



NEW YORK STATE ASSEMBLY

A N N U A L

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R E P O R T



**Committee on
Mental Health and Developmental Disabilities**

Felix W. Ortiz, Chair

SHELDON SILVER, SPEAKER

THE ASSEMBLY
STATE OF NEW YORK
ALBANY



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COMMITTEES
Correction
Labor
Rules
Ways and Means

December 15, 2012

Honorable Sheldon Silver
Speaker of the Assembly
Legislative Office Building, Room 932
Albany, New York 12248

Dear Mr. Speaker:

It is with great pleasure that I submit to you the 2012 Annual Report for the Assembly Standing Committee on Mental Health and Developmental Disabilities. This year has proved to be a year of great change in several areas of the mental health and developmental disabilities fields specifically in regards to increasing the quality of care for individuals that are served by the State. While quality of care has always been a primary focus of the Committee, it has become evident that there is an inherent need to continue to improve the way individuals are cared for including evaluating and improving oversight of programs, supporting the needs of the workforce, and when applicable maintaining supports for individuals and their families to sustain care and services at home or within the community in the least restrictive setting.

The Committee continues to closely monitor changes occurring throughout both systems including the implementation of behavioral health organizations (BHOs) and health homes; the People First Waiver; the implementation of New York's Olmstead Plan; and implementation of the Justice Center for the Protection of People with Special Needs. The Committee is committed to ensuring that the needs and rights of individuals with psychological and developmental disabilities are kept at the forefront throughout many of these changes that will vastly impact the service delivery system.

During the 2012 Legislative Session the Committee also reviewed numerous bills which focused on strengthening consumer rights; requiring higher quality of care and safety for individuals served in the Mental Hygiene System; and changing public perception of stigmas that often surround mental health, chemical dependency, and disabilities.

In closing, I would like to thank you for your leadership and support of the Committee on Mental Health and Developmental Disabilities. I look forward to 2013 as we continue to confront challenges and develop solutions.

Sincerely,

A handwritten signature in cursive script that reads "Felix W. Ortiz". The signature is written in black ink and is positioned below the word "Sincerely,".

Felix W. Ortiz
Chair
Assembly Standing Committee on
Mental Health and Developmental Disabilities

**2012 ANNUAL REPORT
OF THE
NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES**

**Felix W. Ortiz
Chair**

Committee Members

Majority

Thomas Abinanti
Karim Camara
Michael Cusick
Philip Goldfeder
Ellen Jaffee
Barbara Lifton
Robert Rodriguez
Harvey Weisenberg

Minority

Steven Katz– Ranking Member
Jane Corwin
Thomas McKeivitt
Claudia Tenney

Committee Staff

Alice McGrath, Chief of Staff
Caesar Nguyen, Legislative Assistant and Committee Clerk

Program and Counsel Staff

Simonia Brown, Assistant Secretary for Program and Policy
Katie L. Birchenough, Legislative Analyst
Nicholas Cartagena, Legislative Counsel
Terri Zaleski, Secretary

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I. INTRODUCTION

The Assembly Committee on Mental Health and Developmental Disabilities has jurisdiction over legislation affecting programs that provide services, care, treatment, and advocacy for individuals with various disabilities. The Committee focuses on ensuring that individuals with a mental illness or a developmental disability and those with multiple disabilities are provided appropriate and necessary services to live a fulfilling life and are protected from abuse or harm in institutional and community settings.

The Committee has legislative oversight of programs administered and licensed by the State Office of Mental Health (OMH) and the State Office for People with Developmental Disabilities (OPWDD). The Committee also has statutory oversight of the Commission on Quality Care and Advocacy for Persons with Disabilities (CQC-APD), the Developmental Disabilities Planning Council (DDPC), the Inter-Office Coordinating Council (IOCC), and the Most Integrated Setting Coordinating Council (MISCC). According to the Division of the Budget, the aforementioned agencies are expected to serve over 800,000 individuals in 2012-13, including 700,000 persons with mental illness, and 126,000 persons with developmental disabilities. The Committee also works closely with the New York State Assembly Standing Committee on Alcoholism and Drug Abuse, the Assembly Standing Committee on Veterans Affairs, the Assembly Standing Committee on Correction, and the Task Force on People with Disabilities.

