STATE OF NEW YORK

5028--A

2023-2024 Regular Sessions

IN SENATE

February 22, 2023

Introduced by Sens. MANNION, ADDABBO, ASHBY, CLEARE, GALLIVAN, GONZALEZ, HOYLMAN-SIGAL, KENNEDY, MAY, PALUMBO, SALAZAR, SCARCELLA-SPANTON, WEBB, WEBER -- read twice and ordered printed, and when printed to be committed to the Committee on 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 housing initiative for persons with a developmental disability who wish and are able to safely live independently; 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:

Section 1. The mental hygiene law is amended by adding a new section 16.38 to read as follows:

§ 16.38 Innovative housing initiative.

(a) The office shall assist a person with a developmental disability to live independently, where appropriate, in a non-certified residential environment, with support services, including but not limited to staffing support, shared staffing support, and opportunities for social engagement and recreation, when determined by the office to be an appropriate non-certified residential environment for such person.

(b) Such residential environment may be comprised of a single housing unit or multiple units of housing, in one or more buildings, including but not limited to: (i) leased residential housing units; (ii) housing

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

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that qualifies as a cooperative interest in realty under section three hundred fifty-two-e of the general business law; and (iii) condominium units under article nine-B of the real property law. The interest in such residential unit may be leased or owned by a person with a developmental disability, or an entity on behalf of such person, including but not limited to a trust established for such person's benefit. Each unit of residential housing may be occupied by no more than the number of unrelated persons permitted by local law, or other applicable law, rule or regulation.

(c) The office shall have the authority to determine a person's eligibility for the innovative housing initiative as described in this section, including:

(1) where a person with a developmental disability may prefer to live and with whom they may prefer to live with, where appropriate;

(2) maximizing the types of residential environments in which a person with a developmental disability may live while being eligible for services authorized and funded through a home and community based waiver, or other payment mechanism, as appropriate, as determined by the office, to the full extent permitted; and

(3) permitting a number of persons with a developmental disability to live in a residential environment, where appropriate and to the extent permitted.

(d) This section shall not limit or otherwise affect requirements applying to:

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

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

(e) The office shall coordinate with the department of health to determine whether an amendment to the state plan authorized by section three hundred sixty-three-a of the social services law or a waiver is required from the federal Centers for Medicare and Medicaid Services ("CMS") to maximize federal financial participation for the initiative described in this section no more than one hundred eighty days from the effective date of this section. If the office determines that an amendment to the state plan or a waiver is required or desirable, the department of health shall submit such amendment or apply to CMS for such waiver.

(f) This section shall not be construed to permit the operation without an operating certificate of a community residence, community residential facility for the disabled, supervised living facility, supportive living facility, or any other provider of service requiring an operating certificate under section 16.03 of this article. Nothing in this section shall be interpreted as authorizing an increase in the number of beds approved for a community residence, community residential facility for the disabled, supervised living facility, supportive living facility, or any other provider of service requiring an operating certificate under section 16.03 of this article.

(g) Residential environments in which persons with a developmental disability receive services pursuant to the innovative housing initiative described by this section shall not discriminate against any resident or potential resident based on race, creed, age other than being at least eighteen years of age, color, national origin, sex, disability, marital status, military status, family status, sexual orientation,

gender identity or expression, or any other protected characteristic under the New York state human rights law.

§ 2. The office for people with developmental disabilities shall conduct public hearings on residential environments that include the innovative housing initiative as described pursuant to section 16.38 of the mental hygiene law.

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

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

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

(b) Residential environments that are formed as housing development fund corporations pursuant to article XI of the private housing finance law and section four hundred two of the business corporation law where such residential environment is formed for persons receiving services under the innovative housing initiative established by section 16.38 of the mental hygiene law and where the division of housing and community renewal is the supervising agency as defined by section five hundred seventy-two of the private housing finance law, and where the division of housing and community renewal requires the housing development fund corporation to enter into a monitoring agreement with a qualified not-for-profit with experience in the oversight, support and management of housing development fund corporations shall be exempt from any filing requirements of section three hundred fifty-two-e of this article for the investment in any residential environments and the conversion of any building, group of buildings or development which are converted to a housing development fund corporation.

§ 5. This act shall take effect one year after it shall have become a law; provided, however, that section two of this act shall take effect immediately. Effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.