STATE OF NEW YORK

9492--C

IN ASSEMBLY

March 7, 2022

Introduced by M. of A. ABINANTI, STIRPE, HUNTER, CLARK, MAGNARELLI, DARLING, BURDICK, JENSEN, BYRNES, McMAHON -- read once and referred to the Committee on People with Disabilities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the mental hygiene law, in relation to the creation of an innovative housing initiative for persons with a developmental disability who wish and are able to safely reside in such a setting; to direct the division of housing and community renewal to establish guidelines for the dissemination of disclosure materials for the offer and sale of interests in residential environments formed under the innovative housing initiative; and to amend the general business law, in relation to creating an exemption from certain filing requirements for residential environments that are formed as cooperative interests in realty for persons receiving services under the innovative housing initiative

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

Section 1. Legislative purpose and findings. The legislature hereby finds and declares as follows:

(a) New York state is currently facing a severe housing crisis for people with developmental disabilities. Staffing shortages for certified housing, commonly referred to as group homes, has put additional pressure on the state to provide alternative and innovative housing models, especially for those persons who are able to live more independently and wish to do so.

(b) Many persons with developmental disabilities live with a parent or parents, a family member, or other similar direct support personnel. However, many such persons wish to live more independently, and would do so if an option existed that included certain appropriate supports.

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

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(c) Further, although family caregiving is appropriate in many instances, parents and similar direct support personnel may eventually become unable to continue supporting the person who has a developmental disability, due to the direct support personnel's infirmity, death, or other concerns.

(d) When that happens, the person with a developmental disability may need to move to a group home, which is a more restrictive environment than an innovative housing initiative could provide. Often, available group homes are located far from the communities in which people have lived their entire lives. Although group homes may be appropriate for some persons with developmental disabilities, they are not appropriate for those persons with disabilities who wish and are able to live more independently. Currently, group homes, even for those who choose to live in that setting, do not number nearly enough to meet the need.

(e) A system that creates unnecessary pressure to place persons with developmental disabilities in group homes directly contravenes the spirit of federal law that requires state and local governments to provide people with developmental disabilities opportunities to live in the most integrated setting that is available and appropriate for their needs. It also works a double trauma upon the person with developmental disability, who has no option but to move from their long-time home while, at the same time, grieving the loss of a parent or direct support personnel.

(f) Accordingly, there is a need to create new and innovative housing models that maximize independence for persons with developmental disabilities. The state should provide more independent housing options to persons with developmental disabilities, where such persons wish and are able to take advantage of such opportunities, out of concern that a certain number of persons with developmental disabilities living in close proximity automatically qualifies as an "institution."

(g) Guidance from the federal Centers for Medicare and Medicaid Services ("CMS") has emphasized that there is no cap or percentage that is used to determine whether housing for people with developmental disabilities satisfies the federal standards for what constitutes an institution. Rather, CMS clarified that state and local governments should focus on the experience of the individual with developmental disabilities in that setting.

(h) Persons with developmental disabilities can in fact live in close proximity in a safe and healthy residential environment integrated into the community, especially when that environment is chosen by the person and augmented with supports that maximize the person's independence and that are less intensive than the services provided in an institutional setting.

(i) Thus, to maximize the availability of innovative housing settings, this legislation directs the office for people with developmental disabilities ("OPWDD") to create an Innovative Housing Initiative that enables persons with developmental disabilities to live more independently, including housing that is owned or leased in their name, or by someone else on behalf of such person or that of a trust established for their benefit, with supports provided through OPWDD, such as availability of shared direct support personnel. In this way, the program will ensure that persons with developmental disabilities are afforded settings that are the most integrated and appropriate for their needs.

§ 2. The mental hygiene law is amended by adding a new section 16.38 to read as follows:

§ 16.38 Innovative housing initiative.

(a) The office shall enable persons with a developmental disability to live independently in a residential environment, with support services, including but not limited to staffing support, shared staffing support, and opportunities for social engagement and recreation.

(b) Such residential environment may be comprised of a single housing unit or multiple units of housing, in one or more buildings, including but not limited to: (i) leased residential housing units; (ii) housing that qualifies as a cooperative interest in realty under section three hundred fifty-two-e of the general business law; and (iii) condominium units under article nine-B of the real property law. The interest in such residential unit may be leased or owned by a person with a developmental disability, or an entity on behalf of such person, including but not limited to a trust established for such person's benefit. Each unit of residential housing may be occupied by no more than the number of unrelated persons permitted by local law.