During the 2012 session, the Committee reviewed a number of bills and addressed many issues aimed at providing quality services and enhancing protections for individuals with various disabilities. Some key legislation included the passage of the Justice Center for the Protection of People with Special Needs; continuing efforts to improve the quality of care by standardizing training and increasing inspections of certain facilities; and reducing stigma faced by veterans with mental illness and their families.

This report describes the Committee's major legislative activities during the 2012 session.

II. STATE BUDGET HIGHLIGHTS

The State continues to face record budget deficits resulting from the worldwide financial crisis of the last few years. Throughout the 2012 Legislative Session, the Committee was forced to grapple with the difficult task of determining priorities for the mental hygiene system within the difficult constraints imposed by the State's poor fiscal climate. Despite the restraints caused by the State's deficit for the 2012-13 state fiscal year, many important programs in the mental hygiene system continued to be funded. Within the Office of Mental Health and the Office for People with Developmental Disabilities, the following proposals and appropriations were enacted in the 2012-13 Budget:

A. EXTENDING THE COMPREHENSIVE PSYCHIATRIC EMERGENCY PROGRAM

The Comprehensive Psychiatric Emergency Program (CPEP), designed in 1989 to provide a systemic response to psychiatric emergencies CPEPs assist in the triage of individuals in psychiatric crisis entering emergency rooms by allowing specifically trained staff to respond to individuals, providing services including emergency room evaluation and treatment, extended observation beds, and mobile crisis outreach units. The 2012-13 Enacted Budget extended CPEP until July 1, 2016.

B. INTEGRATING BEHAVIORAL HEALTH SERVICES

As the state begins to implement Medicaid managed care for New Yorkers, there is a desire to create efficiencies by streamlining those services to improve quality of care. In order to achieve the goals of managed care, it is necessary for various state agencies to collaborate in streamlining the service delivery system. The 2012-13 Enacted Budget allows for the Department of Health (DOH), the Office of Mental Health (OMH), The Office of People With Developmental Disabilities (OPWDD) and the Office of Alcoholism and Substance Abuse Services (OASAS) to jointly establish operating, reporting, construction requirements and joint survey procedures for providers of services and would allow Commissioners to waive duplicative regulations for such providers.

Additionally, the 2012-13 Enacted Budget repealed the Mental Health Services Council and the Advisory Council on Alcoholism and Substance Abuse Services and instead, created the Behavioral Health Advisory Council intended to advise the Office of Mental Health (OMH) and the Office of Alcoholism and Substance Abuse Services (OASAS) on creating improvements to behavioral health services. The Behavioral Health Services Advisory Council would assume the role and responsibility in the statewide comprehensive planning process required under Mental Hygiene Law (MHL) § 5.07.

C. IMPROVING EDUCATIONAL SERVICES FOR CHILDREN RESIDING IN PSYCHIATRIC CENTERS

Educational services provided to children residing in state psychiatric facilities vary in quality across the state. The 2012-13 Enacted Budget authorizes the Office of Mental Health (OMH) and the State Education Department (SED) to enter into an agreement to allow local school districts to provide educational services to youth between the ages of five and twenty-one who reside in a state psychiatric facility. Pilot programs are expected to commence in the 2012-2013 school year and are expected to be expanded to the rest of the state in the 2013-2014 school year.

D. ADULT HOMES

On July 1, 2003 Disability Advocates, Inc. brought a lawsuit against New York State on behalf of individuals with psychiatric disabilities residing in or at risk of entry into adult homes in New York City (*Disability Advocates, Inc. v. David A. Paterson, et. al.*).

On September 8, 2009, U.S. District Judge Nicholas G. Garaufis ruled that conditions at twenty-eight privately run adult homes in New York City violated the Americans with Disabilities Act by leaving approximately 4,300 residents with mental illness isolated from the outside world in institutional conditions and did not meet the need to serve the residents in the “most integrated setting.” This was seen to be in violation of the integration mandate of the Americans with Disabilities Act and the Supreme Court’s Olmstead decision.

