

S7342-A MAZIARZ Same as [A 9913-B](#)

MAZIARZ, LIBOUS, MORAHAN

Add Art 25 SS700 - 703, Exec L

Creates the most integrated setting coordinating council which is comprised of commissioners from several departments and offices to develop and oversee the implementation of a comprehensive statewide plan and administer state policies which are in compliance with the federal Americans with Disabilities Act of 1990, as amended, for individuals of all ages with disabilities and placement in most integrated settings.

ON FILE: 06/17/02 Executive Law

TITLE....Creates the most integrated setting coordinating council

05/01/02 REFERRED TO AGING
06/12/02 AMEND AND RECOMMIT TO AGING
06/12/02 PRINT NUMBER 7342A
06/20/02 COMMITTEE DISCHARGED AND COMMITTED TO RULES
06/20/02 ORDERED TO THIRD READING CAL.1562
06/20/02 SUBSTITUTED BY A9913B
A09913 Cahill AMEND=B
02/26/02 referred to health
04/29/02 amend (t) and recommit to health
04/29/02 print number 9913a
05/14/02 reported referred to rules
06/07/02 amend and recommit to rules 9913b
06/12/02 rules report cal.736
06/12/02 ordered to third reading rules cal.736
06/12/02 passed assembly
06/12/02 delivered to senate
06/12/02 REFERRED TO RULES
06/20/02 SUBSTITUTED FOR S7342A
06/20/02 3RD READING CAL.1562
06/20/02 PASSED SENATE
06/20/02 RETURNED TO ASSEMBLY

STATE OF NEW YORK

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IN SENATE

May 1, 2002

Introduced by Sens. MAZIARZ, LIBOUS, MORAHAN -- read twice and ordered printed, and when printed to be committed to the Committee on Aging -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to the creation of the most integrated setting coordinating council

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

1 Section 1. The executive law is amended by adding a new article 25 to
2 read as follows:

3 **ARTICLE 25**

4 MOST INTEGRATED SETTING COORDINATING COUNCIL
5 Section 700. Legislative findings and intent.
6 701. Definitions.
7 702. Most integrated setting coordinating council; organization.
8 703. Functions, powers and duties of the council.
9 § 700. Legislative findings and intent. The Americans with Disabili-
10 ties Act requires New York state to ensure that people of all ages with
11 disabilities reside and function in the most integrated setting possi-
12 ble. This requirement was recognized and upheld by the Supreme Court in
13 the case of Olmstead, Commissioner, Georgia Department of Human
14 Resources, et al. v. L.C., by zimring, guardian ad litem and next
15 friend, et al. (138 F. 3d 893). While New York state provides communi-
16 ty supports for people of all ages with disabilities and while the state
17 of New York does operate a home and community-based waiver medicaid
18 program, the legislature hereby finds that New York state has no
19 centralized mechanism in place to determine whether or not people of all
20 ages with disabilities are residing in the most integrated setting
21 possible. In order to ensure that the state of New York is in compliance
22 with the requirements of the Olmstead decision, the legislature hereby
23 finds that it is incumbent upon New York state to develop and implement
24 a plan to reasonably accommodate the desire of people of all ages with
25 disabilities to avoid institutionalization and be appropriately placed
26 in the most integrated setting possible.

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

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1 § 701. Definitions. As used in this article the following terms shall
2 mean:
3 1. "council" means the most integrated setting coordinating council.
4 2. "disability" means, with respect to an individual:
5 (a) a physical or mental impairment that substantially limits one or
6 more of the major life activities of such individual;
7 (b) a record of such an impairment; or
8 (c) being regarded as having such an impairment.
9 3. "most integrated setting" means a setting that is appropriate to
10 the needs of the individual with the disability and enables that indi-
11 vidual to interact with nondisabled persons to the fullest extent possi-
12 ble.
13 § 702. Most integrated setting coordinating council; organization. 1.
14 The most integrated setting coordinating council is hereby created with-
15 in the executive department to have and exercise the functions, powers
16 and duties provided by the provisions of this article and any other
17 provision of law. The council shall be comprised of the commissioners
18 of: the department of health, the office of mental retardation and
19 developmental disabilities, the office of mental health, the department
20 of transportation, the office of children and family services, the
21 office of alcohol and substance abuse services, the department of educa-
22 tion, and the division of housing and community renewal. In addition,
23 the council shall consist of the director of the office for the aging, a
24 representative from the office of the advocate for persons with disabili-
25 ties, a representative from the commission on quality of care for the
26 mentally disabled, three consumers of services for individuals with
27 disabilities, one to be appointed by the governor, one to be appointed
28 by the temporary president of the senate, and one to be appointed by the
29 speaker of the assembly, three individuals with expertise in the field
30 of community services for people of all ages with disabilities, one to

31 be appointed by the governor, one to be appointed by the temporary pres-
32 ident of the senate, and one to be appointed by the speaker of the
33 assembly, and three individuals with expertise in or recipients of
34 services available to senior citizens with disabilities, one to be
35 appointed by the governor, one to be appointed by the temporary presi-
36 dent of the senate, and one to be appointed by the speaker of the assem-
37 bly.

