

# STATE OF NEW YORK

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5840

2017-2018 Regular Sessions

## IN SENATE

May 2, 2017

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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, in relation to establishing a certificate of need process for the assisted living program; and to establish a moratorium on the authorization of new assisted living programs in certain cases

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

1 Section 1. Subdivision 3 of section 461-l of the social services law,  
2 as added by chapter 165 of the laws of 1991, subparagraph (iii) of para-  
3 graph (a) as amended by chapter 438 of the laws of 1994, paragraphs (b),  
4 (c), (e) and (f) as amended by section 82 of part A of chapter 58 of the  
5 laws of 2010, paragraph (d) as amended by chapter 591 of the laws of  
6 1999, paragraph (g) as amended by chapter 397 of the laws of 2012, para-  
7 graph (h) as added by section 20 of part B of chapter 58 of the laws of  
8 2007, paragraph (i) as amended by section 67 of part C of chapter 60 of  
9 the laws of 2014, and paragraph (j) as added by section 70 of part A of  
10 chapter 56 of the laws of 2013, is amended to read as follows:

11 3. Assisted living program approval. (a) An eligible applicant propos-  
12 ing to operate an assisted living program or increase the number of beds  
13 within an existing program shall submit an application to the [~~depart-~~  
14 ~~ment. Upon receipt, the department shall transmit a copy of the applica-~~  
15 ~~tion and accompanying documents to the~~] department of health. Such  
16 application shall be in a format and a quantity determined by the  
17 department of health and shall include, but not be limited to:

18 (i) a copy of or an application for an adult care facility operating  
19 certificate;

20 (ii) a copy of or an application for a home care services agency  
21 license or a copy of a certificate for a certified home health agency or  
22 authorization as a long term home health care program;

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

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1 (iii) a copy of a proposed contract with a social services district or  
2 in a social services district with a population of one million or more,  
3 a copy of a proposed contract with the social services district or the  
4 department;

5 (iv) if the applicant is not a long term home health care program or  
6 certified home health agency, a copy of a proposed contract with a long  
7 term home health care program or certified home health agency for the  
8 provisions of services in accordance with article thirty-six of the  
9 public health law; and

10 (v) a detailed description of the proposed program including budget,  
11 staffing and services.

12 (b) [~~If the application for the proposed program includes an applica-~~  
13 ~~tion for licensure as a home care service agency, the~~] The department of  
14 health shall forward the application for the proposed program and accom-  
15 panying documents to the public health and health planning council for  
16 its written approval in accordance with this subdivision and the  
17 provisions of section thirty-six hundred five of the public health law.

18 (c) An application for an assisted living program shall not be  
19 approved unless the commissioner is satisfied as to:

20 (i) the character, competence and standing in the community of the  
21 operator of the adult care facility;

22 (ii) the financial responsibility of the operator of the adult care  
23 facility;

24 (iii) that the buildings, equipment, staff, standards of care and  
25 records of the adult care facility to be employed in the operation  
26 comply with applicable law, rule and regulation;

27 (iv) the commissioner of health is satisfied that the assisted living  
28 program and the licensed home care agency has received the written  
29 approval of the public health and health planning council as required by  
30 paragraph (b) of this subdivision and the equipment, personnel, rules,  
31 standards of care, and home care services provided by the licensed home  
32 care agency and certified home health agency or long term home health  
33 care program are fit and adequate and will be provided in the manner  
34 required by article thirty-six of the public health law and the rules  
35 and regulations thereunder; and

36 (v) [~~the commissioner and~~] the commissioner of health and the public  
37 health and health planning council are satisfied as to the public need  
38 for the assisted living program beds being proposed after giving consid-  
39 eration to the relative concentration of assisted living program beds  
40 and other long term care resources and capacity in existence in the area  
41 to be served.

