

STATE OF NEW YORK

9492--A

IN ASSEMBLY

March 7, 2022

Introduced by M. of A. ABINANTI, STIRPE -- read once and referred to the Committee on People with Disabilities -- committee discharged, bill amended, 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 supportive housing program for persons with a developmental disability who wish and are able to safely reside in such a setting; 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 supportive housing program

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

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

3 (a) New York state is currently facing a severe housing crisis for
4 people with developmental disabilities. Staffing shortages for certified
5 housing, commonly referred to as group homes, has put additional pres-
6 sure on the state to provide homes for people forced out of their group
7 homes. There is an acute need to create alternative and innovative hous-
8 ing models, especially for those persons who are able to live more inde-
9 pendently and wish to do so.

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

14 (c) Further, although family caregiving is appropriate in many
15 instances, a system that relies exclusively on parents and similar
16 direct support personnel to provide a non-institutional living setting
17 is not sustainable. The parent or direct support personnel eventually
18 becomes unable to continue supporting the person who has a developmental
19 disability, due to the direct support personnel's infirmity, death, or
20 other concerns.

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

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(d) When that happens, the person with a developmental disability has no option but to move to a group home, which is a more restrictive environment than an innovative supportive housing program. 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 results in the unnecessary institutionalization of persons with developmental disabilities 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. At this time, the state of New York offers no practical solution to this crisis.

(f) Accordingly, there is a need to create new and innovative housing models that maximize independence for persons with developmental disabilities. The state must remain vigilant in its efforts to reduce institutionalization of persons with disabilities. However, the state should not avoid opportunities to provide 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 Supportive Housing Program 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 supportive housing program.

(a) The office shall develop an innovative supportive housing program that enables persons with a developmental disability to live independ-

1 ently and safely, with support services, including but not limited to
2 staffing support, shared staffing support, and opportunities for social
3 engagement and recreation, in a residential environment. Eligibility for
4 the program shall be determined solely by the person with a develop-
5 mental disability in collaboration with their service provider and care
6 coordination agencies, and shall be based on the person's ability to
7 live independently and safely, with support services, in their chosen
8 residential environment.

9 (b) The innovative supportive housing program established by this
10 section shall enable eligible persons with developmental disabilities to
11 reside in a residential environment, including but not limited to leased
12 residential housing, housing that qualifies as a cooperative interest in
13 realty under section three hundred fifty-two-e of the general business
14 law, and condominium units under article nine-B of the real property
15 law, where an interest in a residence is owned or leased by a person
16 with a developmental disability, or an entity on behalf of such person,
17 including but not limited to a trust established for such person's bene-
18 fit.

19 (c) When establishing the innovative supportive housing program
20 described by this section, and when determining eligibility for any
21 housing subsidy program for persons with developmental disabilities, in
22 recognition of the right of persons with developmental disabilities to
23 choose the residential environment in which they wish to live and the
24 persons with whom they wish to live, and the requirement that government
25 agencies focus on an individual's experience when determining whether a
26 residential environment is the most integrated and appropriate for their
27 needs, the office shall:

28 (1) maximize the types of residential settings in which individuals
29 may live;

30 (2) maximize and prioritize the ability of individuals to choose the
31 setting in which they may live;

32 (3) not impose any requirements on the types of residential settings
33 that may be eligible for funds through a home and community based waiver
34 beyond those imposed by federal law under Section 1915 of the Social
35 Security Act (42 U.S.C. Sec. 1396n);

36 (4) not preclude settings from receiving funding through a home and
37 community based waiver due to their location, size, or the type or
38 number of individuals served except as required by federal law under
39 Section 1915 of the Social Security Act (42 U.S.C. Sec. 1396(n); and

40 (5) not establish a maximum number or percentage of persons with
41 developmental disabilities who may live in a residential environment
42 when viewed as a whole.

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

52 (e) The office shall coordinate with the department of health to
53 ensure that any state transition plan submitted to CMS that relates to
54 federal regulations governing home and community-based services is writ-
55 ten, amended or supplemented to include recognition of the innovative
56 supportive housing program established by this section.

1 (f) The office may conduct public hearings to receive public comment
2 on how residential environments that include innovative supportive hous-
3 ing authorized by this section can best be integrated with the broader
4 community.

5 (g) A residential environment in which persons with developmental
6 disabilities receive services pursuant to the innovative supportive
7 housing program established by this section shall not be considered a
8 community residence, community residential facility for the disabled,
9 supervised living facility, supportive living facility, or any other
10 provider of service requiring an operating certificate under section
11 16.03 of this article. Nothing in this section shall be interpreted as
12 authorizing an increase in the number of beds approved for a community
13 residence, community residential facility for the disabled, supervised
14 living facility, supportive living facility, or any other provider of
15 service requiring an operating certificate under section 16.03 of this
16 article.

17 (h) Residential environments in which persons with developmental disa-
18 bilities receive services pursuant to the innovative supportive housing
19 program established by this section shall not discriminate against any
20 resident or potential resident based on race, creed, age other than
21 being at least eighteen years of age, color, national origin, sex, disa-
22 bility, marital status, military status, family status, sexual orien-
23 tation, gender identity or expression, or any other protected character-
24 istic under the New York state human rights law; provided, however, that
25 the autism spectrum disorders advisory board established pursuant to
26 section 13.42 of this title may issue guidance with respect to resident
27 selection, including admissions criteria, to ensure such residential
28 environments are predominantly available to persons with developmental
29 disabilities, and provided further that residential environments may
30 adhere to such guidance.

31 § 3. Section 352-g of the general business law, as added by chapter
32 987 of the laws of 1960, is amended to read as follows:

33 § 352-g. Exemptions. (a) The attorney general, upon application, may
34 exempt from the provisions of sections three hundred fifty-two-e, three
35 hundred fifty-two-f and three hundred fifty-two-h any offerings of secu-
36 rities (1) made to persons not exceeding forty in number or (2) which
37 securities have been fully registered with the securities and exchange
38 commission of the United States of America or have received an exemption
39 therefrom for reasons other than said offering is an intrastate offering
40 to residents of the state of New York only.

41 (b) Residential environments that are formed as cooperative interests
42 in realty for persons receiving services under the innovative supportive
43 housing program established by section 16.38 of the mental hygiene law
44 shall be under the sole jurisdiction of the autism spectrum disorders
45 advisory board established pursuant to section 13.42 of the mental
46 hygiene law, and shall be exempt from any filing requirements of section
47 three hundred fifty-two-e of this article for the investment in any
48 residential environments and the conversion of any building, group of
49 buildings or development which are converted to a cooperative interest
50 in realty. The autism spectrum disorders advisory board shall be charged
51 with the exclusive jurisdiction over any disclosure requirements involv-
52 ing the initial investment in and initial purchase of an interest in
53 such residential environments.

54 § 4. This act shall take effect immediately.