

STATE OF NEW YORK

1763

2019-2020 Regular Sessions

IN ASSEMBLY

January 17, 2019

Introduced by M. of A. ABINANTI -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to due process procedures for all adults with mental disabilities

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

1 Section 1. This act shall be known and may be cited as the "protection
2 of adults with mental disabilities act".

3 § 2. Legislative findings and intent. Certain federal and state laws
4 and regulations currently provide various due process protections for
5 certain categories of persons with mental disabilities. For example,
6 the federal Individuals with Disabilities Education Act provides a child
7 or parents of a child with a disability important due process
8 protections, including the right to an impartial hearing to challenge a
9 determination regarding the appropriate setting for a child with a disa-
10 bility. New York state also provides substantial due process protections
11 for the parents of a child with a disability who needs residential care
12 while this child is in school.

13 However, when a mentally disabled individual reaches the age of twen-
14 ty-one, their due process protections become significantly diminished
15 or, in some cases, end completely. Specifically, those developmentally
16 disabled adults in transitional care who reach the age of twenty-one on
17 or before June 30, 1996 have minimal due process protections pursuant to
18 section 13.38 of the mental hygiene law, and those who reached age twen-
19 ty-one on or after July 1, 1996 receive no due process protections. Some
20 of New York's most vulnerable adult populations, including those who
21 remain continuously disabled and continuously in need of residential or
22 other forms of care, thus lose important due process protections simply
23 because of their age.

24 The legislature recognizes that inappropriate or ineffective place-
25 ments and/or services for persons with mental disabilities can have

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

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devastating effects for those persons impacted, including abuse, self-harm, improper medication or even death. Additionally, the legislature recognizes the harm a person with mental disabilities can suffer from the disruption to his/her current treatment needs, home life and familiar surroundings that an inappropriate change in placement, or an improper change in services, entails. Moreover, it is increasingly the policy of the state of New York to afford persons with disabilities the opportunity to participate in their treatment and residential placement decisions, and to obtain their or their guardian's consent prior to any changes of placement.

The legislature hereby finds that New York state must ensure that all mentally disabled adults are afforded necessary and basic due process protections, and fair and meaningful due process proceedings, relating to proposed changes in placement, or proposed changes in services rendered, to those mentally disabled adults under the care of New York state agencies to ensure that appropriate, effective treatment and placements are provided for this highly vulnerable adult population.

In order to ensure that New York state is providing the most appropriate setting and services for all persons with mental disabilities, the legislature hereby finds that it is incumbent upon New York state to institute uniform minimum due process protections for all persons with mental disabilities age twenty-one and older. These protections provide, in part, for fair and meaningful due process proceedings relating to a proposed change of placement or a proposed change in services by the offices of the department of mental hygiene, and are intended to supplement and strengthen the patchwork of various protections for adults with mental disabilities in place under existing laws.

§ 3. The mental hygiene law is amended by adding a new section 13.36 to read as follows:

§ 13.36 Protection of adults with mental disabilities.

1. Definitions. As used in this section, unless otherwise expressly stated or unless the context otherwise requires:

(a) "Adults with mental disabilities" means all persons with a mental disability, as that term is defined in section 1.03 of this chapter, and who are twenty-one years old or older, or the guardian or guardians or representative or representatives of any such person, if any exist.

(b) "Services" means any and all care and treatment rendered to adults with mental disabilities (i) who are under the care, authority, jurisdiction, supervision or control of the various offices of the department, and/or (ii) which are funded in any part by any office of the department. As used in this section, "services" includes, but is not limited to, "services for the mentally disabled" as that term is defined in section 1.03 of this chapter, as well as any other treatment of any form or type.

(c) "Triggering event" means any proposed action, or denial, by the department or any of its offices, as described in subparagraph (i) of paragraph (a) or subparagraph (i) of paragraph (b) of subdivision two of this section.

2. Role of department; triggering events. The department, through its various offices and in conjunction with any other necessary state agency or office, where applicable, shall develop, implement, and ensure a system of meaningful due process protections for adults with mental disabilities, and shall develop and promulgate regulations, policies and procedures necessary to resolve objections by or on behalf of adults with mental disabilities in conformance with this section. Such due

1 process protections shall be afforded to adults with mental disabilities
2 when:

3 (a) any office of the department initiates a proposal which may result
4 in:

5 (i) a change in placement for an adult with mental disabilities,
6 including any proposed discharge or relocation from a facility where
7 services are being provided; or

8 (ii) a reduction, suspension or termination of specific services or
9 funding which is being provided to an adult with mental disabilities
10 pursuant to an individualized treatment plan, including an individual-
11 ized services plan; and,

12 (iii) a timely objection to such proposal or proposals and a request
13 for an administrative appeal is made by or on behalf of an adult with
14 mental disabilities; or,

15 (b) any office of the department:

16 (i) denies an adult with mental disabilities specific services or a
17 specific placement which is recommended for that individual pursuant to
18 an individualized treatment plan, including an individualized services
19 plan; and,

20 (ii) a timely objection to such denial or denials and a request for an
21 administrative appeal is made by or on behalf of an adult with mental
22 disabilities.

