

STATE OF NEW YORK

5084

2021-2022 Regular Sessions

IN SENATE

February 23, 2021

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Substance Abuse

AN ACT to amend the mental hygiene law, in relation to creating the office of addiction and mental health services

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

1 Section 1. Subdivisions 2 and 2-a of section 1.03 of the mental
2 hygiene law, subdivision 2 as amended and subdivision 2-a as added by
3 chapter 281 of the laws of 2019, are amended to read as follows:

4 2. [~~"Commissioner" means the commissioner of mental health~~] "Commis-
5 sioner" means the commissioner of addiction and mental health services,
6 and the commissioner of developmental disabilities [~~and the commissioner~~
7 ~~of addiction services and supports~~] as used in this chapter. Any power
8 or duty heretofore assigned to the commissioner of mental hygiene or to
9 the department of mental hygiene pursuant to this chapter shall hereaft-
10 er be assigned to the commissioner of addiction and mental health
11 services in the case of facilities, programs, or services for individ-
12 uals with mental illness, to the commissioner of developmental disabili-
13 ties in the case of facilities, programs, or services for individuals
14 with developmental disabilities, to the commissioner of addiction and
15 mental health services [~~and supports~~] in the case of facilities,
16 programs, or addiction disorder services in accordance with the
17 provisions of titles D and E of this chapter.

18 2-a. Notwithstanding any other section of law or regulation, on and
19 after the effective date of this subdivision, any and all references to
20 the office of alcoholism and substance abuse services and the predeces-
21 sor agencies to the office of alcoholism and substance abuse services
22 including the division of alcoholism and alcohol abuse and the division
23 of substance abuse services and all references to the office of mental
24 health, shall be known as the "office of addiction and mental health

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

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services [~~and supports~~]." Nothing in this subdivision shall be construed as requiring or prohibiting the further amendment of statutes or regulations to conform to the provisions of this subdivision.

§ 2. Section 5.01 of the mental hygiene law, as amended by chapter 281 of the laws of 2019, is amended and two new sections 5.01-a and 5.01-b are added to read as follows:

§ 5.01 Department of mental hygiene.

There shall continue to be in the state government a department of mental hygiene. Within the department there shall be the following autonomous offices:

(1) office of addiction and mental health services; and

(2) office for people with developmental disabilities[~~+~~

~~(3) office of addiction services and supports~~].

§ 5.01-a Office of addiction and mental health services.

(a) The office of addiction and mental health services shall be a new office within the department formed by the integration of the offices of mental health and addiction services and supports which shall focus on issues related to both mental illness and addiction in the state and carry out the intent of the legislature in establishing the offices pursuant to articles seven and nineteen of this chapter. The office of addiction and mental health services is charged with ensuring the development of comprehensive plans for programs and services in the area of research, prevention, and care and treatment, rehabilitation, education and training, and shall be staffed to perform the responsibilities attributed to the office pursuant to sections 7.07 and 19.07 of this chapter and provide services and programs to promote recovery for individuals with mental illness, substance use disorder, or mental illness and substance use disorder.

(b) The commissioner of the office of addiction and mental health services shall be vested with the powers, duties, and obligations of the office of mental health and the office of addiction services and supports. Additionally, two executive deputy commissioners shall be appointed, one commissioner to represent addiction services and supports and one commissioner to represent mental health services

(c) The office of addiction and mental health services may license providers to provide integrated services for individuals with mental illness, substance use disorder, or mental illness and substance use disorder, in accordance with regulations issued by the commissioner.

§ 5.01-b Office of addiction and mental health services.

Until January first, two thousand twenty-two, the office of addiction and mental health services shall consist of the office of mental health and the office of addiction services and supports.

§ 3. Section 5.03 of the mental hygiene law, as amended by chapter 281 of the laws of 2019, is amended to read as follows:

§ 5.03 Commissioners.

The head of the office of addiction and mental health services shall be the commissioner of addiction and mental health services; and the head of the office for people with developmental disabilities shall be the commissioner of developmental disabilities[~~+~~ ~~and the head of the office of addiction services and supports shall be the commissioner of addiction services and supports~~]. Each commissioner shall be appointed by the governor, by and with the advice and consent of the senate, to serve at the pleasure of the governor. Until the commissioner of addiction and mental health services is appointed by the governor and confirmed by the senate, the commissioner of mental health and the commissioner of addiction services and supports shall continue to over-

1 see mental health and addiction services respectively, and work collabo-
2 ratively to integrate care for individuals with both mental health and
3 substance use disorders.

