

# STATE OF NEW YORK

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7443--C

Cal. No. 310

2021-2022 Regular Sessions

## IN ASSEMBLY

May 10, 2021

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Introduced by M. of A. ABINANTI, BICHOTTE HERMELYN, SAYEGH, OTIS, WEPRIN, BUTTENSCHON, SANTABARBARA -- read once and referred to the Committee on Social Services -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the social services law, in relation to replacing certain instances of the term "mentally retarded" with the term "individuals with developmental disabilities"

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

1 Section 1. Paragraph (c) of subdivision 5 of section 62 of the social  
2 services law, as amended by chapter 344 of the laws of 1973, is amended  
3 to read as follows:

4 (c) When a [~~mentally ill, mentally retarded or epileptic person~~]  
5 person with a mental illness or developmental disability is in need of  
6 public assistance or care while on convalescent status or community  
7 status from a state hospital or institution under the provisions of  
8 section 29.15 of the mental hygiene law, the public welfare district,  
9 town or city from which he was admitted to such hospital or institution  
10 shall be responsible for providing and paying for such assistance or  
11 care as in the case of other persons requiring public assistance and  
12 care, except that such responsibility shall continue during any period  
13 such person is on convalescent status or community status outside the  
14 territory of such public welfare district, town or city and shall  
15 continue thereafter in accordance with the provisions of this paragraph  
16 and paragraph (b) of this subdivision if such person was receiving or  
17 should have been receiving public assistance or care from such public  
18 welfare district, town or city outside its territory at the time he was  
19 discharged from such convalescent status or community status.

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

LBD10591-06-2

1     § 2. The opening paragraph of subdivision 1 of section 131-o of the  
2 social services law, as amended by section 45 of part C of chapter 58 of  
3 the laws of 2005, is amended to read as follows:

4     Each individual receiving family care, residential care or care in a  
5 school for [~~the mentally retarded~~] individuals with developmental disa-  
6 bilities, or enhanced residential care as those terms are defined in  
7 section two hundred nine of this chapter, and who is receiving benefits  
8 under the program of additional state payments pursuant to this chapter  
9 while receiving such care, shall be entitled to a monthly personal  
10 allowance out of such benefits in the following amount:

11     § 3. Section 199 of the social services law, as amended by chapter 322  
12 of the laws of 2021, is amended to read as follows:

13     § 199. Power of commissioner of public welfare to detain certain  
14 incarcerated individuals. The commissioner of public welfare shall have  
15 power to detain in the public home, pending a vacancy for such person in  
16 a state institution, a person over the age of sixteen who has been  
17 certified as [~~mentally retarded or epileptic~~] an individual with a  
18 developmental disability in accordance with the provisions of the mental  
19 hygiene law and for whom an application for admission to a state insti-  
20 tution has been made. Whenever the commissioner shall so detain an  
21 incarcerated individual in the public home he or she shall at once noti-  
22 fy the state department of mental hygiene.

23     § 4. Paragraph (e) of subdivision 3 of section 209 of the social  
24 services law, as amended by chapter 672 of the laws of 2019, is amended  
25 to read as follows:

26     (e) "Receiving enhanced residential care" shall mean residing in a  
27 privately operated school for [~~the mentally retarded and developmentally~~  
28 ~~disabled~~] individuals with developmental disabilities which is certified  
29 by the office for people with developmental disabilities of the depart-  
30 ment of mental hygiene, in accordance with applicable provisions of law  
31 and regulations or an adult home, or enriched housing program certified  
32 by the department of health in accordance with applicable law, rules and  
33 regulations to the extent permitted by federal law and regulations.

34     § 5. Subdivision 1 of section 210 of the social services law, as  
35 amended by chapter 515 of the laws of 2006, is amended to read as  
36 follows:

