

VETO MESSAGE:

VETO MESSAGE - No. 155

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 5398-A, entitled:

"AN ACT to establish a temporary task force on developmental disabilities and establishing the powers and duties thereof; and providing for the repeal of such provisions upon expiration thereof"

NOT APPROVED

This bill would establish a Temporary Task Force on Developmental Disabilities to develop guidelines to determine whether persons with specified developmental disabilities are eligible for services offered by the Office of Mental Retardation and Developmental Disabilities ("OMRDD"). The bill asserts that the eligibility standards established in Advisory Guidelines issued by OMRDD in 2001 are inconsistent with the Mental Hygiene Law and disqualify many persons who are "substantially handicapped" due to cerebral palsy, epilepsy, neurological impairment, familial dysautonomia, or autism.

This bill is well-intentioned, but contains flaws warranting disapproval. First, contrary to the bill's legislative findings, the Advisory Guidelines were informed by and are consistent with the Mental Hygiene Law's definition of a "developmental disability" as a disability which, among other things, "constitutes a substantial handicap to (a) person's ability to function normally in society." The guidelines do not automatically render persons with cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism ineligible for OMRDD services. On the contrary, OMRDD and its network of voluntary providers serve more than 140,000 consumers, many of whom are persons with one of these specific developmental disabilities. The current guidelines actually established criteria to assist OMRDD's regional Developmental Disabilities Services Offices in making objective clinical evaluations to determine whether a particular individual has a "substantial handicap," is a person with a developmental disability, and is eligible for OMRDD services.

Second, the task force that would be established by this bill is not appropriately structured. Ten of the fifteen members would be chosen by direct appointment by individual legislators. As a general rule, all members of advisory councils located within an Executive Branch agency should be appointed by the Governor. I recognize the desire of the Legislature to have input on these issues, and therefore have no objection if a minority of members is selected based upon the recommendation of the legislative leaders. Allowing direct legislative appointments to Executive Branch entities, however, raises significant sepa-

ration of powers concerns - which are even more compelling when the majority of appointments are made from outside the Executive Branch - and should not be permitted.

The bill is disapproved.

(signed) ELIOT SPITZER
