

# STATE OF NEW YORK

5084--A

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 -- 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 the office of mental health, addiction and wellness

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

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

2. [~~"Commissioner" means the commissioner of mental health~~] "Commissioner" means the commissioner of mental health services, addiction and wellness, the commissioner of developmental disabilities and the commissioner of addiction services and supports as used in this chapter. Any power or duty heretofore assigned to the commissioner of mental hygiene or to the department of mental hygiene pursuant to this chapter shall hereafter be assigned to the commissioner of mental health, addiction and wellness in the case of facilities, programs, or services for individuals with mental illness, to the commissioner of developmental disabilities in the case of facilities, programs, or services for individuals with developmental disabilities, to the commissioner of [~~addiction services and supports~~] mental health, addiction and wellness in the case of facilities, programs, or addiction disorder services in accordance with the provisions of titles D and E of this chapter.

2-a. Notwithstanding any other section of law or regulation, on and after the effective date of this subdivision, any and all references to the office of alcoholism and substance abuse services and the predecessor agencies to the office of alcoholism and substance abuse services including the division of alcoholism and alcohol abuse and the division of substance abuse services and all references to the office of mental

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

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1 health, shall be known as the "office of mental health, addiction  
2 ~~[services and supports]~~ and wellness." Nothing in this subdivision  
3 shall be construed as requiring or prohibiting the further amendment of  
4 statutes or regulations to conform to the provisions of this subdivi-  
5 sion.

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

9 § 5.01 Department of mental hygiene.

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

13 (1) office of mental health, addiction and wellness; and

14 (2) office for people with developmental disabilities[+  
15 ~~(3) office of addiction services and supports~~].

16 § 5.01-a Office of mental health, addiction and wellness.

17 (a) The office of mental health, addiction and wellness shall be a new  
18 office within the department formed by the integration of the offices of  
19 mental health and addiction services and supports which shall focus on  
20 issues related to both mental illness and addiction in the state and  
21 carry out the intent of the legislature in establishing the offices  
22 pursuant to articles seven and nineteen of this chapter. The office of  
23 mental health, addiction and wellness is charged with ensuring the  
24 development of comprehensive plans for programs and services in the area  
25 of research, prevention, and care and treatment, rehabilitation, educa-  
26 tion and training, and shall be staffed to perform the responsibilities  
27 attributed to the office pursuant to sections 7.07 and 19.07 of this  
28 chapter and provide services and programs to promote recovery for indi-  
29 viduals with mental illness, substance use disorder, or mental illness  
30 and substance use disorder.

31 (b) The commissioner of the office of mental health, addiction and  
32 wellness shall be vested with the powers, duties, and obligations of the  
33 office of mental health and the office of addiction services and  
34 supports. Additionally, two executive deputy commissioners shall be  
35 appointed, one commissioner to represent addiction services and  
36 supports, which shall be prominently represented to ensure the needs of  
37 substance use disorder communities are met, and one commissioner to  
38 represent mental health services.

39 (c) The office of mental health, addiction and wellness may license  
40 providers to provide integrated services for individuals with mental  
41 illness, substance use disorder, or mental illness and substance use  
42 disorder, in accordance with regulations issued by the commissioner.  
43 Such direct licensing mechanism allows for resources to get to communi-  
44 ty-based organizations in an expedited manner.

45 (d) The office of mental health, addiction and wellness shall house  
46 employees of the office of Medicaid inspector general who shall work in  
47 a coordinated manner with the relevant state oversight agency for the  
48 program that is the subject of the audit to ensure that access to  
49 services is not adversely impacted. Audit findings concerning the lack  
50 of medical necessity and audit findings concerning missing or inaccurate  
51 patient case or treatment records shall not be extrapolated unless fraud  
52 and/or abuse are detected.

53 (e) The office of mental health, addiction and wellness shall estab-  
54 lish a task force on mental health, addiction and wellness to ensure the  
55 intent of the legislature is fulfilled in establishing such office. Such  
56 task force shall consist of providers, peers, family members, individ-

1 uals who have utilized addiction services and supports and/or mental  
2 health services, public and private sector unions and representatives of  
3 other agencies or offices as the commissioner may deem necessary. Such  
4 task force shall meet regularly in furtherance of its functions and at  
5 any other time at the request of the designated task force leader.

6 § 5.01-b Office of mental health, addiction and wellness.

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

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

12 § 5.03 Commissioners.