37     1. Any inconsistent provisions of this title or any other law notwith-  
38 standing, but subject to the provisions of subdivisions two and three of  
39 this section, an individual who is deemed to have met the eligibility  
40 criteria for additional state payments pursuant to paragraph (c) of  
41 subdivision one of section two hundred nine of this title, shall be  
42 entitled to receive for each month after December, nineteen hundred  
43 seventy-three an additional state payment in an amount which, when added  
44 to the supplemental security income benefit and other countable income,  
45 is equal to such individual's December, nineteen hundred seventy-three  
46 cash grant of assistance under the state's program of old age assist-  
47 ance, assistance to the blind, aid to the disabled or the combined  
48 program of aid to aged, blind and disabled persons, plus income not  
49 excluded under such state program, plus an amount equal to the January,  
50 nineteen hundred seventy-two bonus value of food stamps as determined in  
51 accordance with the regulations of the office of temporary and disabili-  
52 ty assistance plus, for any month after June, nineteen hundred seventy-  
53 five, an amount reflecting the federal supplemental security increases  
54 resulting from July first, nineteen hundred seventy-five cost of living  
55 increases in such benefits, plus for any month after June, nineteen  
56 hundred eighty-two, an amount equal to the July first, nineteen hundred

1 eighty-two federal supplemental security income cost of living adjust-  
2 ment, providing such individual was eligible to receive a mandatory  
3 state supplement for the month of December, nineteen hundred eighty-one,  
4 plus for any month after June, nineteen hundred eighty-three, an amount  
5 equal to \$17.70 for individuals, \$26.55 for couples who are living alone  
6 or living with others and \$35.40 for couples receiving family care,  
7 residential care or care in schools for [~~the mentally retarded~~] individ-  
8 uals with developmental disabilities, plus for any month after December,  
9 nineteen hundred eighty-three, an amount equal to \$9.70 for individuals,  
10 \$15.60 for couples who are living alone or living with others and \$19.40  
11 for couples receiving family care, residential care or care in schools  
12 for [~~the mentally retarded~~] individuals with developmental disabilities,  
13 plus for any month after December, nineteen hundred eighty-four, an  
14 amount equal to \$11.00 for individuals, \$16.00 for couples who are  
15 living alone or living with others and \$22.00 for couples receiving  
16 family care, residential care or care in schools for [~~the mentally~~  
17 ~~retarded~~] individuals with developmental disabilities, plus for any  
18 month after December, nineteen hundred eighty-five, an amount equal to  
19 \$11.00 for individuals, \$16.00 for couples who are living alone or  
20 living with others and \$22.00 for couples receiving family care, resi-  
21 dential care or care in schools for [~~the mentally retarded~~] individuals  
22 with developmental disabilities, plus for any month after December,  
23 nineteen hundred eighty-six an amount equal to \$4.00 for individuals,  
24 \$6.00 for couples who are living alone or living with others and \$8.00  
25 for couples receiving family care, residential care or care in schools  
26 for [~~the mentally retarded~~] individuals with developmental disabilities,  
27 plus for any month after December, nineteen hundred eighty-seven an  
28 amount equal to \$14.00 for individuals, \$22.00 for couples who are  
29 living alone or living with others and \$28.00 for couples receiving  
30 family care, residential care or care in schools for [~~the mentally~~  
31 ~~retarded~~] individuals with developmental disabilities, plus for any  
32 month after December, nineteen hundred eighty-eight an amount equal to  
33 \$14.00 for individuals, \$21.00 for couples who are living alone or  
34 living with others and \$28.00 for couples receiving family care, resi-  
35 dential care or care in schools for [~~the mentally retarded~~] individuals  
36 with developmental disabilities, plus for any other month after Decem-  
37 ber, nineteen hundred eighty-nine an amount equal to \$18.00 for individ-  
38 uals, \$27.00 for couples who are living alone or living with others and  
39 \$36.00 for couples receiving family care, residential care or care in  
40 schools for [~~the mentally retarded~~] individuals with developmental disa-  
41 bilities, plus for any month after December, nineteen hundred ninety an  
42 amount equal to \$21.00 for individuals, \$31.00 for couples who are  
43 living alone or living with others and \$42.00 for couples receiving  
44 family care, residential care or care in schools for [~~the mentally~~  
45 ~~retarded~~] individuals with developmental disabilities, plus for any  
46 month after December, nineteen hundred ninety-one an amount equal to  
47 \$15.00 for individuals, \$23.00 for couples who are living alone or  
48 living with others and \$30.00 for couples receiving family care, resi-  
49 dential care or care in schools for [~~the mentally retarded~~] individuals  
50 with developmental disabilities, plus for any month after December,  
51 nineteen hundred ninety-two, an amount equal to \$12.00 for individuals,  
52 \$19.00 for couples who are living alone or living with others and \$24.00  
53 for couples receiving family care, residential care or care in schools  
54 for [~~the mentally retarded~~] individuals with developmental disabilities,  
55 plus for any month after December, nineteen hundred ninety-three an  
56 amount equal to \$12.00 for individuals, \$17.00 for couples who are

