

# 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, ENGLE-BRIGHT, 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.

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

3 "Bill of Rights"

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

8 Be treated with consideration and respect.

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

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

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

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

20 Access information necessary for a qualified person to make informed  
21 decisions, when appropriate, about the resident's care and care coordi-  
22 nation.

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

26 Receive visitors who visit unannounced.

27 Be informed of any and all staffing changes.

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

31 Access a facility's food menus.

32 Choose a care coordinator.

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

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

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

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

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

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

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

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

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

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

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

14 (h) The commissioner shall:

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

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

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

22 (4) Include specific information detailing the efforts of the commis-  
23 sioner to effectuate this section in the statewide comprehensive plan  
24 required pursuant to section 5.07 of this chapter;

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

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