On March 1, 2010, Judge Garaufis ordered the state to allow all qualified residents an opportunity to move into supported housing where they can receive mental health and social services in their own apartments and homes. Included in this was the requirement that the state create supported housing capacity of 4,500 beds in a three-year period. In 2011 however, a federal Court of Appeals judge placed a stay on the order and implementation came to a halt.

On April 6, 2012, the Second Circuit Court of Appeals ruled based on technical grounds that an advocacy group did not have the “standing” to bring a lawsuit against New York State for segregating people with mental illness in adult homes. Despite this ruling, the State has maintained its commitment to fund alternative residential housing units for individuals currently living in adult homes. The 2012-13 Enacted Budget allocated \$16.8 million for alternative bed development.

III. SIGNIFICANT LEGISLATION

A. INCREASED ACCESS TO SERVICES

It is critical that individuals who may be in need of services from OMH or its network of providers are aware of available options for treatment and afforded access to such programs. Equally important to guaranteeing access to services is ensuring that individuals with a mental illness feel encouraged and supported in their decision to seek treatment. Due to the overwhelming stigma that surrounds mental illness, many times individuals do not seek treatment. The committee is steadfast in its commitment to ensuring that significant steps are taken to reduce the stigma that surrounds mental illness so that individuals and families can understand their circumstances and make positive, healthy decisions.

Providing Increased Legal Services for Individuals in Residential Health Care Facilities

A.126A Cusick/ S.3423A McDonald (Passed Assembly)

Mental Hygiene Legal Services (MHLS) is charged with assisting individuals who receive services from the Office of Mental Health (OMH), the Office for People With Developmental Disabilities (OPWDD), and the Office of Alcoholism and Substance Abuse Services (OASAS) with legal representation. Currently individuals with serious mental illness who reside in nursing home settings are not able to receive services through MHLS. This bill would expand Mental Hygiene Legal Services' jurisdiction to include individuals with serious mental illness who reside in nursing homes.

Reducing Stigma for Veterans and Their Families

A.1070A Ortiz/ S.4760A McDonald (Passed Assembly)

As the federal government begins to withdraw troops from overseas conflicts, there will be a significant increase in the number of veterans returning to life after war as residents of New York State. With their return, comes the challenge of finding work or returning to school, coping with physical injuries sustained overseas and transitioning back into life with family and friends.

In addition, many returning veterans have experienced trauma while in combat, placing them at high risk for triggering underlying conditions such as Post Traumatic Stress Disorder (PTSD), substance abuse or other mental health issues. This is complicated further by the pronounced stigma that is associated with mental illness and substance abuse among military communities. Left untreated, combat-related mental health issues can manifest itself through substance abuse, activity that leads to the criminal justice system, and even suicide.

This bill would require the Office of Mental Health (OMH) to engage in a public awareness program for veterans and their families in an effort to eliminate stigma about mental illness and chemical dependency among service members, veterans and their families.

Providing Physicians in Rural Counties

A.9130 Ortiz/ S.5245 McDonald (Passed Assembly)

This bill would require the Office of Mental Health (OMH) to make available to counties with populations less than 75,000, a psychiatrist from a nearby OMH facility in order to provide examination and testimony during “Kendra's Law” (Assisted Outpatient Treatment) hearings.

B. QUALITY OF CARE

A primary focus of the Committee remains to increase the safety and quality of care for individuals receiving services from the mental hygiene agencies. The Committee is focused on continuing to support and advance legislation to alleviate abuse and neglect that may occur while individuals receive services through the Office for People With Developmental Disabilities (OPWDD) and the Office of Mental Health (OMH).

Increasing Inspection of OPWDD Facilities

A.6665-A Ortiz/S.5791 McDonald (Reported to the Assembly Committee on Ways and Means)

Currently the Office for People With Developmental Disabilities (OPWDD) is required to make at least two facility visits per year where one of the two visits is unannounced. This bill would require OPWDD to make at least three unannounced visits to facilities operated or licensed by OPWDD. The bill also would authorize any Developmental Disabilities Services Office (DDSO) Board of Visitor member or any other individual approved by the Commissioner to attend an inspection as an independent monitor.

