STATE OF NEW YORK

3897

2025-2026 Regular Sessions

IN ASSEMBLY

January 30, 2025

Introduced by M. of A. SIMON, SEAWRIGHT -- read once and referred to the Committee on Judiciary

AN ACT to amend the mental hygiene law, in relation to due process procedures for all adults with developmental disabilities

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

Section 1. This act shall be known and may be cited as the "protection of adults with developmental disabilities act".

§ 2. Legislative findings and intent. Certain federal and state laws and regulations currently provide various due process protections for certain categories of persons with developmental disabilities. For example, the federal Individuals with Disabilities Education Act provides a child or parents of a child with a disability important due process protections, including the right to an impartial hearing to challenge a determination regarding the appropriate setting for a child with a disability. New York state also provides substantial due process protections for the parents of a child with a disability who needs residential care while this child is in school.

However, when a developmentally disabled individual reaches the age of twenty-one, their due process protections become significantly diminished or, in some cases, end completely. Specifically, those developmentally disabled adults in transitional care who reach the age of twenty-one on or before June 30, 1996 have minimal due process protections pursuant to section 13.38 of the mental hygiene law, and those who reached age twenty-one on or after July 1, 1996 receive no due process protections. Some of New York's most vulnerable adult populations, including those who remain continuously disabled and continuously in need of residential or other forms of care, thus lose important due process protections simply because of their age.

The legislature recognizes that inappropriate or ineffective placements and/or services for persons with developmental disabilities can

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

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have devastating effects for those persons impacted, including abuse, self-harm, improper medication or even death. Additionally, the legislature recognizes the harm a person with developmental disabilities can suffer from the disruption to such person with development disabilities' current treatment needs, home life and familiar surroundings that an inappropriate change in placement, or an improper change in services, entails. Moreover, it is increasingly the policy of the state of New York to afford persons with disabilities the opportunity to participate in their treatment and residential placement decisions, and to obtain their or their guardian's consent prior to any changes of placement.

The legislature hereby finds that New York state must ensure that all developmentally disabled adults are afforded necessary and basic due process protections, and fair and meaningful due process proceedings, relating to proposed changes in placement, or proposed changes in services rendered, to those developmentally disabled adults under the care of New York state agencies to ensure that appropriate, effective treatment and placements are provided for this highly vulnerable adult population.

In order to ensure that New York state is providing the most appropriate setting and services for all persons with developmental disabilities, the legislature hereby finds that it is incumbent upon New York state to institute uniform minimum due process protections for all persons with developmental disabilities age twenty-one and older. These protections provide, in part, for fair and meaningful due process proceedings relating to a proposed change of placement or a proposed change in services by the offices of the department of mental hygiene, and are intended to supplement and strengthen the patchwork of various protections for adults with developmental disabilities in place under existing laws.

§ 3. The mental hygiene law is amended by adding a new section 13.36 to read as follows:

§ 13.36 Protection of adults with developmental disabilities.

1. Definitions. As used in this section, unless otherwise expressly stated or unless the context otherwise requires:

(a) "Adults with developmental disabilities" means all persons with a mental disability, as that term is defined in section 1.03 of this chapter, and who are twenty-one years old or older, or the guardian or guardians or representative or representatives of any such person, if any exist.

(b) "Services" means any and all care and treatment rendered to adults with developmental disabilities (i) who are under the care, authority, jurisdiction, supervision or control of the various offices of the department, and/or (ii) which are funded in any part by any office of the department. As used in this section, "services" includes, but is not limited to, "services for the developmentally disabled" as that term is defined in section 1.03 of this chapter, as well as any other treatment of any form or type.

(c) "Triggering event" means any proposed action, or denial, by the department or any of its offices, as described in subparagraph (i) of paragraph (a) or subparagraph (i) of paragraph (b) of subdivision two of this section.

