ASSEMBLY, No. 3229

STATE OF NEW JERSEY

219th LEGISLATURE

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Sponsored by:
Assemblyman RONALD S. DANCER
District 12 (Burlington, Middlesex, Monmouth and Ocean)
Assemblywoman CAROL A. MURPHY
District 7 (Burlington)

SYNOPSIS

Updates certain provisions concerning legal settlements and persons in mental health facilities to reflect changes in civil union, same sex marriage, and parentage laws.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/5/2020)

AN ACT concerning legal settlements, amending various parts of the statutory law, and repealing section 39 of P.L.1965, c.59.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 37 of P.L.1965, c.59 (C.30:4-49.1) is amended to read as follows:

37. The settlement of a **[**married woman shall be that of her husband except as otherwise herein provided**]** person who is married or in a civil union shall be in the county in which the couple most recently resided together for five or more continuous years, except that, if the couple has not resided together in any county for five or more continuous years, settlement shall be as follows:

[(a) If her husband at the time of her marriage does not have settlement in any State, she shall retain her own settlement until her husband acquires one or until hers is lost**]**

a. if the spouses or civil union partners have each attained settlement in a county on the basis of residence for five or more continuous years, the spouses or civil union partners shall each retain their own settlement until such time as they acquire a new settlement on the basis of residence together in a county for five or more continuous years;

[(b) A widow or woman who is divorced or separated by judicial decree from her husband shall have the same settlement which she had at the time of the death of her husband or of her divorce or judicial separation, but may subsequently acquire a new settlement**]**

b. if only one spouse or civil union partner has attained settlement in a county on the basis of residence in that county for five or more continuous years, settlement for both spouses or civil union partners shall be in that county;

[(c) After continuous separation from her husband and absence from the State for 1 year, a married woman's settlement shall be lost until such time as she and her husband voluntarily resume living together in which event her settlement will be that of her husband**]**

c. if neither spouse or civil union partner has attained settlement by continuous residence in a county for five or more years, settlement for both spouses or civil union partners shall be with the State, provided that at least one spouse or civil union partner has, pursuant to R.S.30:4-51, continuously resided in the State for a period of at least one year immediately preceding the date of the application for admission or commitment;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

d. a person whose settlement has been deemed abandoned by residence outside the State for a period of one year or more pursuant to R.S.30:4-50 shall not attain settlement through a spouse or civil union partner as provided in this section unless the person has continuously resided in the State for a period of at least one year immediately preceding the date of the application for admission or commitment.

(cf: P.L.1965, c.59, s.37)

2. Section 38 of P.L.1965, c.59 (C.30:4-49.2) is amended to read as follows:

38. The settlement of a minor **[**born in wedlock**]** child shall be that of **[**his parents or surviving parent or in case of divorce or separation, of the parent having his custody**]** the child's custodial parent. In the case of the death of the parent having custody, the settlement shall be that of the surviving parent. In case of the death of both parents or in case of permanent separation from **[**his**]** the child's parents by court order or by surrender of custody by an instrument in writing in accordance with law, the settlement of **[**such**]** the minor child at the time of **[**such**]** the death or permanent separation shall continue until **[**his**]** the child reaches the age of majority unless **[**he shall gain**]** the child gains a separate settlement as hereinafter provided.

(cf: P.L.1965, c.59, s.38)

3. Section 40 of P.L.1965, c.59 (C.30:4-49.4) is amended to read as follows:

40. **[**A**]** An emancipated minor shall be deemed capable under the provisions of **[**this act**]** P.L.1965, c.59 (C.30:1-15.1 et al.) of acquiring a separate settlement**[**,**]** in the same manner as persons of full age**[**, from the time he or she has complied with either of the following provisions:

(a) If a male, by marrying and living apart from parents;

(b) By residing separately and apart from his parents and being lawfully employed when wages are paid to such minor. This provision shall not apply in the case of a minor serving an apprenticeship or securing an education in a regularly organized training school or other educational institution, or where such minor is dependent in whole or in part upon his parent or guardian for support; except that if such minor resumes living with either of his parents, his settlement shall be the same as it was before his departure**]**.