4 § 4. Section 5.05 of the mental hygiene law, as added by chapter 978
5 of the laws of 1977, subdivision (a) as amended by chapter 168 of the
6 laws of 2010, subdivision (b) as amended by chapter 294 of the laws of
7 2007, paragraph 1 of subdivision (b) as amended by section 14 of part J
8 of chapter 56 of the laws of 2012, subdivision (d) as added by chapter
9 58 of the laws of 1988 and subdivision (e) as added by chapter 588 of
10 the laws of 2011, is amended to read as follows:

11 § 5.05 Powers and duties of the head of the department.

12 (a) The commissioners of the office of addiction and mental health
13 services and the office for people with developmental disabilities, as
14 the heads of the department, shall jointly visit and inspect, or cause
15 to be visited and inspected, all facilities either public or private
16 used for the care, treatment and rehabilitation of individuals with
17 mental illness, substance use disorder and developmental disabilities in
18 accordance with the requirements of section four of article seventeen of
19 the New York state constitution.

20 (b) (1) The commissioners of the office of addiction and mental
21 health[~~7~~] services and the office for people with developmental disabil-
22 ities [~~and the office of alcoholism and substance abuse services~~] shall
23 constitute an inter-office coordinating council which, consistent with
24 the autonomy of each office for matters within its jurisdiction, shall
25 ensure that the state policy for the prevention, care, treatment and
26 rehabilitation of individuals with mental illness, substance use disor-
27 ders and developmental disabilities[~~7, alcoholism, alcohol abuse,~~
28 ~~substance abuse, substance dependence, and chemical dependence~~] is
29 planned, developed and implemented comprehensively; that gaps in
30 services to individuals with multiple disabilities are eliminated and
31 that no person is denied treatment and services because he or she has
32 more than one disability; that procedures for the regulation of programs
33 which offer care and treatment for more than one class of persons with
34 mental disabilities be coordinated between the offices having jurisdic-
35 tion over such programs; and that research projects of the institutes,
36 as identified in section 7.17 [~~ex~~], 13.17, or 19.17 of this chapter or
37 as operated by the office for people with developmental disabilities,
38 are coordinated to maximize the success and cost effectiveness of such
39 projects and to eliminate wasteful duplication.

40 (2) The inter-office coordinating council shall annually issue a
41 report on its activities to the legislature on or before December thir-
42 ty-first. Such annual report shall include, but not be limited to, the
43 following information: proper treatment models and programs for persons
44 with multiple disabilities and suggested improvements to such models and
45 programs; research projects of the institutes and their coordination
46 with each other; collaborations and joint initiatives undertaken by the
47 offices of the department; consolidation of regulations of each of the
48 offices of the department to reduce regulatory inconsistencies between
49 the offices; inter-office or office activities related to workforce
50 training and development; data on the prevalence, availability of
51 resources and service utilization by persons with multiple disabilities;
52 eligibility standards of each office of the department affecting clients
53 suffering from multiple disabilities, and eligibility standards under
54 which a client is determined to be an office's primary responsibility;
55 agreements or arrangements on statewide, regional and local government
56 levels addressing how determinations over client responsibility are made

1 and client responsibility disputes are resolved; information on any
2 specific cohort of clients with multiple disabilities for which substan-
3 tial barriers in accessing or receiving appropriate care has been
4 reported or is known to the inter-office coordinating council or the
5 offices of the department; and coordination of planning, standards or
6 services for persons with multiple disabilities between the inter-office
7 coordinating council, the offices of the department and local govern-
8 ments in accordance with the local planning requirements set forth in
9 article forty-one of this chapter.

10 (c) The commissioners shall meet from time to time with the New York
11 state conference of local mental hygiene directors to assure consistent
12 procedures in fulfilling the responsibilities required by this section
13 and by article forty-one of this chapter.

14 (d) 1. The commissioner of addiction and mental health services shall
15 evaluate the type and level of care required by patients in the adult
16 psychiatric centers authorized by section 7.17 of this chapter and
17 develop appropriate comprehensive requirements for the staffing of inpa-
18 tient wards. These requirements should reflect measurable need for
19 administrative and direct care staff including physicians, nurses and
20 other clinical staff, direct and related support and other support
21 staff, established on the basis of sound clinical judgment. The staffing
22 requirements shall include but not be limited to the following: (i) the
23 level of care based on patient needs, including on ward activities, (ii)
24 the number of admissions, (iii) the geographic location of each facili-
25 ty, (iv) the physical layout of the campus, and (v) the physical design
26 of patient care wards.

27 2. Such commissioner, in developing the requirements, shall provide
28 for adequate ward coverage on all shifts taking into account the number
29 of individuals expected to be off the ward due to sick leave, workers'
30 compensation, mandated training and all other off ward leaves.

