

5628

2013-2014 Regular Sessions

I N   S E N A T E

May 30, 2013

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Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the social services law and the public health law, in relation to establishing a streamlined application process for adult care facility and assisted living residence operators in good standing

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivision 2 of section 461-b of the social services law,  
2     as added by chapter 601 of the laws of 1981, paragraph (c) as added by  
3     chapter 848 of the laws of 1992, is amended to read as follows:  
4     2. (a) No adult care facility shall be operated unless and until the  
5     operator obtains the written approval of the department. Such approval  
6     may be granted only to an operator who satisfactorily demonstrates: that  
7     the operator is of good moral character; that the operator is financial-  
8     ly responsible; that there is a public need for the facility; that the  
9     buildings, equipment, staff, standards of care and records to be  
10    employed in the operation comply with applicable law and regulations of  
11    the department and that any license or permit required by law for the  
12    operation of such facility has been issued to such operation. In deter-  
13    mining whether there is a public need for the facility, the department  
14    shall give consideration to the relative concentration of such facili-  
15    ties in the area proposed to be serviced. Such approval for family type  
16    home for adults shall not be granted unless the appropriate social  
17    services official has made the required visitation and inspection and  
18    has submitted a report thereof to the department in accordance with this  
19    article.  
20    (b) FOR EXISTING LICENSED OPERATORS IN GOOD STANDING, THE DEPARTMENT  
21    SHALL DEVELOP A STREAMLINED APPLICATION REVIEW AND APPROVAL PROCESS, IN  
22    COLLABORATION WITH REPRESENTATIVES OF ASSOCIATIONS OF OPERATORS, TO BE  
23    AVAILABLE FOR USE ON OR BEFORE JANUARY FIRST, TWO THOUSAND FOURTEEN.  
24    NOTWITHSTANDING ANY PROVISION OF LAW OR REGULATION TO THE CONTRARY, THE

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD11285-01-3

1 STREAMLINED APPLICATION REVIEW AND APPROVAL PROCESS SHALL INCLUDE, BUT  
2 NOT BE LIMITED TO, THE FOLLOWING:

3 (I) A CERTIFICATION PROCESS AND FORM FOR THE OPERATOR TO VERIFY THAT  
4 IT WILL HAVE SUFFICIENT FINANCIAL RESOURCES, REVENUE AND FINANCING TO  
5 MEET FACILITY EXPENSES AND RESIDENT NEEDS, WHICH SHALL SATISFY THE STAT-  
6 UTORY AND REGULATORY FINANCIAL COMPONENT OF THE APPLICATION REVIEW AND  
7 APPROVAL PROCESS;

8 (II) A CERTIFICATION PROCESS AND FORM FOR THE OPERATOR TO VERIFY THAT  
9 ITS LEGAL, CORPORATE AND ORGANIZATIONAL DOCUMENTS COMPLY IN SUBSTANCE  
10 WITH DEPARTMENT REQUIREMENTS, WHICH SHALL SATISFY THE STATUTORY AND  
11 REGULATORY LEGAL COMPONENT OF THE APPLICATION REVIEW AND APPROVAL PROC-  
12 ESS;

13 (III) A CERTIFICATION PROCESS AND FORM FOR THE OPERATOR TO VERIFY THAT  
14 IT IS IN SUBSTANTIAL COMPLIANCE WITH ALL APPLICABLE CODES, RULES AND  
15 REGULATIONS IN ANY OTHER STATE IN WHICH IT OPERATES, AND TO DISCLOSE ANY  
16 ENFORCEMENT OR ADMINISTRATIVE ACTION TAKEN AGAINST IT IN ANY OTHER  
17 STATE;

18 (IV) ISSUANCE BY THE DEPARTMENT OF A CONDITIONAL APPROVAL TO OPERATE  
19 THE FACILITY FOR A SPECIFIED PERIOD OF TIME UPON SUBSTANTIAL COMPLETION  
20 OF THE CHARACTER AND COMPETENCE, LEGAL, FINANCIAL AND ARCHITECTURAL  
21 COMPONENTS OF THE APPLICATION, SO LONG AS THE OPERATOR AGREES IN WRITING  
22 TO SATISFY ALL PENDING CONDITIONS PRIOR TO THE EXPIRATION OF THE CONDI-  
23 TIONAL APPROVAL PERIOD OR A TIME FRAME ESTABLISHED BY THE DEPARTMENT;

