

5628--A

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I N S E N A T E

May 30, 2013

Introduced by Sens. HANNON, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

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 IN

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

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RELATION TO APPROVAL OF AN ADDITIONAL FACILITY OF THE SAME TYPE. NOTWITHSTANDING ANY PROVISION OF LAW OR REGULATION TO THE CONTRARY, THE STREAMLINED APPLICATION REVIEW AND APPROVAL PROCESS SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

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

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

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

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

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

(VI) ELIMINATION OF DUPLICATIVE SUBMISSION AND REVIEW OF ANY APPLICATION INFORMATION WHICH HAS BEEN PREVIOUSLY REVIEWED AND APPROVED BY THE DEPARTMENT OR ANY OF ITS REGIONAL OFFICES WITHIN THE PAST TWO YEARS THROUGH A CERTIFICATION PROCESS AND FORM WHEREBY THE OPERATOR WILL VERIFY THAT SUCH APPLICATION INFORMATION IS DUPLICATIVE;

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

(VIII) ELECTRONIC SUBMISSION OF APPLICATIONS; AND

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

FOR PURPOSES OF THIS PARAGRAPH, "GOOD STANDING" SHALL MEAN THE OPERATOR HAS NOT (A) RECEIVED ANY OFFICIAL WRITTEN NOTICE FROM THE DEPARTMENT OF A PROPOSED REVOCATION, SUSPENSION, DENIAL OR LIMITATION ON THE OPERATING CERTIFICATE OF THE FACILITY OR RESIDENCE; (B) WITHIN THE PREVIOUS THREE YEARS, BEEN ASSESSED A CIVIL PENALTY AFTER A HEARING CONDUCTED PURSUANT TO SUBPARAGRAPH ONE OF PARAGRAPH (B) OF SUBDIVISION SEVEN OF SECTION FOUR HUNDRED SIXTY-D OF THIS ARTICLE FOR A VIOLATION THAT HAS NOT BEEN RECTIFIED; (C) WITHIN THE PREVIOUS YEAR, RECEIVED ANY OFFICIAL WRITTEN NOTICE FROM THE DEPARTMENT OF A PROPOSED ASSESSMENT OF A CIVIL PENALTY FOR A VIOLATION DESCRIBED IN SUBPARAGRAPH TWO OF PARAGRAPH (B) OF SUBDIVISION SEVEN OF SECTION FOUR HUNDRED SIXTY-D OF THIS ARTICLE; (D) WITHIN THE PREVIOUS THREE YEARS, BEEN ISSUED AN ORDER PURSUANT TO SUBDIVISION TWO, FIVE, SIX OR EIGHT OF SECTION FOUR HUNDRED SIXTY-D OF

THIS ARTICLE; (E) WITHIN THE PREVIOUS THREE YEARS, BEEN PLACED ON, AND IF PLACED ON, REMOVED FROM THE DEPARTMENT'S "DO NOT REFER LIST" PURSUANT TO SUBDIVISION FIFTEEN OF SECTION FOUR HUNDRED SIXTY-D OF THIS ARTICLE. PROVIDED, HOWEVER, THAT IN THE CASE OF AN OPERATOR THAT IS NOT IN GOOD STANDING AS PROVIDED IN THIS PARAGRAPH, THE DEPARTMENT MAY PERMIT THE OPERATOR TO USE THE STREAMLINED APPLICATION PROCESS, IN ITS DISCRETION, IF IT DETERMINES THAT THE DISQUALIFYING VIOLATION WAS AN ISOLATED OCCURRENCE THAT WAS PROMPTLY CORRECTED BY THE OPERATOR;

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

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

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

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

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

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

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

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

2. FOR EXISTING LICENSED OPERATORS IN GOOD STANDING, THE DEPARTMENT SHALL DEVELOP A STREAMLINED APPLICATION REVIEW AND APPROVAL PROCESS, IN COLLABORATION WITH REPRESENTATIVES OF ASSOCIATIONS OF OPERATORS, TO BE AVAILABLE FOR USE ON OR BEFORE JANUARY FIRST, TWO THOUSAND FOURTEEN IN RELATION TO APPROVAL OF AN ADDITIONAL FACILITY OF THE SAME TYPE. NOTWITHSTANDING ANY PROVISION OF LAW OR REGULATION TO THE CONTRARY, THE STREAMLINED APPLICATION REVIEW AND APPROVAL PROCESS SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(A) A CERTIFICATION PROCESS AND FORM FOR THE OPERATOR TO VERIFY THAT IT WILL HAVE SUFFICIENT FINANCIAL RESOURCES, REVENUE AND FINANCING TO MEET FACILITY EXPENSES AND RESIDENT NEEDS, WHICH SHALL SATISFY THE STATUTORY AND REGULATORY FINANCIAL COMPONENT OF THE APPLICATION REVIEW AND APPROVAL PROCESS;

(B) A CERTIFICATION PROCESS AND FORM FOR THE OPERATOR TO VERIFY THAT ITS LEGAL, CORPORATE AND ORGANIZATIONAL DOCUMENTS COMPLY IN SUBSTANCE WITH DEPARTMENT REQUIREMENTS, WHICH SHALL SATISFY THE STATUTORY AND REGULATORY LEGAL COMPONENT OF THE APPLICATION REVIEW AND APPROVAL PROCESS;

1 (C) A CERTIFICATION PROCESS AND FORM FOR THE OPERATOR TO VERIFY THAT
2 IT IS IN SUBSTANTIAL COMPLIANCE WITH ALL APPLICABLE CODES, RULES AND
3 REGULATIONS IN ANY OTHER STATE IN WHICH IT OPERATES, AND TO DISCLOSE ANY
4 ENFORCEMENT OR ADMINISTRATIVE ACTION TAKEN AGAINST IT IN ANY OTHER
5 STATE;