13 The head of the office of mental health, addiction and wellness shall  
14 be the commissioner of mental health, addiction and wellness; and the  
15 head of the office for people with developmental disabilities shall be  
16 the commissioner of developmental disabilities[~~, and the head of the~~  
17 ~~office of addiction services and supports shall be the commissioner of~~  
18 ~~addiction services and supports~~]. Each commissioner shall be appointed  
19 by the governor, by and with the advice and consent of the senate, to  
20 serve at the pleasure of the governor. Until the commissioner of mental  
21 health, addiction and wellness is appointed by the governor and  
22 confirmed by the senate, the commissioner of mental health and the  
23 commissioner of addiction services and supports shall continue to over-  
24 see mental health and addiction services respectively, and work collabo-  
25 ratively to integrate care for individuals with both mental health and  
26 substance use disorders.

27 § 4. Section 5.05 of the mental hygiene law, as added by chapter 978  
28 of the laws of 1977, subdivision (a) as amended by chapter 168 of the  
29 laws of 2010, subdivision (b) as amended by chapter 294 of the laws of  
30 2007, paragraph 1 of subdivision (b) as amended by section 14 of part J  
31 of chapter 56 of the laws of 2012, subdivision (d) as added by chapter  
32 58 of the laws of 1988 and subdivision (e) as added by chapter 588 of  
33 the laws of 2011, is amended to read as follows:

34 § 5.05 Powers and duties of the head of the department.

35 (a) The commissioners of the office of mental health, addiction and  
36 wellness and the office for people with developmental disabilities, as  
37 the heads of the department, shall jointly visit and inspect, or cause  
38 to be visited and inspected, all facilities either public or private  
39 used for the care, treatment and rehabilitation of individuals with  
40 mental illness, substance use disorder and developmental disabilities in  
41 accordance with the requirements of section four of article seventeen of  
42 the New York state constitution.

43 (b) (1) The commissioners of the office of mental health, addiction  
44 and wellness and the office for people with developmental disabilities  
45 [~~and the office of alcoholism and substance abuse services~~] shall  
46 constitute an inter-office coordinating council which, consistent with  
47 the autonomy of each office for matters within its jurisdiction, shall  
48 ensure that the state policy for the prevention, care, treatment and  
49 rehabilitation of individuals with mental illness, substance use disor-  
50 ders and developmental disabilities[~~, alcoholism, alcohol abuse,~~  
51 ~~substance abuse, substance dependence, and chemical dependence~~] is  
52 planned, developed and implemented comprehensively; that gaps in  
53 services to individuals with multiple disabilities are eliminated and  
54 that no person is denied treatment and services because he or she has  
55 more than one disability; that procedures for the regulation of programs  
56 which offer care and treatment for more than one class of persons with

1 mental disabilities be coordinated between the offices having jurisdic-  
2 tion over such programs; and that research projects of the institutes,  
3 as identified in section 7.17 [~~or~~], 13.17, or 19.17 of this chapter or  
4 as operated by the office for people with developmental disabilities,  
5 are coordinated to maximize the success and cost effectiveness of such  
6 projects and to eliminate wasteful duplication.

7 (2) The inter-office coordinating council shall annually issue a  
8 report on its activities to the legislature on or before December thir-  
9 ty-first. Such annual report shall include, but not be limited to, the  
10 following information: proper treatment models and programs for persons  
11 with multiple disabilities and suggested improvements to such models and  
12 programs; research projects of the institutes and their coordination  
13 with each other; collaborations and joint initiatives undertaken by the  
14 offices of the department; consolidation of regulations of each of the  
15 offices of the department to reduce regulatory inconsistencies between  
16 the offices; inter-office or office activities related to workforce  
17 training and development; data on the prevalence, availability of  
18 resources and service utilization by persons with multiple disabilities;  
19 eligibility standards of each office of the department affecting clients  
20 suffering from multiple disabilities, and eligibility standards under  
21 which a client is determined to be an office's primary responsibility;  
22 agreements or arrangements on statewide, regional and local government  
23 levels addressing how determinations over client responsibility are made  
24 and client responsibility disputes are resolved; information on any  
25 specific cohort of clients with multiple disabilities for which substan-  
26 tial barriers in accessing or receiving appropriate care has been  
27 reported or is known to the inter-office coordinating council or the  
28 offices of the department; and coordination of planning, standards or  
29 services for persons with multiple disabilities between the inter-office  
30 coordinating council, the offices of the department and local govern-  
31 ments in accordance with the local planning requirements set forth in  
32 article forty-one of this chapter.