Limiting Mandatory Overtime

A.8127-A Ortiz/ S.5716-A McDonald (Reported to the Assembly Committee on Ways and Means)

Members heard overwhelming testimony in hearings held throughout the state in 2010 that direct support staff are working excessive amounts of overtime which in some cases can lead to hazardous working conditions for the employee and the individuals receiving care. To ensure patient safety and prevent staff fatigue, this bill would establish a cap of 60 hours on the number of hours OPWDD employees are mandated to work each week.

Standardizing Training for OPWDD Employees

A.9118 Ortiz/ S.5794 McDonald (Reported to the Assembly Committee on Ways and Means)

This bill would require the commissioner of OPWDD to create rules and regulations requiring all employees and volunteers to receive training on abuse, neglect and maltreatment indication and prevention; laws, regulations and procedures governing the protection of persons with disabilities from abuse, neglect, and maltreatment; identification, safety and security procedures; fire safety; first aid; cardiopulmonary resuscitation; cultural competence; and any other appropriate topic.

C. EMPOWERING SERVICE RECIPIENTS AND THEIR FAMILIES

A key detail in ensuring service recipients receive sufficient person-centered care is providing individuals and their families with access and information. This empowers individuals and their families to keep the service system accountable.

Preventing State Collections on Lawsuits for Improper Care

A.4346-A Brennan (Passed Assembly)

There have been cases where the Office of Mental Health has billed individuals or families who have successfully sued the State for negligent or improper care in order to recoup payment for services accrued while under care of the State.

This bill would provide that when an action against the State for negligent or improper treatment in a Department of Mental Hygiene facility results in a settlement or a judgment for a monetary award, the Department would be prohibited from seeking recovery from such monetary awards for amounts relating to the provision of services or treatment within the facility.

Permitting Parents to Further Disseminate Information to Certain Professionals

A.9037A Weisenberg/ A.6620A McDonald (Passed Assembly)

This bill would authorize information obtained through Jonathan's Law to be further disseminated to a health care provider, a behavioral health care provider, law enforcement (if it is believed that a crime has been committed), or the recipient's attorney. Currently once a parent has obtained such information it may not be released to any other person.

Extending Jonathan's Law

A.9777A Ortiz/ S.7475A McDonald (Passed Assembly and Senate)

When Jonathan's Law was passed in 2007 the state agencies interpreted the language to apply prospectively. Chapter 262 of the laws of 2010 was then signed to allow a two-year period of access to records dating back to 2003. This bill would extend these provisions for two additional years to allow access to information dating back to 2003.

D. THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS

The end of the 2012 legislative session culminated in the passage of the "Protection of People with Special Needs Act." This historic piece of legislation established a foundation for increased protection and quality of care for children and adults who reside in state operated, certified, or licensed programs under the auspices of the Office of Mental Health, the Office for People With Developmental Disabilities, and the Office of Alcoholism and Substance Abuse; children residing in the Office for Children and Family Services (OCFS) facilities for juvenile delinquents or juvenile offenders, and OCFS licensed residential programs or facilities; children residing in State Education Department programs and individuals living in adult homes, enriched living

programs, overnight summer camps, and assisted living facilities overseen by the Department of Health (DOH).

The Protection of People with Special Needs Act created a new state agency known as the “Justice Center for the Protection of People with Special Needs” that will primarily focus on the protection of vulnerable persons from abuse, neglect, and poor quality of care. The Justice Center will employ a Special Prosecutor and Inspector General for the Protection of People with Special Needs who will investigate reports of abuse and neglect, prosecute allegations that rise to the level of criminal offenses, and determine a course of action for disciplinary proceedings for employees who have been found to have committed acts of abuse or neglect.

In addition, the Justice Center will also be responsible for operating a 24-hour hotline in which certain mandated reporters will be required to report abuse or neglect involving individuals served in certain residential and non-residential facilities and programs; maintaining a statewide database for tracking all reports of abuse and neglect and a statewide register of employees or volunteers who have committed serious acts of abuse who will be prohibited from working with persons with disabilities or special needs; and developing a code of conduct of basic ethical standards for workers who have regular contact with service recipients.