31 3. The staffing requirements shall be designed to reflect the legiti-
32 mate needs of facilities so as to ensure full accreditation and certif-
33 ication by appropriate regulatory bodies. The requirements shall reflect
34 appropriate industry standards. The staffing requirements shall be fully
35 measurable.

36 ~~[4. The commissioner of mental health shall submit an interim report~~
37 ~~to the governor and the legislature on the development of the staffing~~
38 ~~requirements on October first, nineteen hundred eighty-eight and again~~
39 ~~on April first, nineteen hundred eighty-nine. The commissioner shall~~
40 ~~submit a final report to the governor and the legislature no later than~~
41 ~~October first, nineteen hundred eighty-nine and shall include in his~~
42 ~~report a plan to achieve the staffing requirements and the length of~~
43 ~~time necessary to meet these requirements.]~~

44 (e) The commissioners of the office of addiction and mental health[,]
45 services and the office for people with developmental disabilities[, ~~and~~
46 ~~the office of alcoholism and substance abuse services~~] shall cause to
47 have all new contracts with agencies and providers licensed by the
48 offices to have a clause requiring notice be provided to all current and
49 new employees of such agencies and providers stating that all instances
50 of abuse shall be investigated pursuant to this chapter, and, if an
51 employee leaves employment prior to the conclusion of a pending abuse
52 investigation, the investigation shall continue. Nothing in this section
53 shall be deemed to diminish the rights, privileges, or remedies of any
54 employee under any other law or regulation or under any collective
55 bargaining agreement or employment contract.

§ 5. Section 7.01 of the mental hygiene law, as added by chapter 978 of the laws of 1977, is amended to read as follows:

§ 7.01 Declaration of policy.

The state of New York and its local governments have a responsibility for the prevention and early detection of mental illness and for the comprehensively planned care, treatment and rehabilitation of their mentally ill citizens.

Therefore, it shall be the policy of the state to conduct research and to develop programs which further prevention and early detection of mental illness; to develop a comprehensive, integrated system of treatment and rehabilitative services for the mentally ill. Such a system should include, whenever possible, the provision of necessary treatment services to people in their home communities; it should assure the adequacy and appropriateness of residential arrangements for people in need of service; and it should rely upon improved programs of institutional care only when necessary and appropriate. Further, such a system should recognize the important therapeutic roles of all disciplines which may contribute to the care or treatment of the mentally ill, such as psychology, social work, psychiatric nursing, special education and other disciplines in the field of mental illness, as well as psychiatry and should establish accountability for implementation of the policies of the state with regard to the care and rehabilitation of the mentally ill.

To facilitate the implementation of these policies and to further advance the interests of the mentally ill and their families, a new autonomous agency to be known as the office of addiction and mental health services has been established by this article. The office and its commissioner shall plan and work with local governments, voluntary agencies and all providers and consumers of mental health services in order to develop an effective, integrated, comprehensive system for the delivery of all services to the mentally ill and to create financing procedures and mechanisms to support such a system of services to ensure that mentally ill persons in need of services receive appropriate care, treatment and rehabilitation close to their families and communities. In carrying out these responsibilities, the office and its commissioner shall make full use of existing services in the community including those provided by voluntary organizations.

§ 6. Section 19.01 of the mental hygiene law, as added by chapter 223 of the laws of 1992, is amended to read as follows:

§ 19.01 Declaration of policy.

The legislature declares the following:

Alcoholism, substance abuse and chemical dependence pose major health and social problems for individuals and their families when left untreated, including family devastation, homelessness, and unemployment. It has been proven that successful prevention and treatment can dramatically reduce costs to the health care, criminal justice and social welfare systems.

The tragic, cumulative and often fatal consequences of alcoholism and substance abuse are, however, preventable and treatable disabilities that require a coordinated and multi-faceted network of services.

The legislature recognizes locally planned and implemented prevention as a primary means to avert the onset of alcoholism and substance abuse. It is the policy of the state to promote comprehensive, age appropriate education for children and youth and stimulate public awareness of the risks associated with alcoholism and substance abuse. Further, the legislature acknowledges the need for a coordinated state policy for the

1 establishment of prevention and treatment programs designed to address
2 the problems of chemical dependency among youth, including prevention
3 and intervention efforts in school and community-based programs designed
4 to identify and refer high risk youth in need of chemical dependency
5 services.