6 (D) ISSUANCE BY THE DEPARTMENT OF A CONDITIONAL APPROVAL TO OPERATE
7 THE FACILITY FOR A SPECIFIED PERIOD OF TIME UPON SUBSTANTIAL COMPLETION
8 OF THE CHARACTER AND COMPETENCE, LEGAL, FINANCIAL AND ARCHITECTURAL
9 COMPONENTS OF THE APPLICATION, SO LONG AS THE OPERATOR AGREES IN WRITING
10 TO SATISFY ALL PENDING CONDITIONS PRIOR TO THE EXPIRATION OF THE CONDI-
11 TIONAL APPROVAL PERIOD OR A TIME FRAME ESTABLISHED BY THE DEPARTMENT;

12 (E) ISSUANCE BY THE DEPARTMENT OF A CONDITIONAL APPROVAL TO CONSTRUCT
13 A FACILITY, AT THE OPERATOR'S OWN RISK, UPON SUBSTANTIAL COMPLETION OF
14 THE ARCHITECTURAL COMPONENT OF THE APPLICATION;

15 (F) ELIMINATION OF DUPLICATIVE SUBMISSION AND REVIEW OF ANY APPLICA-
16 TION INFORMATION WHICH HAS BEEN PREVIOUSLY REVIEWED AND APPROVED BY THE
17 DEPARTMENT OR ANY OF ITS REGIONAL OFFICES WITHIN THE PAST TWO YEARS
18 THROUGH A CERTIFICATION PROCESS AND FORM WHEREBY THE OPERATOR WILL VERI-
19 FY THAT SUCH APPLICATION INFORMATION IS DUPLICATIVE;

20 (G) WITH RESPECT TO ANY PROGRAMMATIC APPLICATION INFORMATION TO BE
21 REVIEWED BY THE REGIONAL OFFICE, SUCH REVIEW SHALL BE CONDUCTED ON-SITE
22 BY THE REGIONAL OFFICE DURING THE PRE-OPENING INSPECTION OR FIRST FULL
23 ANNUAL INSPECTION, IF THE DEPARTMENT HAS PREVIOUSLY APPROVED THE OPERA-
24 TOR TO OPERATE THE SAME TYPE OF PROGRAM AT ANOTHER FACILITY WITHIN THE
25 PAST TWO YEARS;

26 (H) ELECTRONIC SUBMISSION OF APPLICATIONS; AND

27 (I) A COMBINED APPLICATION FOR LICENSURE AS AN ADULT CARE FACILITY,
28 ASSISTED LIVING RESIDENCE AND/OR ASSISTED LIVING PROGRAM, TO THE EXTENT
29 THE DEPARTMENT DETERMINES SUCH A COMBINED APPLICATION IS FEASIBLE.

30 FOR PURPOSES OF THIS SUBDIVISION, "GOOD STANDING" SHALL MEAN THE OPER-
31 ATOR HAS NOT (I) RECEIVED ANY OFFICIAL WRITTEN NOTICE FROM THE DEPART-
32 MENT OF A PROPOSED REVOCATION, SUSPENSION, DENIAL OR LIMITATION ON THE
33 OPERATING CERTIFICATE OF THE FACILITY OR RESIDENCE; (II) WITHIN THE
34 PREVIOUS THREE YEARS, BEEN ASSESSED A CIVIL PENALTY AFTER A HEARING
35 CONDUCTED PURSUANT TO SUBPARAGRAPH ONE OF PARAGRAPH (B) OF SUBDIVISION
36 SEVEN OF SECTION FOUR HUNDRED SIXTY-D OF THE SOCIAL SERVICES LAW FOR A
37 VIOLATION THAT HAS NOT BEEN RECTIFIED; (III) WITHIN THE PREVIOUS YEAR,
38 RECEIVED ANY OFFICIAL WRITTEN NOTICE FROM THE DEPARTMENT OF A PROPOSED
39 ASSESSMENT OF A CIVIL PENALTY FOR A VIOLATION DESCRIBED IN SUBPARAGRAPH
40 TWO OF PARAGRAPH (B) OF SUBDIVISION SEVEN OF SECTION FOUR HUNDRED
41 SIXTY-D OF THE SOCIAL SERVICES LAW; (IV) WITHIN THE PREVIOUS THREE
42 YEARS, BEEN ISSUED AN ORDER PURSUANT TO SUBDIVISION TWO, FIVE, SIX, OR
43 EIGHT OF SECTION FOUR HUNDRED SIXTY-D OF THE SOCIAL SERVICES LAW; (V)
44 WITHIN THE PREVIOUS THREE YEARS, BEEN PLACED ON, AND IF PLACED ON,
45 REMOVED FROM THE DEPARTMENT'S "DO NOT REFER LIST" PURSUANT TO SUBDIVI-
46 SION FIFTEEN OF SECTION FOUR HUNDRED SIXTY-D OF THE SOCIAL SERVICES LAW.
47 PROVIDED, HOWEVER, THAT IN THE CASE OF AN OPERATOR THAT IS NOT IN GOOD
48 STANDING AS PROVIDED IN THIS PARAGRAPH, THE DEPARTMENT MAY PERMIT THE
49 OPERATOR TO USE THE STREAMLINED APPLICATION PROCESS, IN ITS DISCRETION,
50 IF IT DETERMINES THAT THE DISQUALIFYING VIOLATION WAS AN ISOLATED OCCUR-
51 RENCE THAT WAS PROMPTLY CORRECTED BY THE OPERATOR.

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