STATE OF NEW YORK

6069--A

2021-2022 Regular Sessions

IN ASSEMBLY

March 8, 2021

Introduced by M. of A. ABINANTI, BURDICK, GRIFFIN, THIELE, GALEF, ENGLEBRIGHT, GONZALEZ-ROJAS, ZINERMAN, DINOWITZ, CUSICK, REILLY, BRABENEC, TANNOUSIS, MANKTELOW, ANGELINO -- read once and referred to the Committee on People with Disabilities -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the mental hygiene law, in relation to creating a bill of rights for individuals with developmental disabilities who reside in residences certified or approved by the office for people with developmental disabilities

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

Section 1. The mental hygiene law is amended by adding a new section 13.04 to read as follows:

§ 13.04 Residents' bill of rights.

(a) The principles in the bill of rights set forth in this section are declared to be the public policy of the state.

(b) For purposes of this section:

(1) "resident" means an individual with a developmental disability who is receiving services from a covered provider.

(2) "qualified person" means a resident, the resident's legal guardian, the guardian's designee, the resident's designee, or if none exists, in order of priority, a spouse, parent, adult child or an adult sibling of the resident.

(3) "covered provider" means and includes any entity, providing residential services or programs to one or more persons with a developmental disability, that is operated, licensed, or certified by the office.

(c) In addition to all other rights and privileges under law, a resident shall have the rights set forth below (the "Bill of Rights") which

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

LBD01457-02-1

the resident may exercise or another qualified person may exercise on the resident's behalf.

"Bill of Rights"

Individuals with a developmental disability who are receiving residential services from an entity that is operated, licensed or certified by the office or a qualified person on such individual's behalf shall have the following generally-described rights to:

Be treated with consideration and respect.

Participate in and provide meaningful input into the development, review and revision of the resident's care plan, including placement or transfer within or between facilities.

Access information regarding the resident's health and safety, consistent with federal and state confidentiality protections.

Be notified within a reasonable time of any event that directly impacts the resident's health and safety, consistent with federal and state confidentiality protections.

Access any and all audio and video recordings which are relevant to any incident which affects the resident whether or not the resident appears in the audio or video.

Access information necessary for a qualified person to make informed decisions, when appropriate, about the resident's care and care coordination.

Financial transparency, including access to budgetary information of the facility and resident's expenses, consistent with federal and state confidentiality protections.

Receive visitors who visit unannounced.

Be informed of any and all staffing changes.

Access a facility's fire and other safety plans and any information regarding a facility's passage or failure of any safety drills conducted by the facility and the office.

Access a facility's food menus.

Choose a care coordinator.

Consult and be represented by an independent advocate, mental hygiene legal services or a private attorney; and if services are provided under Medicaid managed care, to have a Medicaid ombudsman.

Be informed in writing in plain language with up-to-date information about:

(i) the system of care and services for persons with developmental disabilities, including but not limited to managed care;

(ii) the laws, rules, and regulations applicable to the rights of individuals with a developmental disability, their legal guardians or family members and other qualified persons to participate in decisions about the individual's life and to access information, records, reports, care plans, etc.; and

(iii) the procedures to challenge any decision affecting the resident.

Nothing in this bill of rights shall limit any other right or privilege under law. If any residential facility service provider fails to afford these rights, assistance may be sought from the facility or provider, or the office.

(d) A qualified person other than a legal guardian may, in accordance with law and appropriate due process, not exercise a right described in this section if the resident, who is competent to do so, specifically affirms, in a reasonably contemporaneous manner, that such identified qualified person shall not be afforded such specific right. Such determination by the resident shall be described and recorded in writing in the case file by appropriate staff of the facility or service provider

and a statement of reasons for such denial shall be provided to the qualified person.

(e) The statement of rights set forth in this section is intended to be a guide to the rights of a resident or a qualified person.

(f) Nothing in this section shall be read to limit any other rights or privileges that a resident or a qualified person may have or limit any action or relief otherwise permitted by law. Nothing in this subdivision shall alter or affect any right of appeal, formal or otherwise, such resident or qualified person may have concerning the denial of any such right.

(g) Each covered provider shall conspicuously post a copy of the bill of rights in a public place at each of the covered provider's facilities and provide a copy to each qualified person.

(h) The commissioner shall:

(1) Post a copy of the bill of rights on the office's website;

(2) Make copies of the bill of rights in English, and the top six languages other than English spoken in the state (according to the latest available data from the U.S. bureau of census) available to the public and every provider;

(3) Establish a public education program designed to disseminate information regarding implementation of this section;

(4) Include specific information detailing the efforts of the commissioner to effectuate this section in the statewide comprehensive plan required pursuant to section 5.07 of this chapter;

(5) Adopt all rules and regulations necessary to effectuate this section.

§ 2. This act shall take effect on the one hundred twentieth day after it shall have become a law.