24 (V) ISSUANCE BY THE DEPARTMENT OF A CONDITIONAL APPROVAL TO CONSTRUCT  
25 A FACILITY, AT THE OPERATOR'S OWN RISK, UPON SUBSTANTIAL COMPLETION OF  
26 THE ARCHITECTURAL COMPONENT OF THE APPLICATION;

27 (VI) ELIMINATION OF DUPLICATIVE SUBMISSION AND REVIEW OF ANY APPLICA-  
28 TION INFORMATION WHICH HAS BEEN PREVIOUSLY REVIEWED AND APPROVED BY THE  
29 DEPARTMENT OR ANY OF ITS REGIONAL OFFICES WITHIN THE PAST TWO YEARS  
30 THROUGH A CERTIFICATION PROCESS AND FORM WHEREBY THE OPERATOR WILL VERI-  
31 FY THAT SUCH APPLICATION INFORMATION IS DUPLICATIVE;

32 (VII) WITH RESPECT TO ANY PROGRAMMATIC APPLICATION INFORMATION TO BE  
33 REVIEWED BY THE REGIONAL OFFICE, SUCH REVIEW SHALL BE CONDUCTED ON-SITE  
34 BY THE REGIONAL OFFICE DURING THE PRE-OPENING INSPECTION OR FIRST FULL  
35 ANNUAL INSPECTION, IF THE DEPARTMENT HAS PREVIOUSLY APPROVED THE OPERA-  
36 TOR TO OPERATE THE SAME TYPE OF PROGRAM AT ANOTHER FACILITY WITHIN THE  
37 PAST TWO YEARS;

38 (VIII) ELECTRONIC SUBMISSION OF APPLICATIONS; AND

39 (IX) A COMBINED APPLICATION FOR LICENSURE AS AN ADULT CARE FACILITY,  
40 ASSISTED LIVING RESIDENCE AND/OR ASSISTED LIVING PROGRAM, TO THE EXTENT  
41 THE DEPARTMENT DETERMINES SUCH A COMBINED APPLICATION IS FEASIBLE.

42 FOR PURPOSES OF THIS PARAGRAPH, "GOOD STANDING" SHALL MEAN THE OPERA-  
43 TOR HAS NOT (A) RECEIVED ANY OFFICIAL WRITTEN NOTICE FROM THE DEPARTMENT  
44 OF A PROPOSED REVOCATION, SUSPENSION, DENIAL OR LIMITATION ON THE OPER-  
45 ATING CERTIFICATE OF THE FACILITY OR RESIDENCE; (B) WITHIN THE PREVIOUS  
46 THREE YEARS, BEEN ASSESSED A CIVIL PENALTY AFTER A HEARING CONDUCTED  
47 PURSUANT TO SUBPARAGRAPH ONE OF PARAGRAPH (B) OF SUBDIVISION SEVEN OF  
48 SECTION FOUR HUNDRED SIXTY-D OF THIS ARTICLE FOR A VIOLATION THAT HAS  
49 NOT BEEN RECTIFIED; (C) WITHIN THE PREVIOUS YEAR, RECEIVED ANY OFFICIAL  
50 WRITTEN NOTICE FROM THE DEPARTMENT OF A PROPOSED ASSESSMENT OF A CIVIL  
51 PENALTY FOR A VIOLATION DESCRIBED IN SUBPARAGRAPH TWO OF PARAGRAPH (B)  
52 OF SUBDIVISION SEVEN OF SECTION FOUR HUNDRED SIXTY-D OF THIS ARTICLE;  
53 (D) WITHIN THE PREVIOUS THREE YEARS, BEEN ISSUED AN ORDER PURSUANT TO  
54 SUBDIVISION TWO, FIVE, SIX OR EIGHT OF SECTION FOUR HUNDRED SIXTY-D OF  
55 THIS ARTICLE; (E) WITHIN THE PREVIOUS THREE YEARS, BEEN PLACED ON, AND  
56 IF PLACED ON, REMOVED FROM THE DEPARTMENT'S "DO NOT REFER LIST" PURSUANT