(cf: P.L.1965, c.59, s.40)

4. Section 41 of P.L.1965, c.59 (C.30:4-49.5) is amended to read as follows:

41. ⟦When a widow, divorced woman or unmarried mother⟧ In the event that a noncustodial parent of a minor child who is receiving care at public expense gains a new settlement ⟦by marriage, if, at the time of such marriage her child is not in her custody and is receiving care at public expense⟧, the settlement of such child shall not follow that of ⟦its mother until such time as the child has been returned to the custody of its mother and has remained in her⟧ the noncustodial parent unless the parent becomes the child's custodial parent and the child remains in that parent's care, without receipt of public assistance, for the period of ⟦1⟧ one year.
(cf: P.L.1965, c.59, s.41)

5. R.S.30:4-54 is amended to read as follows:

30:4-54. No person confined in any public institution outside of this ⟦state⟧ State shall acquire a legal settlement in this ⟦state⟧ State or in any county in this ⟦state⟧ State by virtue of the establishment of a residence in this ⟦state⟧ State of the ⟦husband, wife or⟧ person's spouse or civil union partner, the parent or parents of the ⟦wife, husband⟧ person's spouse or civil union partner, or the parent or guardian of the person's minor child ⟦, as the case may be, of any person confined in any public institution outside of this state⟧.
(cf: R.S.30:4-54)

6. R.S.30:4-60 is amended to read as follows:

30:4-60. a. If the court shall determine that the person has a mental illness and is in need of treatment at a psychiatric facility, it may determine the legal settlement of the person and, consistent with the laws governing civil commitment and the Rules of Court, direct the admission or hospitalization of the person to the care of the Commissioner of Human Services for treatment in a psychiatric facility, short-term care facility, or special psychiatric hospital in this State.

b. If the Department of Human Services determines that the person has a developmental disability and is eligible for functional services from the Division of Developmental Disabilities, the department, using a formula of financial ability to pay as promulgated annually by the Department of the Treasury, shall determine if the person with a developmental disability has sufficient income, assets, resources, or estate to pay for the person's maintenance as fixed by the department, or is able to make any payment towards the person's maintenance, or if the person's chargeable relatives or other persons chargeable by contract are able to pay the person's maintenance or make any payment toward the person's maintenance on the person's behalf. The department shall determine the legal settlement of the ⟦developmentally disabled⟧

person with a developmental disability pursuant to section 86 of P.L.1965, c.59 (C.30:4-165.3).

The department shall send written notice of the periodic payment amount to the person or the person's parent or guardian, chargeable relative, or other person chargeable by contract for the person's support. All required payments shall be made directly to the department unless otherwise specified in the notice. The notice may, in the discretion of the department, contain such direction as may seem proper concerning security to be given for the payment. The payment notice shall be separate and independent of any order of commitment to the care and custody of the commissioner or any order of guardianship.

The department shall annually review and revise, as appropriate, its payment calculations. If the financial circumstances of the person or persons chargeable by law or contract for the support of the ⟦developmentally disabled⟧ person with a developmental disability change prior to the annual review, the chargeable person or persons shall immediately notify the department in writing.

c. (1) A person with mental illness who is 18 years of age or older and is being treated in a psychiatric facility as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2) shall be liable for the full cost of the person's treatment, maintenance, and all necessary and related expenses of the person's hospitalization until the person is determined to be ineligible for or has exhausted any third party insurance benefits or medical assistance program that will pay an amount toward the facility's bill. The obligation by the person with mental illness for the remainder of the facility's bill, after the credit for all available third party insurance payments or medical assistance program payment, will be in an amount based upon the sliding scale fee schedule established for charity care pursuant to subsection b. of section 10 of P.L.1992, c.160 (C.26:2H-18.60).

(2) The obligation of the parent of a person with mental illness under the age of 18 for the remainder of the facility's bill shall be based upon the lesser of the sliding scale fee schedule established for charity care pursuant to subsection b. of section 10 of P.L.1992, c.160 (C.26:2H-18.60), or the formula of financial ability to pay as promulgated annually by the Department of the Treasury pursuant to subsection b. of this section.

(3) A person with mental illness or a person responsible under a court order for the cost of care and maintenance of a person with mental illness who, without good cause, (a) refuses to submit information and authorizations sufficient to enable the facility to access any available third-party payer, or (b) refuses to apply for public medical assistance for which the person with mental illness may be eligible, shall be responsible for the full cost of the person's care and maintenance at the facility without the application of the criteria set forth in paragraphs (1) and (2) of this subsection.

