

MEMORANDUM

April 17, 2007

A.6846-A (By Member of Assembly Weisenberg)

S.3105-A (By Senator Morahan)

An act to amend the mental hygiene law, in relation to incident notifications and reports, release of records pertaining to allegations and investigations of abuse and mistreatment, directing the state commission on quality of care and advocacy for persons with disabilities to serve as a clearinghouse on the right of access to records and reports relating to patient care, incident reporting, child abuse and mistreatment in residential care, and fines for violations by holders of operating certificates; and to establish a task force on mental hygiene records

This bill would enact “Jonathan’s Law” and make certain records of individuals in mental hygiene facilities more accessible to parents and legal guardians.

NYSRA supports the spirit and mission of this legislation regarding proper access to records of minor children in mental hygiene settings. We express concern, however, regarding the legislation’s approach, which we fear could serve to defeat that spirit and mission in some cases.

We applaud the bill’s requirement that a Task Force be convened to study and make recommendations regarding this very important aspect of parental rights. Such a study can lead to comprehensive deliberations on the weighing of all personal and policy interests, review all policies and statutes implicated, and lead to strong and effective reform in an area appropriately of major interest to all stakeholders.

However, this bill’s approach of amending the Mental Hygiene Law immediately, even as it acknowledges the need for a study of what measures would be most effective, is in our view a situation where a solution is being imposed before it is known to be a proper solution. We do not believe this to be the soundest course to follow. Since the Task Force provisions require recommendations by September 30 – less than 6 months hence – we would counsel that the bill’s amendments regarding access under the Mental Hygiene Law be withdrawn and instead submitted as one proposal for the Task Force to consider.

Without a doubt, parents have a substantial and critically important interest in gaining access to information regarding possible mistreatment of their minor children in state facilities and voluntary provider settings. NYSRA strongly endorses that view. However, this bill’s provisions making virtually all investigative records accessible may pose a danger in that they may “chill” investigative efforts and, in fact, lead to less information ultimately being reported and made available.

This version of the bill laudably codifies a methodology whereby identities of individuals receiving services and others would be redacted prior to release of information. Still, the concern remains that this measure fails to instill anonymity in many settings, particularly those such as small residences, where the identities of everyone are widely known at all times. NYSRA suggests that a better practice, ultimately leading to more frequent or more complete incident reports, would be to standardize reports in such a way as to ensure that fear of implication does not deter those in the field from being forthcoming in incident reporting.

NYSRA's view, as expressed in its legislative testimony to the New York State Senate, also is driven by concerns for the protection of individuals receiving services in the mental hygiene system. Such individuals are protected by a panoply of confidentiality statutes – statutes enacted by the Legislature in recognition of the need to protect New Yorkers in the system. Their interests, as well as those of parents and providers, must also be critically weighed in fashioning a better records-access regime.

Confidentiality statutes for people in the system are codified in several different laws of New York State, including the Mental Hygiene Law, the State Education Law, the Social Services Law, and the Public Health Law. Elements of the federal HIPAA statute and regulations also may apply, a consideration that the bill does recognize but may not fully address. None of these prior enactments should be lightly undone; all should be studied to ensure changes are, in fact, not at cross-purposes with their missions.

At the least, we believe amending just one of them at a time is not the most effective approach.

For the foregoing reasons, NYSRA expresses concern regarding this measure. We remain available and eager to work with policymakers and legislators, as well as all stakeholders in the discussion, toward finding the best solutions to these very important issues and interests.

Submitted by:

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