The legislation also would create clear definitions of abuse and neglect; establish a table of penalties for employees who are found to have committed acts of abuse or neglect; expand access to information to individuals, families, and legal representatives; create an advisory council representing individuals, families, employees and advocates to advise and assist the Justice Center on policies related to preventing abuse and neglect; and statutorily establish an independent Protection and Advocacy program (P&A) which will be responsible for providing federally mandated, legally based advocacy on behalf of persons with disabilities.

IV. PUBLIC HEARINGS

A. EXAMINING SUPPORTIVE HOUSING PROGRAMS FOR INDIVIDUALS WITH PSYCHIATRIC DISABILITIES IN NEW YORK STATE

On December 14th, the Assembly Standing Committee on Mental Health and Developmental Disabilities and the Assembly Standing Committee on Social Services convened a public hearing to examine the impact of the Enacted 2012-13 State Budget on Supportive Housing programs throughout New York State.

Since its inception in the 1980s, Supportive Housing has become one of the most cost-effective methods of combating homelessness amongst high-risk populations in New York State including individuals and families affected by mental illness. By providing secure, stable accommodations and services to individuals and families who may not otherwise have access to permanent affordable living arrangements, Supportive Housing allows residents to receive individualized

supports including access to case management, crisis intervention, mental health treatment, job training and placement programs, and support services for families. Permanent housing coupled with these services lends tenants the opportunity to focus on treatment and self-sufficiency while remaining in the community and out of institutional or higher cost settings.

The Committees heard testimony from the Office of Mental Health (OMH) and the Office of Temporary and Disability Assistance (OTDA), as well as providers, advocates, legal representatives, and individuals who have received supports and services through Supportive Housing programs. Witnesses testified on the success and cost effectiveness of Supportive Housing programs but also included the severe need for affordable housing throughout the state. Testimony also included the recognition of the need to revamp outdated models of service and understaffed housing programs, emphasized “housing first” models of treatment, and suggestions for innovative ideas to close gaps in services for transitional youth and individuals with psychiatric disabilities living with aging parents and guardians.

V. OUTLOOK 2013

This year brought significant changes in both the mental health and developmental disabilities systems in New York State. Many of these changes are a result of national trends toward inclusive healthcare, alleviating waste and fraud in benefits programs, and finding efficiencies in service delivery. There also continues to be publicized events within the state that have forced New York to look at improving these systems in order to establish a higher level of quality in care and to protect the individuals they serve. The Committee will continue to work throughout the coming years to ensure that the rights and needs of our most vulnerable residents are kept at the highest priority during this process.

APPENDIX A

**2012 SUMMARY OF ACTION ON ALL BILLS REFERRED TO
THE COMMITTEE ON MENTAL HEALTH**

<u>FINAL ACTION</u>	<u>ASSEMBLY BILLS</u>	<u>SENATE BILLS</u>	<u>TOTAL BILLS</u>
<u>Bills Reported With or Without Amendment</u>			
To Floor; Not Returning to Committee	0	0	0
To Floor; Recommitted and Died		0	
To Ways & Means	12	0	12
To Codes	3	0	3
To Rules	1	0	1
To Judiciary	0	0	0
TOTAL	16	0	16
<u>Bills Having Committee Reference Changed</u>			
To Committee on Alcoholism & Drug Abuse	2	0	2
TOTAL	2	0	2
<u>Senate Bills Substituted or Recalled</u>			
Substituted		1	1
Recalled		1	1
Total		2	2
Bills Defeated in Committee	0		0
Bills Held For Consideration With A Roll-Call Vote	13		13
Bills Never Reported, Held in Committee	45	8	53
Bills Having Enacting Clauses Stricken	11		11
Motions to Discharge Lost			
TOTAL BILLS IN COMMITTEE	85	10	95
Total Number of Committee Meetings Held	9		

APPENDIX B

**FINAL ACTION ON BILLS REPORTED BY THE STANDING COMMITTEE ON
MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES IN 2012**