(4) Based upon the criteria set forth in paragraphs (1) and (2) of this subsection, the Department of Human Services or county adjuster in the county of settlement, as applicable, shall make a determination of the amount the person with mental illness who is 18 years of age or older, or the parent of a person with mental illness under the age of 18, shall be liable to contribute toward the cost of the person's treatment, maintenance, and all necessary and related expenses of the person's hospitalization. The liability may be enforced by the Commissioner of Human Services in the manner set forth in section 1 of P.L.1962, c.207 (C.30:4-75.1).

(5) In the case of a person with mental illness who is married or in a civil union, the department shall establish a spousal or civil union partner share of the combined assets of the couple that shall be preserved for the noninstitutionalized spouse or civil union partner and immune from execution to satisfy the person's liability to contribute toward the cost of treatment, maintenance, and all necessary and related expenses of the person's hospitalization. In order to determine the spousal or civil union partner share of the combined assets to be preserved, the Commissioner of Human Services shall employ the same methodology used by the State Medicaid program to determine the resources that are preserved for the needs of the community spouse of an institutionalized individual in accordance with N.J.A.C.10:71-4.8.

(6) The Commissioner of Human Services shall act on any request by a person with mental illness who is 18 years of age or older, or the parent of a person with mental illness under the age of 18, to compromise for settlement of the obligation established pursuant to this section. With respect to the request, the commissioner shall allow the person or parent to retain adequate funds to:

(a) maintain the person's or parent's housing and usual standard of living in the community;

(b) provide for any necessary medical expenses or special needs;

(c) support any minor, disabled, elderly, or other dependent;

(d) establish a trust to ensure future self-sufficiency; or

(e) provide for any other genuine financial needs.

Requests to compromise for settlement of the obligation shall be liberally granted by the commissioner and shall promote the person's or the person's parent's opportunity to obtain and maintain employment, purchase property, both real and personal, and achieve full reintegration into the community, as applicable. The commissioner shall ensure that all persons and parents are notified of their right to request a compromise and the procedure for doing so.

(cf: P.L.2013, c.253, s.12)

7. Section 69 of P.L.1965, c.59 (C.30:4-83.1) is amended to read as follows:

69. Whenever a person with mental illness or a developmental disability is transferred from one residential service to another by order of the commissioner, notice shall be given by the commissioner in advance, where possible, but in any case in writing, to **[**his**]** the person's spouse or civil union partner, if any, or to **[**his**]** the person's guardian, or to **[**his**]** the person's parents if **[**he**]** the person is a minor, or to **[**his**]** the person's nearest known relative or friend.
(cf: P.L.2010, c.50, s.41)

8. Section 88 of P.L.1965, c.59 (C.30:4-165.5) is amended to read as follows:

88. Whenever a minor has been admitted to functional or other services provided by the Division of Developmental Disabilities on application as provided herein and has not been discharged therefrom, the commissioner shall, not less than six months nor more than 18 months prior to the 18th birthday of said person, cause **[**him**]** the person to be examined to ascertain whether it appears that such person will need a guardian **[**on attainment of his**]** upon attaining the age of majority.

If the commissioner anticipates that such person will need a guardian, the commissioner or **[**his**]** the commissioner's designated agent shall apply to the Superior Court in the same manner as provided in section 1 of P.L.1970, c.289 (C.30:4-165.7) for appointment of a guardian unless another application is pending.

In the event that no guardian has been appointed for a person who commences receiving functional or other services after the effective date of this amendatory and supplementary act and who has attained age 18, and if the commissioner has ascertained that such person appears to need a guardian, then the commissioner shall apply to the Superior Court in the same manner as provided in section 1 of P.L.1970, c.289 (C.30:4-165.7) for appointment of a guardian unless another application is pending.

