

## 2010 Chapters of Interest

### New laws enacted in 2010 include:

#### **Child Welfare**

***“Attorney for the child”*** – Chapter 41 of 2010 (A.7805-B/S.5461-B; Weinstein/Schneiderman)

- Substitutes the phrase “attorney for the child” for outdated references to “law guardian”.
- The new phrase emphasizes that the child’s legal representative is expected to represent the child’s independent position, not the attorney’s view of what is in the “best interest of the child”.
- Effective 4/14/10

***Incarcerated parents*** – Chapter 113 of 2010 (A.5462-A/S.2233-A; Aubry/Montgomery)

- Provides an exception to the required filing of a termination of parental rights (TPR) petition for children in foster care whose parents are incarcerated or in residential substance abuse treatment programs where the parents maintain a meaningful role in their children’s lives.
- Requires the court, when considering a TPR for permanent neglect, to consider the special circumstances of a parent who is incarcerated or in residential treatment.
- Requires the authorized agency, as part of the agency’s “diligent efforts”, to provide the parent with information obtained from the Office of Children and Family Services (OCFS) on the parent’s legal rights and responsibilities along with the social and rehabilitative services available in the community to aid in developing a meaningful relationship between parent and child.
- Effective 6/15/10

***Adoption registry*** - Chapter 181 of 2010 (A.8498-A/S.3255-A; Gottfried/Duane) *Department of Health (DOH) Departmental Bill*

- Makes the administrative process for issuance of a birth certificate for a foreign adoption more consistent with issuance of a birth certificate in a domestic adoption.
- Clarifies that the consent of both birth parents is not necessary when an eligible adoptee seeks to receive medical or identifying information from the DOH Adoption Registry about a birth parent who is registered and consents to the release of such information.
- Effective 7/15/10

***Return to foster care*** – Chapter 342 of 2010 (A.8504/S.4388; Scarborough/Montgomery) *Office*

*of Court Administration (OCA) bill*

- Clarifies that the family court may extend an older youth's trial discharge from foster care, with the youth's consent, until the youth reaches age 21.
- Requires the LDSS to provide necessary preventive services for these youth up to age 21 in order to prevent the youth from returning to foster care.
- Creates a procedure for youth who chose to be finally discharged from foster care after turning 18, but are unable to be independent even with supportive services, to seek family court approval to return to foster care until age 21.
  - A motion to return to care must be filed within 24 months from the youth's first date of final discharge.
  - The court must find that: no alternatives to foster care are available; the youth agrees to enroll in and attend a vocational or educational program unless one is not needed; and return to foster care is in the youth's best interests.
  - If the local department of social service (LDSS) does not consent to the youth's return to care, the court must find that the LDSS' refusal to consent was unreasonable.
  - Additional court findings are required if a youth seeks to return to care following a previous re-entry. Only two separate re-entries to care are permitted.
- Effective 11/11/10

***Restoration of parental rights after TPR*** – Chapter 343 of 2010 (A.8524/S.3868-A; Scarborough /Montgomery)

- Permits the family court to reinstate terminated parental rights where:
  - the order committing guardianship and custody of the child was issued at least two years previously;
  - the child is at least 14 years old;
  - the child remains under the family court's jurisdiction, has not been adopted, and does not have a permanency goal of adoption; and
  - the child, LDSS or authorized agency, and the parent whose rights have been terminated consent to restoration of parental rights. If the LDSS or authorized agency does not consent to the reinstatement of parental rights, the court may proceed if it finds that the LDSS or authorized agency withheld its consent without good cause.
- The court may conditionally grant the petition to reinstate parental rights and order visitation or trial placement of the child with the parent for a period of up to six months, with custody remaining with the LDSS or authorized agency.
- Effective 11/1/10

