

UPDATE ON THE SDMA STATUTE AND REGULATIONS

Because we've received a number of inquiries about the status of our groundbreaking SDMA law, Mental Hygiene Law (MHL) Article 82, and the OPWDD regulations designed to implement that law, we wanted to update our community on the current situation.



Governor Kathy Hochul holds the signed SDMA law

After passage by both the NYS Senate and Assembly, the law was signed by Governor Hochul on July 26, 2022 (Good News 7/29/2022). Like many laws, the statute did not immediately go into effect. Because it would affect many existing OPWDD regulations, and because greater detail was necessary in order to implement some of the law's provisions, MHL Section 82.15 (a) said that:

"The commissioner of the Office for People with Developmental Disabilities shall promulgate within one year of the passage of this act the rules and regulations necessary to implement this article for adults who receive or are eligible to receive services that are operated, certified, funded or approved by the Office for People with Developmental Disabilities."

The law further provided that:

"This act shall take effect ninety days from the date that the regulations issued in accordance with section one of this act appear in the New York State Register, or the date such regulations are adopted, whichever is later..."

As we reported last summer (Good News 8/9/2024), the regulations were put out for a 60-day public comment period in August, and more than 100 comments were ultimately filed. OPWDD reviewed them all, making some changes and clarifications to the regulations, and responded individually to each party who submitted comments as to why their proposed changes had or had not been adopted.

The NYS Administrative Procedure Act requires review of any changes an agency makes to regulations it has promulgated after comment, to ensure that those changes have not significantly changed (i.e., were not “a logical outgrowth of”) the regs that the public was asked to comment on. That means that the regulations cannot be “adopted” or “appear in the New York State Register” until they have been approved by the Department of State and the Governor’s Office.

As most people have observed, this has been a particularly contentious and complicated budget period in Albany. Now that, at least for the present, the budget has been adopted, we hope that the Executive branch (the Department of State and Governor’s office) will be able to turn their attention to the Regulations so that the statute can finally come into effect.

To be clear, because the necessary procedures have not yet been completed, **our SDMA statute is not yet, technically, the law.** So what does that mean for people with I/DD who are utilizing SDM or who have signed SDMNY-facilitated SDMA’s?

First, the use of SDM and SDMA’s can be considered a “less restrictive alternative” to guardianship by courts because that principle has already been recognized in numerous judicial opinions and is not dependent on the provision in the statute that simply restates existing law. However, until the statute actually comes into effect (when the regulations are approved), third parties may—but are not legally required to—accept the decisions of people with facilitated SDMA’s, and do not have legislative immunity if they do so.

We know how important the requirement of legal recognition is to people with I/DD and their families, and we are hopeful that, very soon, the law which provides that recognition and prohibits discrimination based on disability will finally come into “full force and effect.”