

STATE OF NEW YORK

7668

2017-2018 Regular Sessions

IN ASSEMBLY

May 8, 2017

Introduced by M. of A. FITZPATRICK -- read once and referred to the Committee on Health

AN ACT to amend the social services law, in relation to requiring the prior approval of a municipality with respect to site selection for adult care facilities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 461-b of the social services law is amended by
2 adding a new subdivision 11 to read as follows:

3 11. (a) For the purposes of this subdivision, the following defi-
4 nitions shall apply:

5 (i) "Adult care facility" means an adult care facility as defined
6 under subdivision twenty-one of section two of this chapter.

7 (ii) "Sponsoring agency" means an agency or unit of government, a
8 voluntary agency or any other person or organization which intends to
9 establish or operate an adult care facility.

10 (iii) "Municipality" means an incorporated village if a facility is to
11 be located therein, a town if the facility is to be located therein and
12 not simultaneously within an incorporated village, or a city, except
13 that in the city of New York, the community board with jurisdiction over
14 the area in which such a facility is to be located shall be considered
15 the municipality.

16 (iv) "Commissioner" means the commissioner of the office of the
17 department responsible for issuance of license and operating certificate
18 to the proposed adult care facility.

19 (b) If a sponsoring agency intends to establish an adult care facility
20 within a municipality but does not have a specific site selected, it may
21 notify the chief executive officer of the municipality in writing of its
22 intentions and include in such notice a description of the nature, size
23 and community support requirements of the program. Provided, however,

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

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1 nothing in this paragraph shall preclude the proposed establishment of a
2 site pursuant to paragraph (c) of this subdivision.

3 (c) (i) When a site has been selected by the sponsoring agency, it
4 shall notify the chief executive officer of the municipality in writing
5 and include in such notice the specific address of the site, the type of
6 community residence, the number of residents and the community support
7 requirements of the program. Such notice shall also contain the most
8 recently published data compiled pursuant to section four hundred
9 sixty-three-a of this article which can reasonably be expected to permit
10 the municipality to evaluate all such facilities affecting the nature
11 and character of the area wherein such proposed facility is to be
12 located. The municipality shall have forty days after the receipt of
13 such notice to:

14 (1) approve the site recommended by the sponsoring agency;

15 (2) suggest one or more suitable sites within its jurisdiction which
16 could accommodate such a facility; or

17 (3) object to the establishment of a facility of the kind described by
18 the sponsoring agency because to do so would result in such a concen-
19 tration of adult care facilities in the municipality or in the area in
20 proximity to the site selected or a combination of such facilities with
21 other community residences or similar facilities licensed by other agen-
22 cies of state government, including all community residences, intermedi-
23 ate care facilities, residential care facilities for adults and residen-
24 tial treatment facilities for individuals with mental illness or
25 developmental disabilities operated pursuant to article sixteen or arti-
26 cle thirty-one of the mental hygiene law and all similar residential
27 facilities of fourteen or fewer residents operated or licensed by another
28 state agency, that the nature and character of the areas within the
29 municipality would be substantially altered.

30 Such response shall be forwarded to the sponsoring agency and the
31 commissioner. If the municipality does not respond within forty days,
32 the sponsoring agency may establish an adult care facility at a site
33 recommended in its notice.

34 (ii) Prior to forwarding a response to the sponsoring agency and the
35 commissioner, the municipality may hold a public hearing pursuant to
36 local law.

37 (iii) If the municipality approves the site recommended by the spon-
38 soring agency, the sponsoring agency shall seek to establish the facili-
39 ty at the approved site.

40 (iv) If the site or sites suggested by the municipality are satisfac-
41 tory with regard to the nature, size and community support requirements
42 of the program of the proposed facility and the area in which such site
43 or sites are located does not already include an excessive number of
44 adult care facilities or similar facilities licensed by other state
45 agencies, the sponsoring agency shall seek to establish its facility at
46 one of the sites designated by the municipality. If the municipality
47 suggests a site or sites which are not satisfactory to the sponsoring
48 agency, the agency shall so notify the municipality which shall have
49 fifteen days to suggest an alternative site or sites for the purposed
50 adult care facility.

51 (v) In the event the municipality objects to establishment of a facil-
52 ity in the municipality because to do so would result in such a concen-
53 tration of adult care facilities or combination of such facilities and
54 other facilities licensed by other state agencies that the nature and
55 character of areas within the municipality would be substantially
56 altered; or the sponsoring agency objects to the establishment of a

1 facility in the area or areas suggested by the municipality; or in the
2 event that the municipality and sponsoring agency cannot agree upon a
3 site, either the sponsoring agency or the municipality may request an
4 immediate hearing before the commissioner to resolve the issue. The
5 commissioner shall personally or by a hearing officer conduct such a
6 hearing within fifteen days of such a request.

7 (vi) In reviewing any such objections, the need for such facilities in
8 the municipality shall be considered as shall the existing concentration
9 of such facilities and other similar facilities licensed by other state
10 agencies in the municipality or in the area in proximity to the site
11 selected. The commissioner shall sustain the objection if he determines
12 that the nature and character of the area in which the facility is to be
13 based would be substantially altered as a result of establishment of the
14 facility. The commissioner shall make a determination within thirty days
15 of the hearing.

16 (d) Review of a decision rendered by the commissioner pursuant to this
17 section may be had in a proceeding pursuant to article seventy-eight of
18 the civil practice law and rules commenced within thirty days of the
19 determination of the commissioner.

20 (e) (i) A licensing authority shall not issue an operating certificate
21 to a sponsoring agency for operation of a facility if the sponsoring
22 agency does not notify the municipality of its intention to establish a
23 program as requested by paragraph (c) of this subdivision. Any operating
24 certificate issued without compliance with the provisions of this
25 section shall be considered null and void and continued operation of the
26 facility may be enjoined.

27 (ii) The department of health shall not issue an operating certificate
28 for the operation of an adult care facility if the agency or unit of
29 government, voluntary agency or any other person or organization which
30 intends to establish or operate such a facility does not notify the
31 chief executive officer of the municipality in which that facility is to
32 be established in writing of the intention to establish such facility
33 and include in such notice the specific address of the site, the type of
34 residence, the number of residents and the community support require-
35 ments of the program; provided, however, that nothing contained in this
36 paragraph shall either be construed to require facilities of more than
37 fourteen beds to meet any other requirement of this section, or to deem
38 such facilities family units for the purposes of local laws and ordi-
39 nances.

40 § 2. This act shall take effect immediately.