***Kinship Guardianship Assistance Program*** – Part F of Chapter 58 of 2010 (Article VII Budget Bill)

- Eligibility: Child in foster care with prospective relative guardian for at least six previous consecutive months; permanency goals for child are not return home or adoption; child and relative guardian demonstrate strong attachment; relative guardian demonstrates strong commitment to permanently care for child. The child must be consulted if age 14 or older, must consent if age 18. Relative guardian and household members must have State and federal criminal background check and be cleared through SCR or other state equivalent if lived elsewhere in past five years.
- LDSS and relative guardian must enter into a subsidy assistance agreement. Relative guardian also eligible to receive up to \$2,000 in non-recurring expenses to obtain legal guardianship. Assistance payments must be at same rate as adoption subsidy, and based on foster care maintenance rate guardian received while child in foster care. Assistance continues until child is 18, or until age 21 if child 16+ when relative assumed guardianship and child remains in school (unless incapable of doing so). Assistance ends when relative guardian no longer legally responsible or not providing support for child. Medical assistance available if child Title IV-e eligible and other limited circumstances.
- Court process: guardianship proceeding under Family Court Act (FCA) Article 6 or Surrogate's Court Procedure Act Article 17. Birth parent must consent if parental rights not terminated.
- State and federal reimbursement: Federal Title IV-e is available where child is eligible. State share is under the Foster Care Block Grant.
- Effective 4/1/11

***Adoption by two unmarried intimate partners*** – Chapter 509 of 2010 (S.1523-A/A.5652-B; Duane/Rosenthal)

- Clarifies that two unmarried adult intimate partners may adopt a child together even where neither person is the child's biological parent. Substitutes "married couple" or "spouse" for references to "husband" and "wife" in describing who may adopt.
- Effective 9/17/10

## **Child Day Care**

***Child day care enforcement and quality enhancement*** – Chapter 117 of 2010 (A.8827-A/S.3895-B; Scarborough/Montgomery) *OCFS Departmental Bill*

- Enacts various measures to enhance the safety of child care programs:
  - Allows a local social services district to suspend the eligibility of a legally-exempt provider to provide subsidized child care if the provider is the subject of a report of child abuse or maltreatment being investigated by a social services district.
  - Effectively bars for two years re-application by a provider whose license or

registration was revoked or surrendered due to violations.

- Expands the categories of critical health and safety violations for which a fine may be imposed even if the violation is rectified.
- Increases the maximum capacity in group family day care homes with appropriate staffing.
- Clarifies existing provisions that preclude municipalities from imposing more zoning, fire safety, or building standards on group family and family day care providers than apply to other residences.
- Effective 6/15/10

***CPR training for a day care employee*** - Chapter 334 of 2010 (A.7923/S.3644; Scarborough/Montgomery)

- Requires child day care centers, group family and family day care homes, and school-age child care programs to have an employee present during operating hours who is certified in first aid and cardiopulmonary resuscitation (CPR).
- The first aid and CPR training courses must be approved by OCFS and emphasize providing aid to children. OCFS is not required to pay for the training.
- Effective 12/11/10

***Six-month notice of child day care closures*** – Chapter 462 of 2010 (S.3601-D/A.3065-E; Parker/Benjamin)

- Requires the New York City Administration for Children’s Services (ACS) to provide at least six months written notice when seeking to close a child day care center under contract with ACS. This notice must be provided to the child day care center and to the parents of the children enrolled at the center. The six-month clock begins on the bill’s effective date for child day care centers previously notified of pending closure.
- Advance notice is not required where a child day care center is being closed because of regulatory violations or for health and safety reasons or where expedited closure is necessary due to public safety concerns, criminal behavior by a center, breach of contract, or suspension or revocation of a center’s license for non-economic reasons.
- Effective 8/30/10

***Codification of child day care unionization*** – Chapter 540 of 2010 (S.7451/A.10764; Savino/John)

- Enacts into statute provisions similar to Executive Order (EO) No. 12 issued by former Governor Eliot Spitzer and continued by Governor David A. Paterson, which allowed certain family-based child care providers to organize and select representatives to meet with OCFS to try to reach agreement on enumerated topics.