6 Substantial benefits can be gained through alcoholism and substance
7 abuse treatment for both addicted individuals and their families. Posi-
8 tive treatment outcomes that may be generated through a complete contin-
9 uum of care offer a cost effective and comprehensive approach to reha-
10 bilitating such individuals. The primary goals of the rehabilitation and
11 recovery process are to restore social, family, lifestyle, vocational
12 and economic supports by stabilizing an individual's physical and
13 psychological functioning. The legislature recognizes the importance of
14 varying treatment approaches and levels of care designed to meet each
15 client's needs. Relapse prevention and aftercare are two primary compo-
16 nents of treatment that serve to promote and maintain recovery.

17 The legislature recognizes that the distinct treatment needs of
18 special populations, including women and women with children, persons
19 with HIV infection, persons diagnosed with mental illness, persons who
20 abuse chemicals, the homeless and veterans with posttraumatic stress
21 disorder, merit particular attention. It is the intent of the legisla-
22 ture to promote effective interventions for such populations in need of
23 particular attention. The legislature also recognizes the importance of
24 family support for individuals in alcohol or substance abuse treatment
25 and recovery. Such family participation can provide lasting support to
26 the recovering individual to prevent relapse and maintain recovery. The
27 intergenerational cycle of chemical dependency within families can be
28 intercepted through appropriate interventions.

29 The state of New York and its local governments have a responsibility
30 in coordinating the delivery of alcoholism and substance abuse services,
31 through the entire network of service providers. To accomplish these
32 objectives, the legislature declares that the establishment of a single,
33 unified office of [~~alcoholism and substance abuse~~] addiction and mental
34 health services will provide an integrated framework to plan, oversee
35 and regulate the state's prevention and treatment network. In recogni-
36 tion of the growing trends and incidence of chemical dependency, this
37 consolidation allows the state to respond to the changing profile of
38 chemical dependency. The legislature recognizes that some distinctions
39 exist between the alcoholism and substance abuse field and the mental
40 health field and where appropriate, those distinctions may be preserved.
41 Accordingly, it is the intent of the state to establish one office of
42 [~~alcoholism and substance abuse~~] addiction and mental health services in
43 furtherance of a comprehensive service delivery system.

44 § 7. Upon or prior to January 1, 2022, the governor may nominate an
45 individual to serve as commissioner of the office of addiction and
46 mental health services. If such individual is confirmed by the senate
47 prior to January 1, 2022, they shall become the commissioner of the
48 office of addiction and mental health services. The governor may desig-
49 nate a person to exercise the powers of the commissioner of the office
50 of addiction and mental health services on an acting basis, until
51 confirmation of a nominee by the senate, who is hereby authorized to
52 take such actions as are necessary and proper to implement the orderly
53 transition of the functions, powers as duties as herein provided,
54 including the preparation for a budget request for the office as estab-
55 lished by this act.

§ 8. Upon the transfer pursuant to this act of the functions and powers possessed by and all of the obligations and duties of the office of mental health and the office of addiction services and supports as established pursuant to the mental hygiene law and other laws, to the office of addiction and mental health services as prescribed by this act, provision shall be made for the transfer of all employees from the office of mental health and the office of addiction services and supports into the office of addiction and mental health services. Employees so transferred shall be transferred without further examination or qualification to the same or similar titles and shall remain in the same collective bargaining units and shall retain their respective civil service classifications, status, and rights pursuant to their collective bargaining units and collective bargaining agreements.

§ 9. Notwithstanding any contrary provision of law, on or before October 1, 2021 and annually thereafter, the office of addiction and mental health services, in consultation with the department of health, shall issue a report, and post such report on their public website, detailing the office's expenditures for mental health and addiction services and supports, including total Medicaid spending directly by the state to licensed or designated providers and payments to managed care providers pursuant to section 364-j of the social services law. The office of addiction and mental health services shall examine reports produced pursuant to this section and may make recommendations to the governor and the legislature regarding appropriations for mental health and addiction services and supports or other provisions of law which may be necessary to effectively implement the creation and continued operation of the office. The office of addiction and mental health services shall also issue a report detailing the steps necessary to shift control over Medicaid spending for mental health and addiction services and supports to such office. Such plan shall be implemented in the next succeeding state budget.

§ 10. The budget appropriations for the office of addiction and mental health services shall be maintained in a manner so that those for addiction services and supports and mental health services are separately itemized. Further, the methods of funding services and supports in place as of January 1, 2021 shall not be altered. Any financial saving realized from the creation of the office of addiction and mental health services shall be reinvested in the services and supports funded by such office.

§ 11. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 12. This act shall take effect immediately. Effective immediately, the office of mental health and the office of addiction services and supports are authorized to promulgate the addition, amendment and/or repeal of any rule or regulation or engage in any work necessary for the implementation of this act on its effective date authorized to be made and completed on or before such effective date.