1 living alone or living with others and \$24.00 for couples receiving  
2 family care, residential care or care in schools for [~~the mentally~~  
3 ~~retarded~~] individuals with developmental disabilities, plus for any  
4 month after December, nineteen hundred ninety-four an amount equal to  
5 \$12.00 for individuals, \$18.00 for couples who are living alone or  
6 living with others and \$24.00 for couples receiving family care, resi-  
7 dential care or care in schools for [~~the mentally retarded~~] individuals  
8 with developmental disabilities, plus for any month after December,  
9 nineteen hundred ninety-five an amount equal to \$12.00 for individuals,  
10 \$18.00 for couples who are living alone or living with others and \$24.00  
11 for couples receiving family care, residential care or care in schools  
12 for [~~the mentally retarded~~] individuals with developmental disabilities,  
13 plus for any month after December, nineteen hundred ninety-six, an  
14 amount equal to \$14.00 for individuals and \$21.00 for couples plus for  
15 any month after December, nineteen hundred ninety-seven an amount equal  
16 to \$10.00 for individuals and \$15.00 for couples plus for any month  
17 after December, nineteen hundred ninety-eight an amount equal to \$6.00  
18 for individuals and \$11.00 for couples plus for any month after Decem-  
19 ber, nineteen hundred ninety-nine an amount equal to \$13.00 for individ-  
20 uals and \$18.00 for couples plus for any month after December, two thou-  
21 sand an amount equal to \$18.00 for individuals and \$27.00 for couples  
22 plus for any month after December, two thousand one an amount equal to  
23 \$15.00 for individuals and \$21.00 for couples plus for any month after  
24 December, two thousand two an amount equal to \$7.00 for individuals and  
25 \$12.00 for couples plus for any month after December, two thousand three  
26 an amount equal to \$12.00 for individuals and \$17.00 for couples plus  
27 for any month after December, two thousand four an amount equal to  
28 \$15.00 for individuals and \$23.00 for couples plus for any month after  
29 December, two thousand five an amount equal to \$24.00 for individuals  
30 and \$35.00 for couples plus for any month after December, two thousand  
31 six an amount equal to the amount of any increases in federal supple-  
32 mental security income benefits for individuals or couples pursuant to  
33 section 1617 of the Social Security Act (42 USC § 1382f) which become  
34 effective on or after January first, two thousand seven.

35 § 6. Paragraph (c) of subdivision 2 and paragraph (a) of subdivision 4  
36 of section 365 of the social services law, paragraph (c) of subdivision  
37 2 as amended by chapter 516 of the laws of 1973 and paragraph (a) of  
38 subdivision 4 as amended by chapter 170 of the laws of 1994, are amended  
39 to read as follows:

40 (c) who are patients in that part of a public institution operated for  
41 the care of [~~the mentally retarded~~] individuals with developmental disa-  
42 bilities that has been approved pursuant to law as a hospital or nursing  
43 home;

44 (a) who are patients in that part of a public institution operated for  
45 the care of [~~the mentally retarded~~] individuals with developmental disa-  
46 bilities that has been approved pursuant to law as an intermediate care  
47 facility or who are participating in a program operated by the depart-  
48 ment of mental hygiene or by a voluntary agency under an agreement with  
49 such department, in that part of such a facility that has been approved  
50 as a day treatment program in accordance with the regulations of the  
51 state commissioner of mental hygiene;

52 § 7. Clause (iii) of subparagraph 2 of paragraph (e) of subdivision 1,  
53 clauses (vii), (viii) and (ix) of subparagraph 1 of paragraph (d) and  
54 clauses (vii), (viii) and (ix) of subparagraph 1 of paragraph (e) of  
55 subdivision 5 of section 366 of the social services law, clause (iii) of  
56 subparagraph 2 of paragraph (e) of subdivision 1 as added by section 1