38 2. The commissioners of the department of health, the office of mental
39 health, the office of mental retardation and developmental disabilities,
40 and the director of the office for the aging shall rotate as chairperson
41 of the council on a quarterly basis.

42 3. The council shall meet as necessary to carry out its functions,
43 powers and duties, but such meetings shall occur at least once each
44 quarter.

45 § 703. Functions, powers and duties of the council. 1. The council
46 shall develop and oversee the implementation of a comprehensive state-
47 wide plan for providing services to individuals of all ages with disa-
48 bilities in the most integrated setting. Such plan shall be completed
49 within one year of the effective date of this article. Such plan shall
50 include, but not be limited to

51 (a) the number of individuals of all ages with disabilities who are
52 currently institutionalized and are eligible for services in community-
53 based settings, the number of individuals residing in the community who
54 are dependent on the assistance of community-based services to avoid
55 institutionalization and any improvements necessary to be made to

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1 current data collection systems or any new data collection initiatives
2 necessary to obtain such information;

3 (b) the current assessment procedures utilized to identify individuals
4 of all ages with disabilities who could benefit from services in a more
5 integrated setting and the development of a single assessment process
6 for individuals of all ages with disabilities in need of services, to be
7 implemented by one community-based agency in each county with expertise
8 in community-based services for people of all ages with disabilities
9 through the use of a uniform assessment tool;

10 (c) the identification of what community-based services are available
11 to individuals of all ages with disabilities in the state of New York
12 and an assessment of the extent to which these programs are able to
13 serve people in the most integrated settings;

14 (d) the identification of what improvements need to be made to the
15 system of community-based services to ensure that the system is compre-
16 hensive, accessible, meets the needs of persons who are likely to
17 require assistance in order to live in the community and provides high
18 quality, adequate supports for individuals of all ages with disabili-
19 ties;

20 (e) an evaluation of the supports and services available to assist
21 individuals of all ages with disabilities who reside in their own homes
22 with the presence of other family members or other informal caregivers
23 and an evaluation of the supports and services available to address the
24 needs of individuals of all ages with disabilities who reside in their
25 own homes without family members or other informal caregivers;

26 (f) an examination of how the identified community-based supports and
27 services integrate individuals of all ages with disabilities into the
28 community;

29 (g) a review of what funding sources are available to increase the
30 availability of community-based services and an analysis of how the
31 varied funding sources available to meet the needs of individuals of all
32 ages with disabilities in the most integrated setting can be organized

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33 into a coherent system of long term care which affords people reasonable
34 and timely access to community-based services;

35 (h) an assessment of how well the current service system works for
36 different populations, including but not limited to, elderly people with
37 disabilities, people with physical disabilities, people with develop-
38 mental disabilities, people with mental illness, and people with HIV and
39 AIDS, and a review of changes that might be desirable to make services a
40 reality in the most integrated setting for all populations;

41 (i) an examination of waiting lists for community-based services and
42 what might be done to ensure that waiting lists are created and accu-
43 rately maintained and that people are able to come off waiting lists and
44 receive needed community-based services at a reasonable pace;

45 (j) an examination of what information, education, outreach and refer-
46 ral systems might be useful to ensure that individuals of all ages with
47 disabilities receive the information necessary to make informed choices
48 regarding how their needs can best be met, including the evaluation of
49 the creation of a toll free hotline with information on community-based
50 services for individuals of all ages with disabilities;

51 (k) an evaluation of how quality assurance and quality improvement can
52 be conducted effectively as more people of all ages with disabilities
53 live in community settings; and

54 (l) an examination of how the overall system of health and long term
55 care can best be managed so that placement in the most integrated
56 setting becomes the norm.

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1 2. The council shall contract with an independent organization with
2 expertise in the provision of community-based services for individuals
3 of all ages with disabilities and with expertise in the area of program
4 evaluation research to conduct an evaluation of the council's plan
5 created pursuant to subdivision one of this section and the implementa-
6 tion of such plan. Such evaluation shall be completed three years after
7 the effective date of this article.

8 3. Each commissioner and director serving on the council shall ensure
9 that his or her agency implements every aspect of the plan developed
10 pursuant to subdivision one of this section which falls under the
11 responsibilities of his or her agency. The council shall oversee the
12 implementation of the plan created pursuant to subdivision one of this
13 section and shall update such plan as necessary to ensure that waiting
14 lists for community-based services for people of all ages with disabili-
15 ties are moving at a reasonable pace and to ensure that the state of New
16 York is developing a system of long term care that allows individuals of
17 all ages with disabilities to reside and function in the most integrated
18 setting.

