

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:

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

ARTICLE 19-E

OFFICE OF COMMUNITY LIVING

Section 460. Purpose.

6 461. Office of community living.

7 462. Director; general responsibilities.

8 463. Additional powers of the office of community living.

9 464. Most integrated setting coordinating council.

10 465. Independent living centers.

11 466. New York access to home program.

12 467. Other responsibilities of the office of community living.

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

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

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1 § 461. Office of community living. There is hereby established within
2 the executive department an office of community living. The office of
3 community living shall advise and assist the governor in developing
4 policies designed to help meet the needs of persons with disabilities
5 and to encourage the full participation of persons with disabilities in
6 society. The office of community living shall be the state's coordina-
7 tor for implementation of the Americans with Disabilities Act, and, as
8 such, is charged with coordinating state activities which insure that
9 state programs do not discriminate against and are accessible to persons
10 with disabilities. The office of community living shall also coordinate
11 the state's efforts to comply with the United States Supreme Court's
12 Olmstead decision. In its 1999, Olmstead v. L.C. decision, the United
13 States Supreme Court ruled that New York, like all states, in accordance
14 with the Americans with Disabilities Act (ADA), have an obligation to
15 provide services to individuals with disabilities in the most integrated
16 setting appropriate to their needs. A comprehensive Olmstead implementa-
17 tion plan that will address integrated housing, employment, transporta-
18 tion, community services and other important issues will affirm New
19 York's position as a national leader on disability rights. As such, the
20 office of community living will assume responsibility of chairmanship of
21 the most integrated settings coordinating council. The office for commu-
22 nity living shall also be responsible for funding services that promote
23 and advocate for independence and community living for persons with
24 disabilities.

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

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

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

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

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

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

3 § 464. Most integrated setting coordinating council. 1. Legislative
4 findings and intent. The Americans with Disabilities Act requires the
5 state of New York to ensure that people of all ages with disabilities
6 reside and function in the most integrated setting possible. This
7 requirement was recognized and upheld by the Supreme Court in the case
8 of Olmstead, Commissioner, Georgia Department of Human Resources, et al.
9 v. L.C., by Zimring, Guardian ad litem and Next Friend, et al. (138 F.
10 3d 893). While the state of New York provides community supports for
11 people of all ages with disabilities and while the state of New York
12 does operate a home and community-based waiver Medicaid program, the
13 legislature hereby finds that the state of New York has no centralized
14 mechanism in place to determine whether or not people of all ages with
15 disabilities are residing in the most integrated setting possible. In
16 order to ensure that the state of New York is in compliance with the
17 requirements of the Olmstead decision, the legislature hereby finds that
18 it is incumbent upon the state of New York to develop and implement a
19 plan to reasonably accommodate the desire of people of all ages with
20 disabilities to avoid institutionalization and be appropriately placed
21 in the most integrated setting possible.

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

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

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

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

28 (ii) a record of such an impairment; or

29 (iii) being regarded as having such an impairment.

30 (c) "Most integrated setting" means a setting that is appropriate to
31 the needs of the individual with the disability and enables that indi-
32 vidual to interact with nondisabled persons to the fullest extent possi-
33 ble.

34 3. Most integrated setting coordinating council; organization. (a) The
35 most integrated setting coordinating council is continued within the
36 executive department to have and exercise the functions powers and
37 duties provided by the provisions of this article and any other
38 provision of law. The council shall be comprised of the director of the
39 office of community living, and the commissioners of: the department of
40 health, the office of persons with developmental disabilities, the
41 office of mental health, the department of transportation, the office of
42 children and family services, the office of alcohol and substance abuse
43 services, the department of education, and the division of housing and
44 community renewal. In addition, the council shall consist of the direc-
45 tor of the office for the aging, a representative from the justice
46 center for persons with special needs, six consumers of services for
47 individuals with disabilities, two to be appointed by the governor, two
48 to be appointed by the temporary president of the senate, and two to be
49 appointed by the speaker of the assembly, three individuals with exper-
50 tise in the field of community services for people of all ages with
51 disabilities, one to be appointed by the governor, one to be appointed
52 by the temporary president of the senate, and one to be appointed by the
53 speaker of the assembly, and three individuals with expertise in or
54 recipients of services available to senior citizens with disabilities,
55 one to be appointed by the governor, one to be appointed by the tempo-

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

3 (b) The director of the office of community living shall be the chair-
4 person of the council.

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

8 4. Functions, powers and duties of the council. (a) The council shall
9 develop, update and oversee the implementation of a comprehensive state-
10 wide plan for providing services to individuals of all ages with disa-
11 bilities in the most integrated setting. Such plan shall include, but
12 not be limited to:

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

20 (ii) the current assessment procedures utilized to identify individ-
21 uals of all ages with disabilities who could benefit from services in a
22 more integrated setting and the development of a single assessment proc-
23 ess for individuals of all ages with disabilities in need of services,
24 to be implemented by one community-based agency in each county with
25 expertise in community-based services for people of all ages with disa-
26 bilities through the use of a uniform assessment tool;

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

31 (iv) the identification of what improvements need to be made to the
32 system of community-based services to ensure that the system is compre-
33 hensive, accessible, meets the needs of persons who are likely to
34 require assistance in order to live in the community and provides high
35 quality, adequate supports for individuals of all ages with disabili-
36 ties;

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

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

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

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

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

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

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

13 (xi) an evaluation of how quality assurance and quality improvement
14 can be conducted effectively as more people of all ages with disabili-
15 ties live in community settings; and

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

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

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

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

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

45 § 465. Independent living centers. 1. Declaration of intent. Independ-
46 ent living centers greatly assist persons with disabilities to integrate
47 and live more independently in the community. Since their inception,
48 service centers for independent living have enhanced the ability of
49 persons with disabilities to pursue an independent and active lifestyle
50 within their community. In order to achieve this, it is necessary for
51 the state to provide funding to maintain existing service centers
52 designed to promote independent living and to encourage the establish-
53 ment of new centers. To maximize the effectiveness of these centers in
54 promoting independent living for persons with disabilities, and to opti-
55 mally utilize independent living centers in helping the state to meet
56 its obligations to persons with disabilities, the responsibility for

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

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

6 (a) Such center shall:

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

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

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

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

22 (v) serve persons with disabilities.

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

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

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

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

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

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

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

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

49 (c) Independent living centers shall be located in the cities of Alba-
50 ny, Buffalo, Rochester, Syracuse, Utica, White Plains, Binghamton, King-
51 ston, Poughkeepsie, Jamestown, Yonkers, the counties of Queens, Kings,
52 Nassau, Bronx, Richmond and New York and the township of Brookhaven with
53 a satellite center in Central Islip in the county of Suffolk.

54 (d) Additional independent living centers shall be located in the
55 cities of Niagara Falls, Olean, Troy, Amsterdam, Newburgh, Corning,
56 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.

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

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

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

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

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

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

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

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

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

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

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

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