1 TO SUBDIVISION FIFTEEN OF SECTION FOUR HUNDRED SIXTY-D OF THIS ARTICLE.  
2 PROVIDED, HOWEVER, THAT IN THE CASE OF AN OPERATOR THAT IS NOT IN GOOD  
3 STANDING AS PROVIDED IN THIS PARAGRAPH, THE DEPARTMENT MAY PERMIT THE  
4 OPERATOR TO USE THE STREAMLINED APPLICATION PROCESS, IN ITS DISCRETION,  
5 IF IT DETERMINES THAT THE DISQUALIFYING VIOLATION WAS AN ISOLATED OCCUR-  
6 RENCE THAT WAS PROMPTLY CORRECTED BY THE OPERATOR;

7 (C) After an operator obtains approval of the department for the oper-  
8 ation of an adult care facility he may operate such facility only so  
9 long as he continues to do so in compliance with the requirements of  
10 such approval, applicable law, and the regulations of the department.

11 [(c)] (D) The knowing operation of an adult care facility without the  
12 prior written approval of the department shall be a class A misdemeanor.

13 S 2. Section 4653 of the public health law, as added by chapter 2 of  
14 the laws of 2004, is amended to read as follows:

15 S 4653. Licensure procedures and requirements for assisted living. 1.  
16 In order to operate as assisted living, an operator shall be licensed as  
17 an adult home or enriched housing program and apply and be approved for  
18 licensure with the commissioner pursuant to this article. The operator  
19 shall provide, on an application form developed by the commissioner, the  
20 following information to the commissioner in order to be licensed:

21 [1.] (A) business name, street address, and mailing address of the  
22 residence and of the owners of the residence;

23 [2.] (B) status of current operating certificate;

24 [3.] (C) verification that the operator has a valid residency agree-  
25 ment in compliance with this article to be entered into with each resi-  
26 dent, resident's representative and resident's legal representative, if  
27 any, and shall include a copy of the information to be included in the  
28 residency agreement and disclosures as required pursuant to the  
29 provisions of section four thousand six hundred fifty-eight of this  
30 article, AS ADDED BY CHAPTER TWO OF THE LAWS OF TWO THOUSAND FOUR, that  
31 will be given to prospective residents; and

32 [4.] (D) any other information the department may deem necessary for  
33 the evaluation of the application provided such information is not  
34 duplicative of what is otherwise required of the applicant in obtaining  
35 an adult care facility license.

36 2. FOR EXISTING LICENSED OPERATORS IN GOOD STANDING, THE DEPARTMENT  
37 SHALL DEVELOP A STREAMLINED APPLICATION REVIEW AND APPROVAL PROCESS, IN  
38 COLLABORATION WITH REPRESENTATIVES OF ASSOCIATIONS OF OPERATORS, TO BE  
39 AVAILABLE FOR USE ON OR BEFORE JANUARY FIRST, TWO THOUSAND FOURTEEN.  
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48 (B) A CERTIFICATION PROCESS AND FORM FOR THE OPERATOR TO VERIFY THAT  
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32 CONDUCTED PURSUANT TO SUBPARAGRAPH ONE OF PARAGRAPH (B) OF SUBDIVISION  
33 SEVEN OF SECTION FOUR HUNDRED SIXTY-D OF THE SOCIAL SERVICES LAW FOR A  
34 VIOLATION THAT HAS NOT BEEN RECTIFIED; (III) WITHIN THE PREVIOUS YEAR,  
35 RECEIVED ANY OFFICIAL WRITTEN NOTICE FROM THE DEPARTMENT OF A PROPOSED  
36 ASSESSMENT OF A CIVIL PENALTY FOR A VIOLATION DESCRIBED IN SUBPARAGRAPH  
37 TWO OF PARAGRAPH (B) OF SUBDIVISION SEVEN OF SECTION FOUR HUNDRED  
38 SIXTY-D OF THE SOCIAL SERVICES LAW; (IV) WITHIN THE PREVIOUS THREE  
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46 OPERATOR TO USE THE STREAMLINED APPLICATION PROCESS, IN ITS DISCRETION,  
47 IF IT DETERMINES THAT THE DISQUALIFYING VIOLATION WAS AN ISOLATED OCCUR-  
48 RENCE THAT WAS PROMPTLY CORRECTED BY THE OPERATOR.

49 S 3. This act shall take effect immediately; provided that the depart-  
50 ment of health is authorized and directed to promulgate, amend and/or  
51 repeal, on an emergency basis, any rules and regulations necessary to  
52 implement the provisions of this act.