STATE OF NEW YORK

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2021-2022 Regular Sessions

IN SENATE

February 23, 2021

Introduced by Sens. HARCKHAM, BROUK, GOUNARDES -- 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 -- 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

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

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including the division of alcoholism and alcohol abuse and the division of substance abuse services **and all references to the office of mental health,** shall be known as the "office of **mental health,** addiction [~~**services and supports**~~] **and wellness**." 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 mental health**, addiction and wellness**; **and**

(2) office for people with developmental disabilities[~~**;**~~

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

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

(a) The office of mental health, addiction and wellness 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 mental health, addiction and wellness 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 mental health, addiction and wellness 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, which shall be prominently represented to ensure the needs of substance use disorder communities are met, and one commissioner to represent mental health services.

(c) The office of mental health, addiction and wellness 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. Such direct licensing mechanism allows for resources to get to community-based organizations in an expedited manner.

(d) The office of mental health, addiction and wellness shall establish a task force on mental health, addiction and wellness to ensure the intent of the legislature is fulfilled in establishing such office. Such task force shall consist of providers, peers, family members, individuals who have utilized addiction services and supports and/or mental health services, the local government unit as defined in article forty-one of this chapter, public and private sector unions and representatives of other agencies or offices as the commissioner may deem necessary. Such task force shall meet regularly in furtherance of its

functions and at any other time at the request of the designated task force leader.

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

Until January first, two thousand twenty-two, the office of mental health, addiction and wellness 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 mental health**, addiction and wellness** shall be the commissioner of mental health**, addiction and wellness**; **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 mental health, addiction and wellness 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 oversee mental health and addiction services respectively, and work collaboratively to integrate care for individuals with both mental health and substance use disorders.**

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

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

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

(b) (1) The commissioners of the office of mental health, **addiction and wellness and** the office for people with developmental disabilities [~~and the office of alcoholism and substance abuse services~~] shall constitute an inter-office coordinating council which, consistent with the autonomy of each office for matters within its jurisdiction, shall ensure that the state policy for the prevention, care, treatment and rehabilitation of individuals with mental illness**, substance use disorders** and developmental disabilities[~~, alcoholism, alcohol abuse, substance abuse, substance dependence, and chemical dependence~~] is planned, developed and implemented comprehensively; that gaps in services to individuals with multiple disabilities are eliminated and that no person is denied treatment and services because he or she has more than one disability; that procedures for the regulation of programs which offer care and treatment for more than one class of persons with mental disabilities be coordinated between the offices having jurisdiction over such programs; and that research projects of the institutes, as identified in section 7.17 [~~or~~]**,** 13.17**, or 19.17** of this chapter or

as operated by the office for people with developmental disabilities, are coordinated to maximize the success and cost effectiveness of such projects and to eliminate wasteful duplication.

(2) The inter-office coordinating council shall annually issue a report on its activities to the legislature on or before December thirty-first. Such annual report shall include, but not be limited to, the following information: proper treatment models and programs for persons with multiple disabilities and suggested improvements to such models and programs; research projects of the institutes and their coordination with each other; collaborations and joint initiatives undertaken by the offices of the department; consolidation of regulations of each of the offices of the department to reduce regulatory inconsistencies between the offices; inter-office or office activities related to workforce training and development; data on the prevalence, availability of resources and service utilization by persons with multiple disabilities; eligibility standards of each office of the department affecting clients suffering from multiple disabilities, and eligibility standards under which a client is determined to be an office's primary responsibility; agreements or arrangements on statewide, regional and local government levels addressing how determinations over client responsibility are made and client responsibility disputes are resolved; information on any specific cohort of clients with multiple disabilities for which substantial barriers in accessing or receiving appropriate care has been reported or is known to the inter-office coordinating council or the offices of the department; and coordination of planning, standards or services for persons with multiple disabilities between the inter-office coordinating council, the offices of the department and local governments in accordance with the local planning requirements set forth in article forty-one of this chapter.

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

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

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

[~~3.~~] **(3)** The staffing requirements shall be designed to reflect the legitimate needs of facilities so as to ensure full accreditation and certification by appropriate regulatory bodies. The requirements shall reflect appropriate industry standards. The staffing requirements shall be fully measurable.

4. The commissioner of mental health, addiction, and wellness shall submit an interim report to the governor and the legislature on the development of the staffing requirements on October first, [~~nineteen hundred eighty-eight~~] two thousand twenty-one and again on April first, [~~nineteen hundred eighty-nine~~] two thousand twenty-two. The commissioner shall submit a final report to the governor and the legislature no later than October first, [~~nineteen hundred eighty-nine~~] two thousand twenty-two and shall include in his report a plan to achieve the staffing requirements and the length of time necessary to meet these requirements.

(e) The commissioners of the office of mental health, addiction and wellness and the office for people with developmental disabilities[~~, and the office of alcoholism and substance abuse services~~] shall cause to have all new contracts with agencies and providers licensed by the offices to have a clause requiring notice be provided to all current and new employees of such agencies and providers stating that all instances of abuse shall be investigated pursuant to this chapter, and, if an employee leaves employment prior to the conclusion of a pending abuse investigation, the investigation shall continue. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective 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 mental health, addiction and wellness 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 establishment of prevention and treatment programs designed to address the problems of chemical dependency among youth, including prevention and intervention efforts in school and community-based programs designed to identify and refer high risk youth in need of chemical dependency services.

Substantial benefits can be gained through alcoholism and substance abuse treatment for both addicted individuals and their families. Positive treatment outcomes that may be generated through a complete continuum of care offer a cost effective and comprehensive approach to rehabilitating such individuals. The primary goals of the rehabilitation and recovery process are to restore social, family, lifestyle, vocational and economic supports by stabilizing an individual's physical and psychological functioning. The legislature recognizes the importance of varying treatment approaches and levels of care designed to meet each client's needs. Relapse prevention and aftercare are two primary components of treatment that serve to promote and maintain recovery.

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

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

plan, oversee and regulate the state's prevention and treatment network. In recognition of the growing trends and incidence of chemical dependency, this consolidation allows the state to respond to the changing profile of chemical dependency. The legislature recognizes that some distinctions exist between the alcoholism and substance abuse field and **the mental health field and** where appropriate, those distinctions may be preserved. Accordingly, it is the intent of the state to establish one office of [~~**alcoholism and substance abuse services**~~] **mental health, addiction and wellness** in furtherance of a comprehensive service delivery system.

§ 7. Upon or prior to January 1, 2022, the governor may nominate an individual to serve as commissioner of the office of mental health, addiction and wellness. If such individual is confirmed by the senate prior to January 1, 2022, they shall become the commissioner of the office of mental health, addiction and wellness. The governor may designate a person to exercise the powers of the commissioner of the office of mental health, addiction and wellness on an acting basis, until confirmation of a nominee by the senate, who is hereby authorized to take such actions as are necessary and proper to implement the orderly transition of the functions, powers as duties as herein provided, including the preparation for a budget request for the office as established 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 mental health, addiction and wellness 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 mental health, addiction and wellness. 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 mental health, addiction and wellness, 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 mental health, addiction and wellness 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.

§ 10. Any financial saving realized from the creation of the office of mental health, addiction and wellness 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.