

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:

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 alternative and innovative housing models,
7 especially for those persons who are able to live more independently and
8 wish to do so.

9 (b) Many persons with developmental disabilities live with a parent or
10 parents, a family member, or other similar direct support personnel.
11 However, many such persons wish to live more independently, and would do
12 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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1 (c) Further, although family caregiving is appropriate in many
2 instances, parents and similar direct support personnel may eventually
3 become unable to continue supporting the person who has a developmental
4 disability, due to the direct support personnel's infirmity, death, or
5 other concerns.

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

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

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

31 (g) Guidance from the federal Centers for Medicare and Medicaid
32 Services ("CMS") has emphasized that there is no cap or percentage that
33 is used to determine whether housing for people with developmental disa-
34 bilities satisfies the federal standards for what constitutes an insti-
35 tution. Rather, CMS clarified that state and local governments should
36 focus on the experience of the individual with developmental disabili-
37 ties in that setting.

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

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

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

56 § 16.38 Innovative housing initiative.

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

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

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

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

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

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

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

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

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

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

43 (f) 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 initiative
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 (g) 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 housing initiative described by this section.

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

4 (i) This section shall not be construed to permit the operation with-
5 out an operating certificate of a community residence, community resi-
6 dential facility for the disabled, supervised living facility, support-
7 ive living facility, or any other provider of service requiring an
8 operating certificate under section 16.03 of this article. Nothing in
9 this section shall be interpreted as authorizing an increase in the
10 number of beds approved for a community residence, community residential
11 facility for the disabled, supervised living facility, supportive living
12 facility, or any other provider of service requiring an operating
13 certificate under section 16.03 of this article.

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

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

38 § 4. Section 352-g of the general business law, as added by chapter
39 987 of the laws of 1960, is amended to read as follows:

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

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

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

8 § 5. This act shall take effect immediately.