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

37 (d) [~~1+~~] (1) The commissioner of mental health, addiction and wellness  
38 shall evaluate the type and level of care required by patients in the  
39 adult psychiatric centers authorized by section 7.17 of this chapter and  
40 develop appropriate comprehensive requirements for the staffing of inpa-  
41 tient wards. These requirements should reflect measurable need for  
42 administrative and direct care staff including physicians, nurses and  
43 other clinical staff, direct and related support and other support  
44 staff, established on the basis of sound clinical judgment. The staffing  
45 requirements shall include but not be limited to the following: (i) the  
46 level of care based on patient needs, including on ward activities, (ii)  
47 the number of admissions, (iii) the geographic location of each facili-  
48 ty, (iv) the physical layout of the campus, and (v) the physical design  
49 of patient care wards.

50 [~~2+~~] (2) Such commissioner, in developing the requirements, shall  
51 provide for adequate ward coverage on all shifts taking into account the  
52 number of individuals expected to be off the ward due to sick leave,  
53 workers' compensation, mandated training and all other off ward leaves.

54 [~~3+~~] (3) The staffing requirements shall be designed to reflect the  
55 legitimate needs of facilities so as to ensure full accreditation and  
56 certification by appropriate regulatory bodies. The requirements shall

1 reflect appropriate industry standards. The staffing requirements shall  
2 be fully measurable.

3 ~~[4. The commissioner of mental health shall submit an interim report~~  
4 ~~to the governor and the legislature on the development of the staffing~~  
5 ~~requirements on October first, nineteen hundred eighty-eight and again~~  
6 ~~on April first, nineteen hundred eighty-nine. The commissioner shall~~  
7 ~~submit a final report to the governor and the legislature no later than~~  
8 ~~October first, nineteen hundred eighty-nine and shall include in his~~  
9 ~~report a plan to achieve the staffing requirements and the length of~~  
10 ~~time necessary to meet these requirements.]~~

11 (e) The commissioners of the office of mental health, addiction and  
12 wellness and the office for people with developmental disabilities~~[, and~~  
13 ~~the office of alcoholism and substance abuse services]~~ shall cause to  
14 have all new contracts with agencies and providers licensed by the  
15 offices to have a clause requiring notice be provided to all current and  
16 new employees of such agencies and providers stating that all instances  
17 of abuse shall be investigated pursuant to this chapter, and, if an  
18 employee leaves employment prior to the conclusion of a pending abuse  
19 investigation, the investigation shall continue. Nothing in this section  
20 shall be deemed to diminish the rights, privileges, or remedies of any  
21 employee under any other law or regulation or under any collective  
22 bargaining agreement or employment contract.

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

25 § 7.01 Declaration of policy.

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

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

46 To facilitate the implementation of these policies and to further  
47 advance the interests of the mentally ill and their families, a new  
48 autonomous agency to be known as the office of mental health, addiction  
49 and wellness has been established by this article. The office and its  
50 commissioner shall plan and work with local governments, voluntary agen-  
51 cies and all providers and consumers of mental health services in order  
52 to develop an effective, integrated, comprehensive system for the deliv-  
53 ery of all services to the mentally ill and to create financing proce-  
54 dures and mechanisms to support such a system of services to ensure that  
55 mentally ill persons in need of services receive appropriate care,  
56 treatment and rehabilitation close to their families and communities. In



1 carrying out these responsibilities, the office and its commissioner  
2 shall make full use of existing services in the community including  
3 those provided by voluntary organizations.

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

6 § 19.01 Declaration of policy.

7 The legislature declares the following:

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

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

17 The legislature recognizes locally planned and implemented prevention  
18 as a primary means to avert the onset of alcoholism and substance abuse.  
19 It is the policy of the state to promote comprehensive, age appropriate  
20 education for children and youth and stimulate public awareness of the  
21 risks associated with alcoholism and substance abuse. Further, the  
22 legislature acknowledges the need for a coordinated state policy for the  
23 establishment of prevention and treatment programs designed to address  
24 the problems of chemical dependency among youth, including prevention  
25 and intervention efforts in school and community-based programs designed  
26 to identify and refer high risk youth in need of chemical dependency  
27 services.

28 Substantial benefits can be gained through alcoholism and substance  
29 abuse treatment for both addicted individuals and their families. Posi-  
30 tive treatment outcomes that may be generated through a complete contin-  
31 uum of care offer a cost effective and comprehensive approach to reha-  
32 bilitating such individuals. The primary goals of the rehabilitation and  
33 recovery process are to restore social, family, lifestyle, vocational  
34 and economic supports by stabilizing an individual's physical and  
35 psychological functioning. The legislature recognizes the importance of  
36 varying treatment approaches and levels of care designed to meet each  
37 client's needs. Relapse prevention and aftercare are two primary compo-  
38 nents of treatment that serve to promote and maintain recovery.

