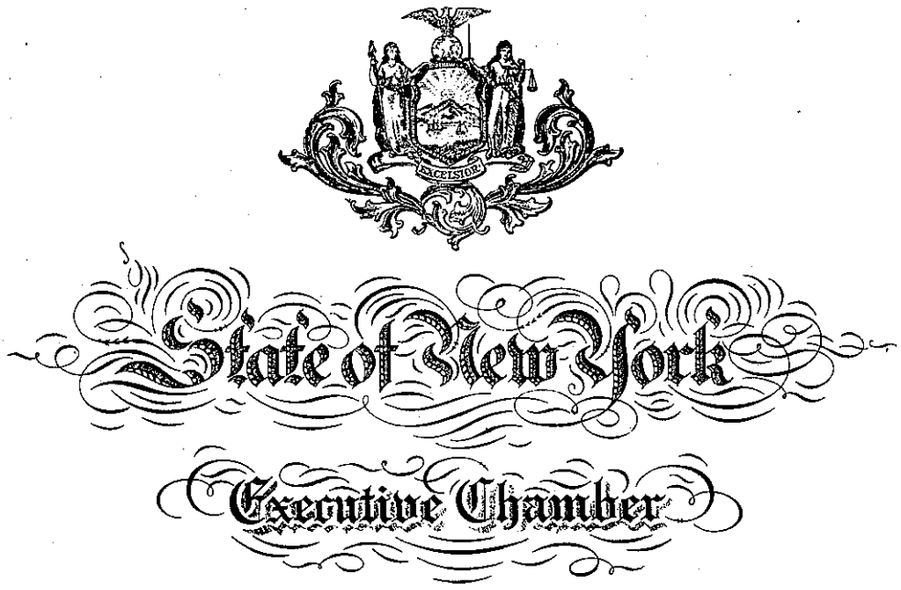

No. 71

EXECUTIVE ORDER

TEMPORARY SUSPENSION AND MODIFICATION OF STATUTES AND REGULATIONS REGARDING SERVICES PROVIDED TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES, MENTAL ILLNESSES AND ALCOHOL AND SUBSTANCE ABUSE DISORDERS DURING THE STATE DISASTER EMERGENCY

WHEREAS, on October 26, 2012, I issued Executive Order Number 47, declaring a disaster emergency in all 62 counties in the State of New York; and

WHEREAS, on October 30, 2012, the President issued a major disaster declaration for Bronx, Kings, Nassau, New York, Queens, Richmond and Suffolk Counties, and on November 2, 2012, extended such declaration to include Rockland and Westchester Counties; and

WHEREAS, many New Yorkers with developmental disabilities, mental illnesses and alcohol and substance abuse disorders have experienced service disruptions, many such individuals have been displaced from their residences and programs, and the State offices and providers serving these individuals have been severely impacted by Hurricane Sandy; and

WHEREAS, it is incumbent upon the State to ensure, to the maximum extent feasible, that the provision of services to these individuals continues with minimal disruption; and

WHEREAS, full compliance with certain statutory and regulatory requirements may delay or impede the ability of providers to furnish such services;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify specific provisions of any statute, local law, ordinance, orders, rules or regulations, or parts thereof, of any agency during a State disaster emergency, if compliance with such provisions would prevent, hinder or delay action necessary to cope with the disaster, hereby temporarily suspend or modify, as the case may be, during the period from the date that the disaster emergency was declared pursuant to Executive Order Number 47, issued on October 26, 2012, until further notice, the following:

A. With respect to programs and providers in the federally-declared counties that are under the jurisdiction of the Office for People With Developmental Disabilities ("OPWDD"), the Office of Mental Health ("OMH") and the Office of Alcoholism and Substance Abuse Services ("OASAS"):

   1. Mental Hygiene Law Section 33.17, and any associated regulations, to the extent they limit who may accompany certain patients during transport to or from a facility, so that staff members can be utilized in the most effective manner in aiding in recovery from Hurricane Sandy;

B. With respect to programs and providers in the federally-declared counties that are under the jurisdiction of OPWDD or OMH:

