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**REPORT ON LEGISLATION BY THE
COMMITTEE ON MENTAL HEALTH LAW**

A.9729

S.7374

M. of A. Jaffe

Sen. Bonacic

AN ACT to amend the mental hygiene law, in relation to due process protections for transitional care adults.

STATUS: Delivered to Governor; Passed Assembly (128-0), Passed Senate (59-0)

**THE MENTAL HEALTH LAW COMMITTEE URGES
THE GOVERNOR TO SIGN THIS BILL INTO LAW**

The New York City Bar Association, founded in 1870, is a private, non-profit organization of more than 24,000 attorneys, law students, and law professors, and is one of the oldest bar associations in the United States. The Committee on Mental Health Law (“the Committee”) addresses issues relating to the legal protections, supportive decision-making, social integration, medical treatment and facility placement, civil commitment, and guardianship, for individuals with a mental illness or developmental/intellectual disabilities. As part of its agenda, the Committee considers and comments on proposed amendments to the Mental Hygiene Law, or court rules.

After review and deliberation, the Committee supports the enactment of A.9729/S.7374. The proposed bill would amend Section 13.37-a of the Mental Hygiene Law to provide due process protections for developmentally disabled individuals housed at a facility other than one that is operated or certified by the Office of People with Developmental Disabilities (“OPWDD”) who are in transition. The bill would require OPWDD to notify parents or guardians of an appeal process to challenge OPWDD’s new facility placement of the transitional adult.

The Committee supports the proposed amendment to 13.37-a because it affords due process to transitional adults concerning where they will be placed to live after they reach 21 years old. Currently, a transitional developmentally disabled adult who reached the age of 21 at the end of the school year of July 1, 1996 or who has “aged out” because he or she has completed the school year in which he or she turned 21 would be placed in a new facility by OPWDD without giving parents and guardians a meaningful opportunity to object to the new facility or otherwise to appeal OPWDD’s decision. By contrast, parents and guardians of school-age children are given due process in working with OPWDD to place their children in the most

appropriate facility. Parents and guardians of transitional adults in other than OPWDD facilities should be entitled to the same opportunity to work with OPWDD in choosing an appropriate adult facility. Those individuals should also have the right to appeal and object to the OPWDD placement because they may believe that the new facility is not properly suited to the level of care their child requires.

Specifically, this Bill will require OPWDD to notify parents and guardians of transitional adults no later than forty-five (45) days prior to the transitional adult's being placed at the chosen adult facility. Included in the notification will be a description of the appeal process for any objections to the new facility, which requires that any such objections shall be sent in writing to OPWDD no later than thirty (30) days from the notice. OPWDD must, within five (5) days of receipt of written objection, schedule a hearing giving the parent or guardian no less than ten (10) days notice of the hearing date. These protections are not overly burdensome and fall in line with other due process rights given under the Mental Hygiene Law.

The Committee supports this bill and hopes that its enactment will be the impetus for future legislation in giving all individuals who are subject to the rules and regulations of OPWDD due process in decision-making regarding their care and treatment in all OPWDD facilities.

For these reasons, the Committee supports A.9729/S.7374 and urges its enactment.

Mental Health Law Committee
Deborah Meyer, Chair

November 2014