39 The legislature recognizes that the distinct treatment needs of  
40 special populations, including women and women with children, persons  
41 with HIV infection, persons diagnosed with mental illness, persons who  
42 abuse chemicals, the homeless and veterans with posttraumatic stress  
43 disorder, merit particular attention. It is the intent of the legisla-  
44 ture to promote effective interventions for such populations in need of  
45 particular attention. The legislature also recognizes the importance of  
46 family support for individuals in alcohol or substance abuse treatment  
47 and recovery. Such family participation can provide lasting support to  
48 the recovering individual to prevent relapse and maintain recovery. The  
49 intergenerational cycle of chemical dependency within families can be  
50 intercepted through appropriate interventions.

51 The state of New York and its local governments have a responsibility  
52 in coordinating the delivery of alcoholism and substance abuse services,  
53 through the entire network of service providers. To accomplish these  
54 objectives, the legislature declares that the establishment of a single,  
55 unified office of [~~alcoholism and substance abuse services~~] mental  
56 health, addiction and wellness will provide an integrated framework to

1 plan, oversee and regulate the state's prevention and treatment network.  
2 In recognition of the growing trends and incidence of chemical dependen-  
3 cy, this consolidation allows the state to respond to the changing  
4 profile of chemical dependency. The legislature recognizes that some  
5 distinctions exist between the alcoholism and substance abuse field and  
6 the mental health field and where appropriate, those distinctions may be  
7 preserved. Accordingly, it is the intent of the state to establish one  
8 office of [~~alcoholism and substance abuse services~~] mental health,  
9 addiction and wellness in furtherance of a comprehensive service deliv-  
10 ery system.

11 § 7. Upon or prior to January 1, 2022, the governor may nominate an  
12 individual to serve as commissioner of the office of mental health,  
13 addiction and wellness. If such individual is confirmed by the senate  
14 prior to January 1, 2022, they shall become the commissioner of the  
15 office of mental health, addiction and wellness. The governor may  
16 designate a person to exercise the powers of the commissioner of the  
17 office of mental health, addiction and wellness on an acting basis,  
18 until confirmation of a nominee by the senate, who is hereby authorized  
19 to take such actions as are necessary and proper to implement the order-  
20 ly transition of the functions, powers as duties as herein provided,  
21 including the preparation for a budget request for the office as estab-  
22 lished by this act.

23 § 8. Upon the transfer pursuant to this act of the functions and  
24 powers possessed by and all of the obligations and duties of the office  
25 of mental health and the office of addiction services and supports as  
26 established pursuant to the mental hygiene law and other laws, to the  
27 office of mental health, addiction and wellness as prescribed by this  
28 act, provision shall be made for the transfer of all employees from the  
29 office of mental health and the office of addiction services and  
30 supports into the office of mental health, addiction and wellness.  
31 Employees so transferred shall be transferred without further examina-  
32 tion or qualification to the same or similar titles and shall remain in  
33 the same collective bargaining units and shall retain their respective  
34 civil service classifications, status, and rights pursuant to their  
35 collective bargaining units and collective bargaining agreements.

36 § 9. Notwithstanding any contrary provision of law, on or before Octo-  
37 ber 1, 2021 and annually thereafter, the office of mental health,  
38 addiction and wellness, in consultation with the department of health,  
39 shall issue a report, and post such report on their public website,  
40 detailing the office's expenditures for mental health and addiction  
41 services and supports, including total Medicaid spending directly by the  
42 state to licensed or designated providers and payments to managed care  
43 providers pursuant to section 364-j of the social services law. The  
44 office of mental health, addiction and wellness shall examine reports  
45 produced pursuant to this section and may make recommendations to the  
46 governor and the legislature regarding appropriations for mental health  
47 and addiction services and supports or other provisions of law which may  
48 be necessary to effectively implement the creation and continued opera-  
49 tion of the office. The office of mental health, addiction and wellness  
50 shall also issue a report detailing the steps necessary to shift control  
51 over Medicaid spending for mental health and addiction services and  
52 supports to such office. Such plan shall be implemented in the next  
53 succeeding state budget.

54 § 10. The budget appropriations for the office of mental health,  
55 addiction and wellness shall be maintained in a manner so that those for  
56 addiction services and supports and mental health services are separate-

1 ly itemized. Further, the methods of funding services and supports in  
2 place as of January 1, 2021 shall not be altered. Any financial saving  
3 realized from the creation of the office of mental health, addiction and  
4 wellness shall be reinvested in the services and supports funded by such  
5 office.

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

12 § 12. Notwithstanding any inconsistent provision of law to the  
13 contrary, effective January 1, 2022, all functions, powers, duties and  
14 obligations of the New York state office of Medicaid inspector general  
15 concerning Medicaid audits and the prevention of Medicaid fraud and  
16 abuse shall be transferred to the office of mental health, addiction and  
17 wellness.

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