23 3. Minimum due process protections. Due process protections for adults
24 with mental disabilities implemented by the department and its offices
25 shall include, at a minimum, the rights of adults with mental disabili-
26 ties:

27 (a) to be provided with advance written notice by the relevant office
28 of the department of any triggering event, whether it be a proposed
29 action or a denial by such office of the department, which notice shall
30 set forth all reasons and documentation, if any, in support of the
31 determination by the relevant office of the department, and which shall
32 specifically advise an adult with mental disabilities as to his or her
33 right to formally object in writing and to request an administrative
34 hearing within thirty days of receipt of notice of the triggering
35 event, and as to their other rights as provided within this section;

36 (b) to be represented in any proceedings before the relevant office of
37 the department by any person including, but not limited to, a parent,
38 guardian, correspondent, advocate, legal representative, themselves, or
39 any other person or representative;

40 (c) to request, and to be provided with, an opportunity to present, in
41 a meaningful fashion and at a reasonable time not less than fourteen
42 days from the date a written request for an administrative hearing is
43 made, any objection to a triggering event by the relevant office of the
44 department to an impartial decision maker in the context of an evidenti-
45 ary hearing;

46 (d) to discover and obtain, and have a meaningful opportunity to
47 review in advance of the evidentiary hearing, any documents to be used
48 by the relevant office of the department in support of its determination
49 at such hearing;

50 (e) to present and elicit evidence and witnesses, and confront and
51 cross-examine evidence and witnesses at such evidentiary hearing;

52 (f) to obtain a reasonably prompt written determination by the impar-
53 tial hearing officer, which shall be based on the evidence and testimony
54 introduced and rendered at the hearing, and in which it is determined
55 whether the triggering event taken or proposed by the relevant office of
56 the department, if ultimately allowed, would be (i) in the overall best,

1 individual interests of the adult with mental disabilities, (ii) result
2 in appropriate, effective services and/or placement for such individual,
3 and (iii) so as to best enable their personal development;

4 (g) to appeal, if necessary, the written determination rendered by the
5 impartial hearing officer to the commissioner of the relevant office of
6 the department, who may remand the matter to the hearing officer for
7 further review or findings, if necessary, and who shall, after review of
8 the matter, issue a further written determination which shall be binding
9 on the relevant office of the department as its final administrative
10 determination;

11 (h) to appeal, if necessary, the final written determination rendered
12 by the commissioner on behalf of the relevant office of the department
13 by way of a proceeding pursuant to article seventy-eight of the civil
14 practice law and rules; and

15 (i) to continued services, programming, funding and placement by the
16 relevant office of the department, of the same level and type as that
17 provided by such office prior to the triggering event, during the period
18 that an objection by an adult with mental disabilities is undergoing
19 administrative and/or appellate review, unless as otherwise agreed to by
20 such office and such adult with mental disabilities or his or her guard-
21 ian or representative.

22 4. Nothing in this section shall prevent the department and its
23 offices from designing and implementing dispute resolution mechanisms
24 which are not inconsistent with the due process protections for adults
25 with mental disabilities set forth by this section, including expedited,
26 or informal (non-binding), dispute resolution mechanisms that may be
27 agreed to by the relevant office of the department and such adult with
28 mental disabilities or his or her guardian or representative.

29 5. The minimum due process protections for adults with mental disabil-
30 ities set forth within this section shall serve to supplement and rein-
31 force any and all other laws or authorities which provide for certain
32 rights for the developmentally disabled adult population, including the
33 state administrative procedure act or applicable federal requirements,
34 if any, pertaining to due process protections for such individuals. In
35 the absence of regulations, the provisions of the state administrative
36 procedure act shall control the hearing process where not inconsistent
37 with the provisions of this section. The department, through its
38 offices, shall take all actions necessary to ensure the continued
39 compliance with any applicable federal authorities to the extent that
40 any provision of this section may be deemed to conflict with such
41 authorities.

42 § 4. This act shall take effect immediately.