(c) The selection of the residential environment, the person or persons with whom they live and the determination that they may independently live in such residential environment, with support services, shall be made solely by such person with a developmental disability and their qualified representative.

(d) In recognition of the requirement that the individual's experience shall determine whether a residential environment is the most integrated and appropriate for the needs of the person with a developmental disability, in determining eligibility for any housing program, support services or other benefits, the office shall:

(1) honor the right of the person with a developmental disability to choose the residential environment and with whom they may live;

(2) maximize the types of residential environments in which a person with a developmental disability may live while being eligible for funds through a home and community based waiver to the full extent permitted by federal law; and

(3) permit a number of persons with a developmental disability to live in a residential environment when viewed as a whole up to the full extent permitted by federal law.

(e) This section shall not limit or otherwise affect requirements applying to:

(1) an integrated supportive housing program administered by the office in coordination with the division of housing and community renewal (commonly referred to as the Integrative Supportive Housing program or "ISH"); or

(2) projects developed as part of an empire state supportive housing initiative (commonly referred to as "ESSHI").

(f) The office shall coordinate with the department of health to determine whether an amendment to the state plan authorized by section three hundred sixty-three-a of the social services law or a waiver is required from the federal Centers for Medicare and Medicaid Services ("CMS") to maximize federal financial participation for the initiative described in this section. If an amendment to the state plan or a waiver is required or desirable, the department of health shall submit such amendment or apply to CMS for such waiver no more than ninety days from the date that this section becomes effective.

(g) The office shall coordinate with the department of health to ensure that any state transition plan submitted to CMS that relates to federal regulations governing home and community-based services is written, amended or supplemented to include recognition of the innovative housing initiative described by this section.

(h) The office may conduct public hearings to receive public comment on how residential environments that include innovative housing authorized by this section can best be integrated with the broader community.

(i) This section shall not be construed to permit the operation without an operating certificate of a community residence, community residential facility for the disabled, supervised living facility, supportive living facility, or any other provider of service requiring an operating certificate under section 16.03 of this article. Nothing in this section shall be interpreted as authorizing an increase in the number of beds approved for a community residence, community residential facility for the disabled, supervised living facility, supportive living facility, or any other provider of service requiring an operating certificate under section 16.03 of this article.

(j) Residential environments in which persons with a developmental disability receive services pursuant to the innovative housing initiative described by this section shall not discriminate against any resident or potential resident based on race, creed, age other than being at least eighteen years of age, color, national origin, sex, disability, marital status, military status, family status, sexual orientation, gender identity or expression, or any other protected characteristic under the New York state human rights law.

§ 3. The division of housing and community renewal shall establish guidelines for the dissemination of disclosure materials for the offer and sale of interests in residential environments formed under the innovative housing initiative established by section 16.38 of the mental hygiene law, including (a) housing that qualifies as a cooperative interest in realty under section 352-e of the general business law; (b) condominium units under article 9-B of the real property law; and (c) shares in a housing development fund corporation which are otherwise exempt from the filing requirements of section 352-e of the general business law, to ensure material information is disclosed to any prospective shareholder that: (i) fully describes the risks to a prospective shareholder's investment; and (ii) encourages the prospective shareholder to consult with legal counsel prior to purchasing any shares. The division of housing and community renewal shall make the disclosure guidelines publicly available on its website in compliance with section 102(14) of the state administrative procedure act.

§ 4. Section 352-g of the general business law, as added by chapter 987 of the laws of 1960, is amended to read as follows:

§ 352-g. Exemptions. (a) The attorney general, upon application, may exempt from the provisions of sections three hundred fifty-two-e, three hundred fifty-two-f and three hundred fifty-two-h any offerings of securities (1) made to persons not exceeding forty in number or (2) which securities have been fully registered with the securities and exchange commission of the United States of America or have received an exemption therefrom for reasons other than said offering is an intrastate offering to residents of the state of New York only.

(b) Residential environments that are formed as housing development fund corporations pursuant to article XI of the private housing finance law and section four hundred two of the business corporation law where such residential environment is formed for persons receiving services under the innovative housing initiative established by section 16.38 of the mental hygiene law and where the division of housing and community renewal is the supervising agency as defined by section five hundred seventy-two of the private housing finance law, and where the division of housing and community renewal requires the housing development fund

corporation to enter into a monitoring agreement with a qualified not-for-profit with experience in the oversight, support and management of housing development fund corporations shall be exempt from any filing requirements of section three hundred fifty-two-e of this article for the investment in any residential environments and the conversion of any building, group of buildings or development which are converted to a housing development fund corporation.

§ 5. This act shall take effect immediately.