1. Subdivision (d) of section 33.13 of the Mental Hygiene Law, and any associated regulations, to the extent that they would limit providers of mental hygiene services from disclosing information from a clinical record to another treatment provider for treatment purposes, as long as such disclosure is permitted by 45 C.F.R. Parts 160 and 164; and

2. Section 29.13 of the Mental Hygiene Law, and any associated regulations, to the extent that they require a new or revised treatment plan for individuals in the federally-declared counties who are temporarily receiving services from a different provider, in a situation in which it is not reasonably possible to comply with all of the development, assessment, scope, frequency and documentation requirements for treatment plans, and the provider makes reasonable, good faith efforts to comply with the individual's existing treatment plan, if any;

C. With respect to programs and providers that are under the jurisdiction of OPWDD:

1. Sections 16.03 and 16.05 of the Mental Hygiene Law, and any associated regulations, to the extent that they require a provider of services in a federally-declared county to provide such services only in a certified setting, provided that the Commissioner of OPWDD must approve the use of any uncertified setting;

2. Sections 633.8, 633.14 and 633.17 of Title 14 of the New York Code, Rules and Regulations ("NYCRR"), to the extent that any required training for employees of providers in the federally-declared counties and for employees of providers serving individuals displaced into other counties as a result of Hurricane Sandy may be delayed while such providers are coping with the recovery from Hurricane Sandy, provided that such training shall be held as soon as practicable, and provided further that such employees have sufficient competence to serve such individuals in the interim;

3. Sections 635-7.3 and 635-7.4 of Title 14 of the NYCRR, for programs and providers operating in the federally-declared counties and for programs and providers serving individuals displaced by Hurricane Sandy, to the extent that such regulations contain certain physical plant and environmental requirements for residential settings, provided that any setting used for housing for individuals meets basic health and safety requirements;

4. Sections 671.4, 635-99.1 and 686.99 of Title 14 of the NYCRR, for programs and providers operating in the federally-declared counties and for programs and providers serving individuals displaced by Hurricane Sandy, to the extent that such regulations require an annual renewal of a level of care eligibility determination or a semi-annual review of an individual's individualized service plan, provided that such programs and providers shall make a good faith effort to complete such renewals and reviews as soon as practicable;

5. Section 686.3 of Title 14 of the NYCRR, for programs and providers operating in the federally-declared counties and for programs and providers serving individuals displaced by Hurricane Sandy, to the extent that such programs and providers may exceed the capacity limits for community residences imposed by such regulation, upon approval of the Commissioner;

6. Section 686.15 of Title 14 of the NYCRR, for programs and providers operating in the federally-declared counties and for programs and providers serving individuals displaced by Hurricane Sandy, to the extent that such regulation limits the number of days respite can be provided; and

7. Section 635-10.5 of Title 14 of the NYCRR, to the extent that such regulation requires documentation of services provided for countable service days or contains other documentation requirements and a provider located in a federally-declared county is unable to document the provision of such services due to loss of records based on damage sustained in Hurricane Sandy, provided that such provider must give reasonable assurances that the services sought to be reimbursed were in fact provided;

D. With respect to programs and providers in the federally-declared counties that are under the jurisdiction of OMH:

1. Sections 31.02 and 31.05 of the Mental Hygiene Law, and corresponding implementing regulations in Sections 551, 580, 582, 585, 587, 589, 590, 594, 595 and 599 of Title 14 of the

NYCRR, to the extent that they require a provider of mental health services to: (a) provide such services only at a licensed site and (b) set maximum authorized capacities, provided that the Commissioner of Mental Health must approve any unlicensed site; and

2. Section 31.27 of the Mental Hygiene Law, and corresponding implementing regulations at sections 590.9 and 590.13 of Title 14 of the NYCRR, to the extent necessary to give comprehensive psychiatric emergency programs flexibility in terms of the location in which emergency psychiatric services may be provided, and time frames in which doctors must see and observe patients and patients must be moved to extended observation beds, without compromising the due process rights of patients.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this eleventh day of November in the year two thousand twelve.

BY THE GOVERNOR

Secretary to the Governor