*** § 41.40 Respite services.**

(a) Definitions. When read in this article:

1. "Respite" shall mean the provision of intermittent temporary substitute care of mentally retarded or developmentally disabled persons on behalf of and in the absence of the parent or legal guardian of the mentally retarded or developmentally disabled person, for the purpose of providing relief from the stresses of responsibilities concommitant with providing continued care. Respite shall not exceed forty-two days in any calendar year for any individual except where authorized by the commissioner, subject to the approval of the director of the budget.

2. "Provider" shall mean any person, firm, corporation, governmental subdivision or state agency which renders respite services including, but not limited to: individuals, family care providers and volunteers. Individuals who are a parent or legal guardian of a disabled person receiving the respite service may be providers only where respite service is rendered as part of a voluntary in-kind program approved hereunder.

3. "Sponsor" shall mean any person, firm, corporation, governmental subdivision or state agency approved by the commissioner which contracts with the office for purposes of a demonstration project pursuant to this chapter and which is responsible for the recruitment, coordination and arrangement of provider services in a manner which meets client needs, the general supervision of the demonstration project, and the submission of such information or reports as may be required by the commissioner.

(b) Respite demonstration programs. 1. The commissioner is hereby authorized to establish respite demonstration projects for the purposes of establishing eligibility criteria for respite services; evaluating the demand for respite services and the means of effectively, efficiently and economically meeting such demand; ascertaining the respite services available and necessary to meet the demand; evaluating the effectiveness of utilizing paid providers which are not state agencies for the provision of respite services; evaluating the viability of financing the provision of respite services through user fees and by local government units; evaluating the effectiveness and efficiency of

utilizing a program of voluntary in-kind services for the provision of respite; evaluating the relationship between respite and the need for institutionalization; identifying the costs of providing such services; and the effectiveness of continuing such projects. The commissioner shall establish regulations as may be necessary for the implementation of such demonstration projects.

2. The commissioner is authorized to demonstrate, where appropriate, the viability of the provision of insurance coverage necessary to protect and defend providers from liability for claims arising out of the provision of voluntary in-kind respite services.

3. The commissioner, within four months after the effective date of this section, shall publicize the existence of, and make available, application forms for such demonstration projects.

4. Such application forms shall contain notification of the purposes of respite projects as set forth in paragraph one of this subdivision and shall require the submission of such information as the commissioner deems necessary for the evaluation of such proposed demonstration projects. This information shall include, but not be limited to:

i. the identity and qualifications of the sponsor and provider or providers and a plan for the coordination of their services;

ii. the assessment of the demand and availability for respite services within the community to be served;

iii. evidence of the level of community support and participation;

iv. a fiscal plan, including specific provisions for the utilization of existing reimbursement and funding sources, and availability of potential funding sources; and

v. plans for publicizing the purpose of the project and the services to be provided, including the identities, services and charges of each participating provider.

5. All applications shall be received by the commissioner no later than January first, nineteen hundred eighty-three at which time the commissioner shall have four weeks to review and certify projects and, subject to the approval of the director of the budget award grants, within amounts available therefor, for the operation of demonstration projects from funds appropriated therefor.

Award of such grant shall be contingent upon receipt of evidence by the commissioner that the combination of projects to be selected for such awards shall be capable of achieving those purposes set forth in paragraph one of this subdivision. Notification and description of all such awards shall be forwarded to the chairman of the senate finance committee and to the chairman of the assembly ways and means committee.

6. The commissioner shall contract with a sponsor for the provision of respite services pursuant to this section.

(c) On or before the first day of January, nineteen hundred eighty-four the commissioner shall issue a report to the governor, the director of the budget, the chairman of the senate finance committee, and the chairman of the assembly ways and means committee evaluating the appropriateness of continuing respite projects which shall include, but not be limited to:

1. An analysis of the effectiveness of respite in promoting the continuance of quality care for such mentally retarded and developmentally disabled persons.

2. A qualitative and quantitative analysis of respite services rendered by providers herein, together with demographic analysis of the families and mentally retarded or developmentally disabled persons participating in the project and the degree of disability of participants.

3. An assessment of the nature and extent of the demands for respite services and an analysis of accessibility and availability of services to meet this demand.

4. Specific identification of any factors which significantly enhance or inhibit the successful provision of respite.

5. A comparative assessment of the costs, efficiency and effectiveness of each type of service or combination of services provided either pursuant to this section or otherwise existing.

6. Methods for funding respite services, including:

i. state financial support;

ii. federal funds;

iii. local funds;

iv. available third party reimbursement for qualified services;

v. user fees; and

vi. in-kind services for users of respite services.

7. A financial report for each project.

8. A qualitative and quantitative description of respite services provided through developmental centers and the home care program and any other respite services provided through the office or any other provider as well as an analysis of the effectiveness and efficiency of such respite services.

9. Recommendations for client eligibility criteria for all respite services described by the report issued pursuant to this paragraph.

(d) No funds shall be paid to any parent or guardian for the provision of respite services to his or her own child or dependent.

* NB Expired March 31, 1984

* NB There are 2 § 41.40