ASSEMBLY BILL # SPONSOR	SENATE BILL # SPONSOR	FINAL ACTION	DESCRIPTION
A.126-A Cusick	S.3423-A McDonald	Passed Assembly	This bill would provide mental hygiene legal services to certain patients or residents of residential health care facilities.
A.1070-A Ortiz	S.4760-A McDonald	Passed Assembly	This bill would require the commissioners of the Office of Mental Health (OMH), the Office of Alcoholism and Substance Abuse Services (OASAS), and the Director of the Division of Veterans' Affairs, to develop a public education initiative on mental illness and chemical dependency among service members, veterans, and their families.
A.2954-A Weisenberg	S.2150-A McDonald	Reported to the Assembly Committee on Ways and Means	This bill would create the New York autism spectrum disorders treatment, training and research council and would provide for the powers and duties of the council.
A.4346-A Brennan	N/A	Passed Assembly	This bill would provide that when an action against the State for negligent or improper treatment in a Department of Mental Hygiene facility results in a settlement or a judgment for a monetary award, the Department would be prohibited from seeking recovery from such monetary awards for amounts relating to the provision of services or treatment within the facility.
A.5167 Ortiz	N/A	Advanced to 3 rd Calendar Reading	This bill would require the Office of Mental Health (OMH) and the State Education Department (SED) to coordinate to provide culturally competent information to educators on youth depression and suicide prevention.
A.6573-B Sweeney	S.7069-A Johnson	Passed Assembly	This bill would require the Office of Mental Health (OMH) and the Office of Alcoholism and Substance Abuse Services (OASAS) to develop guidelines and procedures regarding the treatment of victims of sexual assault in outpatient settings in order to avoid retraumatization by known sex offenders. The bill would also require OMH and OASAS to consult with stakeholders including victims groups and consumer

ASSEMBLY BILL # SPONSOR	SENATE BILL # SPONSOR	FINAL ACTION	DESCRIPTION
			advocates when developing such guidelines.
A.6665-A Ortiz	A.5791 McDonald	Reported to the Assembly Committee on Ways and Means	This bill would increase the frequency of inspections of facilities operated or licensed by the Office for People With Developmental Disabilities (OPWDD).
A.8127-A Ortiz	S.5716-A McDonald	Reported to the Assembly Committee on Ways and Means	This bill would prohibit an OPWDD provider from requiring direct care employees to work more than sixty hours per seven day work week.
A.9037-A Weisenberg	S.6620-A McDonald	Passed Assembly	This bill would provide that when information is obtained through Jonathan's Law, it can be further disseminated to a health care provider, a behavioral health care provider, law enforcement (if it is believed that a crime has been committed), or the recipient's attorney. This bill would also require that a cover letter describing who the records can be shared with accompany records and reports that are released.
A.9118 Ortiz	S.5794 McDonald	Reported to the Assembly Committee on Ways and Means	This bill would require a standardized training curriculum for employees or volunteers of the Office for People With Developmental Disabilities (OPWDD).
A.9130 Ortiz	S.5245 McDonald	Passed Assembly	This bill would require the Office of Mental Health (OMH) to provide a licensed psychiatrist for an examination in an assisted outpatient treatment proceeding in counties that have a population less than 75,000.
A.9777-A Ortiz	S.7475-A McDonald	Chapter 498 of the Laws of 2012	This bill would extend certain provisions of Jonathan's Law that allow qualified individuals to receive records dating back to 2003. The bill would maintain these provisions for an additional two years.
A.9983 Abinanti	S.7072 McDonald	Reported to the Assembly Committee on Ways and Means	This bill would codify the current Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR) definition of autism in Mental Hygiene Law.
A.10721 Ortiz	S.7749 McDonald	Chapter 501 of the Laws of 2012	This bill would create the "Justice Center for the Protection of People with Special Needs."

APPENDIX C

LAWS ENACTED IN 2012

ASSEMBLY BILL # SPONSOR	SENATE BILL # SPONSOR	FINAL ACTION	DESCRIPTION
A.9777-A Ortiz	S.7475-A McDonald	Chapter 498 of the Laws of 2012	This bill would extend certain provisions of Jonathan's Law that allow qualified individuals to receive records dating back to 2003. The bill would maintain these provisions for an additional two years.
A.10721 Ortiz	S.7749 McDonald	Chapter 501 of the Laws of 2012	This bill would create the "Justice Center for the Protection of People with Special Needs."