2. Role of department; triggering events. The department, through its various offices and in conjunction with any other necessary state agency or office, where applicable, shall develop, implement, and ensure a system of meaningful due process protections for adults with developmental disabilities, and shall develop and promulgate regulations, poli-

cies and procedures necessary to resolve objections by or on behalf of adults with developmental disabilities in conformance with this section. Such due process protections shall be afforded to adults with developmental disabilities when:

(a) any office of the department initiates a proposal which may result in:

(i) a change in placement for an adult with developmental disabilities, including any proposed discharge or relocation from a facility where services are being provided; or

(ii) a reduction, suspension or termination of specific services or funding which is being provided to an adult with developmental disabilities pursuant to an individualized treatment plan, including an individualized services plan; and,

(iii) a timely objection to such proposal or proposals and a request for an administrative appeal is made by or on behalf of an adult with developmental disabilities; or,

(b) any office of the department:

(i) denies an adult with developmental disabilities specific services or a specific placement which is recommended for that individual pursuant to an individualized treatment plan, including an individualized services plan; and,

(ii) a timely objection to such denial or denials and a request for an administrative appeal is made by or on behalf of an adult with developmental disabilities.

3. Minimum due process protections. Due process protections for adults with developmental disabilities implemented by the department and its offices shall include, at a minimum, the rights of adults with developmental disabilities:

(a) to be provided with advance written notice by the relevant office of the department of any triggering event, whether it be a proposed action or a denial by such office of the department, which notice shall set forth all reasons and documentation, if any, in support of the determination by the relevant office of the department, and which shall specifically advise an adult with developmental disabilities as to such adult with developmental disabilities' right to formally object in writing and to request an administrative hearing within thirty days of receipt of notice of the triggering event, and as to their other rights as provided within this section;

(b) to be represented in any proceedings before the relevant office of the department by any person including, but not limited to, a parent, guardian, correspondent, advocate, legal representative, themselves, or any other person or representative;

(c) to request, and to be provided with, an opportunity to present, in a meaningful fashion and at a reasonable time not less than fourteen days from the date a written request for an administrative hearing is made, any objection to a triggering event by the relevant office of the department to an impartial decision maker in the context of an evidentiary hearing;

(d) to discover and obtain, and have a meaningful opportunity to review in advance of the evidentiary hearing, any documents to be used by the relevant office of the department in support of its determination at such hearing;

(e) to present and elicit evidence and witnesses, and confront and cross-examine evidence and witnesses at such evidentiary hearing;

(f) to obtain a reasonably prompt written determination by the impartial hearing officer, which shall be based on the evidence and testimony

introduced and rendered at the hearing, and in which it is determined whether the triggering event taken or proposed by the relevant office of the department, if ultimately allowed, would be (i) in the overall best, individual interests of the adult with developmental disabilities, (ii) result in appropriate, effective services and/or placement for such individual, and (iii) so as to best enable their personal development;

(g) to appeal, if necessary, the written determination rendered by the impartial hearing officer to the commissioner of the relevant office of the department, who may remand the matter to the hearing officer for further review or findings, if necessary, and who shall, after review of the matter, issue a further written determination which shall be binding on the relevant office of the department as its final administrative determination;

(h) to appeal, if necessary, the final written determination rendered by the commissioner on behalf of the relevant office of the department by way of a proceeding pursuant to article seventy-eight of the civil practice law and rules; and

(i) to continued services, programming, funding and placement by the relevant office of the department, of the same level and type as that provided by such office prior to the triggering event, during the period that an objection by an adult with developmental disabilities is undergoing administrative and/or appellate review, unless as otherwise agreed to by such office and such adult with developmental disabilities or such adult with developmental disabilities' guardian or representative.

4. Nothing in this section shall prevent the department and its offices from designing and implementing dispute resolution mechanisms which are not inconsistent with the due process protections for adults with developmental disabilities set forth by this section, including expedited, or informal (non-binding), dispute resolution mechanisms that may be agreed to by the relevant office of the department and such adult with developmental disabilities or such adult with developmental disabilities' guardian or representative.

5. The minimum due process protections for adults with developmental disabilities set forth within this section shall serve to supplement and reinforce any and all other laws or authorities which provide for certain rights for the developmentally disabled adult population, including the state administrative procedure act or applicable federal requirements, if any, pertaining to due process protections for such individuals. In the absence of regulations, the provisions of the state administrative procedure act shall control the hearing process where not inconsistent with the provisions of this section. The department, through its offices, shall take all actions necessary to ensure the continued compliance with any applicable federal authorities to the extent that any provision of this section may be deemed to conflict with such authorities.

§ 4. This act shall take effect immediately.