- Effective 10/1/10

### **Commission for the Blind and Visually Handicapped (CBVH)**

***Expansion of CBVH Business Enterprise Program*** - Chapter 532 of 2010 (A.6420/S.3430; Weisenberg/Breslin)

- Expands the Business Enterprise Program (BEP), which provides a priority for eligible persons who are legally blind to operate newsstands, snack bars, and vending facilities at government buildings located in New York State (NYS), or to receive a portion of the proceeds from such facilities.
- Eliminates the minimum employee threshold per site and removes the exemption for the State University of New York, Department of Correctional Services, and the NYS Thruway Authority as potential BEP vendor sites.
- Also extends the BEP vendor facility priority to airports located in NYS and to any building that houses any authority, agency, or entity whose board of directors or executives are appointed by the Governor.
- Effective 10/1/10.

### **Vulnerable Children and Adults**

***Surrogate health care decisions*** - Chapter 8 of 2010 (A.7729-D/S.3164-B; Gottfried/Duane)

- Enacts the Family Health Care Decisions Act authorizing surrogate health care decision making in hospitals and nursing homes where a patient has lost the capacity to make health care decisions, but has not executed a health care proxy or made a living will. Special provisions govern decision-making for minors and allow participation of the local social services district on behalf of a child under certain circumstances.
- Creates an Interdisciplinary Ethics Review Committee in hospitals and nursing homes to resolve objections and disagreements that may arise from the surrogate health care decision making process.
- Enacts provisions entitled Non-Hospital Orders Not to Resuscitate with special standards and procedures for surrogate decision-making involving determinations to withhold or withdraw life-sustaining treatment.
- Effective 6/1/10

***Endangering the welfare of an incompetent or disabled person*** – Chapter 14 of 2010 (A.9534/S.6728; Gordon/Huntley)

- Increases the criminal penalties for endangering the welfare of an incompetent or physically disabled person where a caregiver:
  - intentionally or recklessly injures such person;
  - injures such person with criminal negligence by means of a deadly weapon or

- dangerous instrument; or
  - subjects such person to non-consensual sexual contact.
- Includes definitions of “incompetent or physically disabled person” and “caregiver.”
- Effective 5/22/10

***Allegations of abuse or mistreatment in OMH or OPWDD programs*** - Chapter 192 of 2010 (A.9825-A/S6772-A; Weisenberg/Morahan)

- Requires the Office of Mental Health (OMH) and the Office for Persons with Developmental Disabilities (OPWDD, formerly the Office of Mental Retardation and Developmental Disabilities) to establish procedures, including operation of a toll-free hotline, to receive and refer for investigation allegations of abuse or mistreatment of patients in facilities or programs operated or licensed by OMH and OPWDD.
- Requires OMH and OPWDD to refer to the Statewide Central Register of Child Abuse and Maltreatment (SCR) any allegations they may receive that a child has been abused or mistreated.
- Effective 1/11/11

***Amendments to the Safe Harbour for Sexually Exploited Children Act*** – Part G of Chapter 58 of 2010 (Article VII Budget Bill)

- Makes numerous clarifying amendments to the 2008 Safe Harbour for Sexually Exploited Children Act and incorporates the Act’s protections for sexually exploited children into existing court processes and statutory constructs for Persons in Need of Supervision (PINS), juvenile delinquents (JDs), and runaway and homeless youth.
- Amends the definition of a “sexually exploited child” to remove cases of familial sexual abuse, as an appropriate service structure already exists under FCA Article 10 for these children. Provides statutory authority for approved runaway programs to operate short-term safe houses and transitional independent living support programs to operate long-term safe houses for sexually exploited children.
- Clarifies that OCFS and the LDSS responsibilities to make available safe houses and other services for sexually exploited children are limited to the extent that funds are made available specifically for these purposes. Reduces from annually to every five years how often a LDSS must determine the number of sexually exploited youth in the district who are in need of services.
- Eliminates the requirement in FCA Article 3 that the child must meet the federal criteria as a victim of a severe form of trafficking in order for a PINS petition to be substituted for a JD petition for prostitution. Allows filing of a PINS petition, if the child consents, on the basis that the child is a sexually exploited child.
- Effective as of 4/1/10