1 of part D of chapter 56 of the laws of 2013, clauses (vii), (viii) and  
2 (ix) of subparagraph 1 of paragraph (d) of subdivision 5 as added by  
3 chapter 170 of the laws of 1994, clause (vii) of subparagraph 1 of para-  
4 graph (e) of subdivision 5 as amended by section 51 of part C of chapter  
5 58 of the laws of 2008 and clauses (viii) and (ix) of subparagraph 1 of  
6 paragraph (e) of subdivision 5 as added by section 26-a of part C of  
7 chapter 109 of the laws of 2006, are amended to read as follows:

8 (iii) a patient in a public institution operated primarily for the  
9 care of [~~the mentally retarded~~] individuals with developmental disabili-  
10 ties who is receiving medical care or treatment in that part of such  
11 institution that has been approved pursuant to law as a hospital or  
12 nursing home;

13 (vii) "institutionalized individual" means any individual who is an  
14 in-patient in a nursing facility, including an intermediate care facili-  
15 ty for [~~the mentally retarded~~] individuals with developmental disabili-  
16 ties, or who is an in-patient in a medical facility and is receiving a  
17 level of care provided in a nursing facility, or who is receiving care,  
18 services or supplies pursuant to a waiver granted pursuant to subsection  
19 (c) of section 1915 of the federal social security act.

20 (viii) "intermediate care facility for [~~the mentally retarded~~] indi-  
21 viduals with developmental disabilities" means a facility certified  
22 under article sixteen of the mental hygiene law and which has a valid  
23 agreement with the department for providing intermediate care facility  
24 services and receiving payment therefor under title XIX of the federal  
25 social security act.

26 (ix) "nursing facility" means a nursing home as defined by section  
27 twenty-eight hundred one of the public health law and an intermediate  
28 care facility for [~~the mentally retarded~~] individuals with developmental  
29 disabilities.

30 (vii) "institutionalized individual" means any individual who is an  
31 in-patient in a nursing facility, including an intermediate care facili-  
32 ty for [~~the mentally retarded~~] individuals with developmental disabili-  
33 ties, or who is an in-patient in a medical facility and is receiving a  
34 level of care provided in a nursing facility, or who is described in  
35 section 1902(a)(10)(A)(ii)(VI) of the federal social security act.

36 (viii) "intermediate care facility for [~~the mentally retarded~~] indi-  
37 viduals with developmental disabilities" means a facility certified  
38 under article sixteen of the mental hygiene law and which has a valid  
39 agreement with the department for providing intermediate care facility  
40 services and receiving payment therefor under title XIX of the federal  
41 social security act.

42 (ix) "nursing facility" means a nursing home as defined by section  
43 twenty-eight hundred one of the public health law and an intermediate  
44 care facility for [~~the mentally retarded~~] individuals with developmental  
45 disabilities.

46 § 8. The opening paragraph of subparagraph (ii) of paragraph (a) of  
47 subdivision 2 of section 369 of the social services law, as amended by  
48 section 62 of part C of chapter 60 of the laws of 2014, is amended to  
49 read as follows:

50 with respect to the real property of an individual who is an inpatient  
51 in a nursing facility, intermediate care facility for [~~the mentally~~  
52 ~~retarded~~] individuals with developmental disabilities, or other medical  
53 institution, who is not reasonably expected to be discharged from the  
54 medical institution and to return home, and who is required, as a condi-  
55 tion of receiving services in such institution under the state plan for  
56 medical assistance, to spend for costs of medical care all but a minimal

1 amount of his or her income required for personal needs; provided,  
2 however, any such lien will dissolve upon the individual's discharge  
3 from the medical institution and return home; in addition, no such lien  
4 may be imposed on the individual's home if one of the following persons  
5 is lawfully residing in the home:

6 § 9. Paragraph (f) of subdivision 2 of section 473-e of the social  
7 services law, as added by chapter 395 of the laws of 1995, is amended to  
8 read as follows:

9 (f) a person named as a court-appointed evaluator or guardian in  
10 accordance with article eighty-one of the mental hygiene law, or a  
11 person named as a guardian for [~~the mentally retarded~~] individuals with  
12 developmental disabilities in accordance with article seventeen-A of the  
13 surrogate's court procedure act; or

14 § 10. Section 2 of the social services law is amended by adding two  
15 new subdivisions 39 and 40 to read as follows:

16 39. "Mental illness" shall have the same meaning as defined in section  
17 1.03 of the mental hygiene law.

18 40. "Developmental disability" shall have the same meaning as defined  
19 in section 1.03 of the mental hygiene law.

20 § 11. This act shall take effect immediately.