19 4. The council shall provide a report to the governor, the temporary
20 president of the senate and the speaker of the assembly one year after
21 the effective date of this article and annually thereafter. Such report
22 shall detail the plan developed pursuant to subdivision one of this
23 section, any changes made to such plan, all steps taken to implement
24 such plan and their outcome, and any future actions planned.

25 5. The plan to be developed under this article shall not be construed
26 to increase, decrease, or change the statutory authority of any person
27 or entity and shall be implemented consistent with all otherwise appli-
28 cable law.

29 § 2. This act shall take effect on the ninetieth day after it shall
30 have become law; provided, however, that effective immediately, the
31 addition, amendment and/or repeal of any rule or regulation necessary
32 for the implementation of this act on its effective date are authorized
33 and directed to be made and completed on or before such effective date.

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NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S7342A

SPONSOR: MAZIARZ

TITLE OF BILL: An act to amend the executive law, in relation to the creation of the most integrated setting coordinating council

PURPOSE: This legislation provides for the creation of a Most Integrated Setting Coordinating Council, which will be responsible for developing and overseeing the implementation of a comprehensive plan to ensure that people of all ages with disabilities receive the services they need in the most integrated settings possible, as mandated by the Federal Americans with Disabilities Act and the 1999 U.S. Supreme Court Olmstead vs. L.C. Decision.

SUMMARY OF PROVISIONS: Section one of the bill amends the executive law by adding a new Article 25 to create the Most Integrated Setting Coordinating Council. The new Article 25 contains, therein, 4 new sections - 700, 701, 702, and 703.

Section 700 of Article 25 sets forth the Legislative findings and intent which explains the need to develop and implement a plan to serve people of all ages with disabilities in the most integrated setting possible.

Section 701 of the newly created Article 25, sets forth the definitions in the article.

Section 702 provides the framework for the creation of the Most Integrated Setting Coordinating Council, which will be comprised of the Commissioners of the Department of Health, Office of Mental Retardation and Developmental Disabilities, Office of Mental Health, Department of Transportation, Office of Children and Family Services, Office of Alcohol and Substance Abuse Services, Department of Education, Division of Housing and Community Renewal and the Director of the Office for the Aging. Also included, are a representative from the Office of the Advocate for Persons with Disabilities, a representative from the Commission on Quality Care for the Mentally Disabled, three consumers of services for individuals with disabilities, three individuals with expertise in the field of community services for people of all ages with disabilities, and three individuals with expertise in or recipients of services available to senior citizens with disabilities. This new section also provides for rotating Chairpersons for the Council and requires it to meet at least once every four months.

Section 703 sets forth the specific functions, powers and duties of the Most Integrated Setting Coordinating Council. The Council is required to develop and oversee each agency's implementation of a comprehensive statewide plan to serve people of all ages with disabilities in the most integrated setting. This plan is to be developed one year after this article takes effect.

JUSTIFICATION: In 1999, the U.S. Supreme Court rendered a Decision in the case of Olmstead vs. L.C., which states that the Americans with

Disabilities Act (ADA) requires people with disabilities be served in integrated settings most appropriate to their needs. The Olmstead ruling states that the unnecessary segregation of individuals with disabilities in institutions may be discriminatory and a violation of civil rights. Equally important, the ruling speaks to any age group and therefore, applies to older persons as well.

According to a letter sent to all state Medicaid Directors from the U.S. Department of Health and Human Services, the Olmstead Decision suggests that states can establish compliance with the ADA by demonstrating a comprehensive, effective working plan for placing qualified people with disabilities in less restrictive settings. Additionally, states must show effort to reasonably move individuals off waiting lists and into community-based services to be considered in compliance.

Under the Olmstead Decision, the Supreme Court found that a) the most integrated setting is the most preferable and b) to the degree there is bias toward institutional care, the State would then be in violation of the ADA. States must offer community-based care if: the individual desires to be in a community based program and professionals conclude services can appropriately be community-based. Also, placement in community-based services should not fundamentally alter the program considering the state's obligation to serve needs in an equitable manner.

While New York State is a leader in providing community-based services to persons with disabilities and senior citizens (in Medicaid alone, NYS spent \$2.4 billion for long-term community-based care services in 1998), the Olmstead Decision creates both a requirement and an opportunity for NYS to evaluate its current service delivery system and to develop a comprehensive system of community-based services that allows persons with disabilities and older persons, to the extent feasible, to live in the most integrated setting possible which appropriately meets their needs. This proposed legislation will help assure that the State undertakes this important task in a coordinated manner and with consumer and service provider input.

LEGISLATIVE HISTORY: None.

FISCAL IMPLICATIONS: To be determined.

EFFECTIVE DATE: This act shall take effect on the ninetieth day after it shall have become law provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.

