employment referral, transportation referral, attendant care, independent living skills, peer counseling, advocacy services, job training, health care, homemaker services, and other such services as approved by the director;

(iv) train personnel for the purpose of attendant care in assisting and serving persons with disabilities; and

(v) serve persons with disabilities.

(b) Such center may also, but need not limit itself to, provide disability awareness programs, peer counseling, role modeling and any other appropriate services within elementary and secondary schools.

(c) Such service centers shall not be established or operated as a residential or housing facility.

(d) Such service centers shall make maximum use of existing resources available to persons with disabilities and shall not duplicate any existing services or programs, to the extent that such services or programs are available through other state sources to meet the needs of persons with disabilities. Such centers shall however provide necessary information and referral to assist a person with a disability in obtaining such services and coordinate where possible the delivery of such services to persons with disabilities.

(e) Such service centers shall be in compliance with all applicable local laws and ordinances.

3. Office of community living; responsibilities. The office shall assist individuals and organizations in the planning and establishment of such service centers. The office shall ensure program accountability and shall monitor and evaluate such centers.

4. Regulations. The office shall promulgate rules and regulations necessary for the implementation of this article.

5. Distribution of funds. (a) Independent living centers shall be funded out of appropriations available for such purposes to the extent of the entire approved budget of such centers.

(b) Budgets submitted by independent living centers shall be approved in accordance with regulations of the office.

(c) Independent living centers shall be located in the cities of Albany, Buffalo, Rochester, Syracuse, Utica, White Plains, Binghamton, Kingston, Poughkeepsie, Jamestown, Yonkers, the counties of Queens, Kings, Nassau, Bronx, Richmond and New York and the township of Brookhaven with a satellite center in Central Islip in the county of Suffolk.

(d) Additional independent living centers shall be located in the cities of Niagara Falls, Olean, Troy, Amsterdam, Newburgh, Corning, Ithaca, Cortland, Auburn, Watertown, Plattsburgh, Batavia, Massena and

Glens Falls, the counties of Delaware and Rockland, the county of Orange, in either the city of Middletown or Port Jervis or in the town of Deerpark, Greenville, Mount Hope, Warwick or Wawayanda or in the village of Goshen, in the county of New York to serve the Harlem community, and in the counties of Putnam, Sullivan and Herkimer.

§ 466. New York access to home program. 1. Statement of legislative findings and purpose. The legislature hereby finds and declares that there exists in the state of New York a serious need for financial and technical resources to assist renters and property owners to make dwelling units accessible for low and moderate income persons with disabilities. Providing assistance with the cost of adapting homes will enable many New Yorkers with disabilities to safely and comfortably continue to, or return to, live in their residences instead of residing in an institutional setting. To best accomplish this, the responsibility for the program is transferred to the office of community living.

2. Definitions. As used in this article:

(a) "Office" shall mean the office of community living.

(b) "Eligible applicant" shall mean a city, town, village or not-for-profit corporation in existence for a period of one or more years prior to application, which is, or will be at the time of award, incorporated under the not-for-profit corporation law and has substantial experience in adapting or retrofitting homes for persons with disabilities.

(c) "Disabled veteran" shall mean a veteran who is certified by the United States department of veterans affairs or the department of defense as entitled to receive disability payments upon the certification of such department for a disability incurred by him or her in time of war.

(d) "Access to home programs" or "programs" shall mean a series of activities by an eligible applicant to administer funds to provide either loans or grants to homeowners and renters and to oversee the adaptation or retrofitting of eligible properties.

(e) "Eligible property" shall mean a housing unit that is the primary residence of a person with a physical disability and a total household income that does not exceed eighty percent of median income or a disabled veteran who has a total household income that does not exceed one hundred twenty percent of median income. A property shall not be considered an eligible property if the owner of the property is otherwise obligated by federal, state or local law to provide the improvements funded under this article.

3. Access to home contracts. (a) Within the limit of funds available in the access to home program, the office is hereby authorized to enter into contracts with eligible applicants to provide financial assistance for the actual costs of an access to home program. The financial assistance shall be either in the form of grants or loans, as the office shall determine. No more than fifty percent of the total amount awarded pursuant to this article in any fiscal year shall be allocated to access to home programs located within any single municipality.

(b) The total payment pursuant to any one contract shall not exceed five hundred thousand dollars and the contract shall provide for completion of the program within a reasonable period, as specified therein, which shall not in any event exceed three years from its commencement. Upon request, the office may extend the term of the contract for up to two additional one year periods for good cause shown by the eligible applicant.

(c) The office may authorize the eligible applicant to spend up to seven and a half percent of the contract amount for approved administrative costs associated with administering the program.

(d) The office shall require that, in order to receive funds pursuant to this article, the eligible applicant shall submit a plan which shall include, but not be limited to, program feasibility, impact on the community, budget for expenditure of program funds, a schedule for completion of the program, affirmative action and minority business participation.

§ 467. Other responsibilities of the office of community living. The office of community living is also responsible for administering the following programs, some of which are being transferred from the justice center for persons with special needs:

1. Information and referral services. Information and referral services, including the toll-free information and referral telephone line.

2. Technology-related assistance for individuals with disabilities (TRAID) program. The TRAID program's mission is to coordinate statewide activities to increase access to and acquisition of assistive technology in the areas of education, employment, community living and information technology/telecommunications. The program serves individuals of all ages and disabilities. The program supports regional TRAID centers (RTCs) which provide information, training, device demonstration, reuse, exchange, and loans. The TRAID program also provides technical assistance and advocacy on how to obtain and use assistive technology services and devices.

3. Adult home advocacy program. The adult home advocacy program, which has been in operation since 1995, is now under the jurisdiction of the office of community living. The program assists individuals with mental health disabilities who reside in adult homes in the city of New York and Long Island in understanding their legal rights and promotes and protects their rights, including legal and non-legal advocacy services, training on residents' rights supporting self-advocacy and leadership initiatives, and the development and support of resident councils is provided by qualified non-profit agencies which are awarded contracts through a competitive bidding process.

4. Advocacy. Advocacy is a core function of the office of community living. Advocacy is an active process with the goal of making the social system, public and community-based or private entities more responsive to the needs of persons with disabilities who are served by that system. Advocacy is not a singular approach, but a continuum of strategies including: self-advocacy, citizen advocacy, and systems advocacy.

§ 2. Article 25 of the executive law is REPEALED.

§ 3. Section 559 of the executive law is REPEALED.

§ 4. Article 23-A of the education law is REPEALED.

§ 5. Article 25 of the private housing finance law is REPEALED.

§ 6. This act shall take effect on the first of April next succeeding the date on which it shall have become a law, provided, however, that the governor is authorized to take, notwithstanding any law to the contrary, whatever steps are necessary to effectively and efficiently transfer the functions transferred to the office of community living from other agencies of the state so that the office of community living may fully commence operation on the effective date of this act.