***Abandoned Infant Protection Act amendments*** - Chapter 447 of 2010 (A.11111/S.2950-D; Paulin/ Klein)

- The original Abandoned Infant Protection Act of 2000 provided an affirmative defense to prosecution for the crimes of abandonment of a child or endangering the welfare of a child and was available only where the infant was five days old or less. In addition, the abandonment had to be done in a safe and appropriate manner with prompt notification to an appropriate person and the person leaving the infant had to intend to wholly abandon the infant.
- This amendment to the Act decriminalizes the abandonment of an infant by a parent, guardian or other person with legal care and custody of the infant, instead of providing an affirmative defense to criminal prosecution. In addition, the amendment permits the abandonment of a child who is up to 30 days old instead of five days old. The requirements for abandonment in a safe and appropriate manner are still applicable.
- Effective 8/30/10

### **Professional Practice**

***Corporate practice fixes and extender for social workers and mental health professionals - and Chapter amendment*** – Chapter 130 of 2010 (S.5921-A/A.8897-A; Stavisky/Pretlow) and Chapter 132 of 2010 (A.11440/S.8178; Rules/ Stavisky)

- Addresses corporate practice problems created when persons employed by not-for-profit (NFP) and education corporations who engage in the practice of psychology or social work and mental health practitioners became subject to professional licensing.
- Extends until **July 1, 2013** the exemption for licensing persons employed by a program operated, regulated, funded or approved by the Department of Mental Hygiene, OCFS, Department of Correctional Services, State Office for the Aging, the Department of Health, or a local governmental unit or social services district.
- Imposes reporting requirements on state agencies with temporary exemptions, beginning with a report to SED by **October 1, 2010** on the functions, tasks and activities performed by that agency and by the local government units /social services districts that the agency regulates. SED is to convene a workgroup to discuss the data and make recommendations.
- By **July 1, 2011**, temporarily exempted state agencies must submit a report to SED:
  - identifying functions, tasks and activities that are within the scopes of practice requiring a license and activities that do not require a license;
  - providing an analysis of the costs associated with employing only licensed or otherwise exempt personnel; and
  - providing a plan for compliance with professional licensing by July 1, 2013 and

recommending any alternative paths for licensure.

- By **July 1, 2012**, SED must report to the Governor and the Legislature on this data and any recommendations for statutory or regulatory changes needed to implement licensure. Other state agency commissioners must have the opportunity to include statements or alternative recommendations in the report.
- Effective as of 6/1/10.

## **Veto of Interest**

***Study of health care provided to foster children*** – Veto Message 11 (A.5497/S.5924; Titus/Parker)

- Would have required OCFS to contract with an external research organization to evaluate the health care delivery system for youth in OCFS custody and children in the custody of local social services districts, and submit a report on or before June 30, 2011.

***Notice of change in foster care*** – Veto Message 13 (A.8418/S.5266; Scarborough/Montgomery)

- Would have expanded the Family Court's ability to direct placement of a child in a specific foster home. Would have required prior notification, and in some cases prior court approval, for a local social services district to transfer a foster child from one foster home or other foster care placement to another.

***Interstate Compact for Juveniles*** – Veto Message 6737 (S.8279/A.11400-A; Montgomery/Aubry)

- Would have adopted the Interstate Compact for Juveniles in New York State to provide an agreed upon process between the states for sending and receiving adjudicated juveniles for supervision and for returning juveniles who run away or abscond to another state. Would have statutorily created a State Council for New York State consisting of the Compact Administrator and 12 other members representing the legislature, judiciary, law enforcement, bar associations, advocates and state and local agencies. Included a three year sunset provision.

***Independent Office of the Child Advocate*** - Veto Message 6819 (A.3233-B/S.6877; Clark/Parker)

- Would have established an Independent Office of the Child Advocate (IOCA) with broad powers to oversee juvenile justice facilities and to advocate for children. Would have eliminated the OCFS Office of the Ombudsman; authorized the child advocate to take all possible actions, including formal legal action to secure and ensure the legal, civil and special rights of children; and provided the IOCA access to facilities records and

individuals under the jurisdiction of OCFS.