The commissioner shall also promptly advise in plain language any parent, spouse, civil union partner, relative, or other interested person of **[**his**]** the commissioner's findings and of the parent's or person's right to participate in the process of an adjudication and to be considered for appointment as a guardian. The commissioner may offer to these persons assistance to facilitate their appointments as guardians unless **[**he**]** the commissioner has reason to question their fitness to serve.
(cf: P.L.2010, c.50, s.48)

9. Section 1 of P.L.1970, c.289 (C.30:4-165.7) is amended to read as follows:

1. The commissioner or any parent, spouse, civil union partner, relative, or interested party, on behalf of an alleged incapacitated

person who is receiving functional or other services and is over 18 years of age, may file a complaint upon notice to the alleged incapacitated person with the Superior Court in the county furnishing the services or in which such parent, spouse, civil union partner, relative, or interested party resides, for a judgment designating a guardian. The county of settlement shall be served with a copy of the moving papers, however, the county may waive service of the moving papers if it has no reason to oppose the action. If the county elects to oppose the action it shall do so within 30 days after being served with a copy of the moving papers. Unless filed by the commissioner, a complaint shall be served by the filing party upon the Division of Developmental Disabilities, to the attention of the Regional Director for the region in which the alleged incapacitated person is receiving functional or other services. The filing party shall likewise serve upon the Regional Director a copy of the Order Fixing Hearing Date and Appointing Attorney for Alleged Incapacitated Person, as well as a copy of any Judgment of Incapacity and Order Appointing Guardian.
(cf: P.L.2015, c.132, s.2)

10. Section 39 of P.L.1965, c.59 (C.30:4-49.3) is repealed.

11. This act shall take effect immediately.

STATEMENT

This bill updates certain statutory provisions concerning settlement for persons in mental health facilities to incorporate subsequent laws concerning same sex marriage, civil unions, and children born out of wedlock.

Settlement is the means of determining which county is responsible for a person's care in a mental health facility in the event the person has no other source of income or means of support. Individuals may attain settlement by residence in a county for five or more continuous years; if the person has no county settlement, settlement is with the State, provided the person has continuously resided in the State for one year or more. A settlement in the State or a county is deemed abandoned if the person continuously resides outside the State for one year or more.

Under current law, settlement for a married woman is that of her husband, and she retains this settlement following divorce, legal separation, or the death of her husband, until such time as she acquires a new settlement on her own behalf. With regard to settlement of minor children, current law differentiates between children born in and out of wedlock, a differentiation which New Jersey eliminated with respect to most other legal issues with the passage of the "New Jersey Parentage Act" in 1983.

The bill revises these provisions to establish a new system for determining the settlement of couples who are married or in a civil union that is consistent with the current settlement laws for individuals. Under the bill, when a person is married or in a civil union, settlement for both spouses or partners is in the county in which the couple most recently resided together for five or more continuous years. If the couple has not resided together in any county for five or more continuous years, each spouse or partner will retain their current settlement until such time as they establish a new settlement by residing together in a county for five or more continuous years. If only one of the spouses has attained a settlement in a county in the State, settlement for both spouses or partners will be in that county until the couple attains a new settlement. If neither of the spouses or partners has attained settlement in a county, settlement will be with the State, provided that one spouse or civil union partner has continuously resided in the State for a period of at least one year immediately preceding the date of the application for admission or commitment. Any person deemed to have abandoned a legal settlement on the basis of residing outside the State for one year or more will not be able to attain settlement through a spouse or civil union partner under the bill, unless the person has continuously resided in the State for a period of at least one year immediately preceding the date of the application for admission or commitment.

With regard to minor children, the bill eliminates the distinction between children born in and out of wedlock to provide that settlement for a minor child will be established through the child's custodial parent; in the event that both parents die or there is a permanent separation from the child, settlement will remain as it was established at the time of the death or separation until such time as the child reaches the age of majority or settlement is otherwise changed under the law. A minor child's settlement will not change based on a noncustodial parent gaining a new settlement unless the noncustodial parent gains custody of the child and the child remains in that parent's care, without receipt of public assistance, for one year. The bill repeals section 39 of P.L.1965, c.59 (C.30:4-49.3), which addressed settlement for minor children born out of wedlock.

The bill revises other sections of the law to provide that settlement may be established for an emancipated minor in the same manner as for an adult, and to update certain other statutory provisions concerning guardianship appointments, spousal set asides from the obligation to pay for institutionalized care, and persons confined in public institutions outside the State, to include references to civil unions.