42 (d) The department of health shall not approve an application for an  
43 assisted living program or an expansion of an existing program for any  
44 eligible applicant who does not meet the requirements of this article,  
45 including but not limited to, an eligible applicant who is already or  
46 within the past ten years has been an incorporator, director, sponsor,  
47 principal stockholder, member or owner of any adult care facility which  
48 has been issued an operating certificate by the board or the department,  
49 or of a halfway house, hostel or other residential facility or institu-  
50 tion for the care, custody or treatment of the mentally disabled which  
51 is subject to approval by an office of the department of mental hygiene,  
52 or of any residential health care facility or home care agency as  
53 defined in the public health law, unless [~~the department, in conjunction~~  
54 ~~with the department of health,~~] it finds by substantial evidence as to  
55 each such applicant that a substantially consistent high level of care  
56 has been rendered in each such facility or institution under which such

1 person is or was affiliated. For the purposes of this paragraph, there  
2 may be a finding that a substantially consistent high level of care has  
3 been rendered despite a record of violations of applicable rules and  
4 regulations, if such violations (i) did not threaten to directly affect  
5 the health, safety or welfare of any patient or resident, and (ii) were  
6 promptly corrected and not recurrent.

7 ~~(e) [The commissioner of health shall provide written notice of~~  
8 ~~approval or disapproval of portions of the proposed application concern-~~  
9 ~~ing a licensed home care agency, certified home health agency or long~~  
10 ~~term home health care program, and, where applicable, of the approval or~~  
11 ~~disapproval of the public health and health planning council to the~~  
12 ~~commissioner.]~~ If an application receives all the necessary approvals,  
13 the commissioner of health shall notify the applicant in writing. The  
14 commissioner's written approval shall constitute authorization to oper-  
15 ate an assisted living program.

16 (f) No assisted living program may be operated without the written  
17 approval of ~~[the department,]~~ the department of health and~~[, where~~  
18 ~~applicable,]~~ the public health and health planning council.

19 (g) Notwithstanding any other provision of law to the contrary, any  
20 assisted living program having less than seventy-five authorized bed  
21 slots, located in a county with a population of more than one hundred  
22 ten thousand and less than one hundred fifty thousand persons based upon  
23 the decennial federal census for the year two thousand, and which at any  
24 point in time is unable to accommodate individuals awaiting placement  
25 into the assisted living program, shall be authorized to increase the  
26 number of assisted living beds available for a specified period of time  
27 as part of a demonstration program by up to thirty percent of its  
28 approved bed level; provided, however, that such program shall otherwise  
29 satisfy all other assisted living program requirements as set forth in  
30 this section. In addition, any program which receives such authorization  
31 and which at any point on or after July first, two thousand five is  
32 unable to accommodate individuals awaiting placement into the assisted  
33 program, shall be authorized to further increase the number of assisted  
34 living beds available as part of this demonstration program by up to  
35 twenty-five percent of its bed level as of July first, two thousand  
36 five; provided, however, that such program shall otherwise satisfy all  
37 other assisted living program requirements as set forth in this section.

38 (h) The commissioner is authorized to add one thousand five hundred  
39 assisted living program beds to the gross number of assisted living  
40 program beds having been determined to be available as of April first,  
41 two thousand seven.

42 (i) (a) The commissioner of health is authorized to add up to six  
43 thousand assisted living program beds to the gross number of assisted  
44 living program beds having been determined to be available as of April  
45 first, two thousand nine. Nothing herein shall be interpreted as prohib-  
46 iting any eligible applicant from submitting an application for any  
47 assisted living program bed so added. The commissioner of health shall  
48 not be required to review on a comparative basis applications submitted  
49 for assisted living program beds made available under this paragraph.  
50 The commissioner of health shall only authorize the addition of six  
51 thousand beds pursuant to a seven year plan ending prior to January  
52 first, two thousand seventeen.

53 (b) The commissioner of health shall provide an annual written report  
54 to the chair of the senate standing committee on health and the chair of  
55 the assembly health committee no later than January first of each year.  
56 Such report shall include, but not be limited to, the number of assisted

1 living program beds made available pursuant to this section by county,  
2 the total number of assisted living program beds by county, the number  
3 of vacant assisted living program beds by county, and any other informa-  
4 tion deemed necessary and appropriate.

5 (j) The commissioner of health is authorized to add up to four thou-  
6 sand five hundred assisted living program beds to the gross number of  
7 assisted living program beds having been determined to be available as  
8 of April first, two thousand twelve. Applicants eligible to submit an  
9 application under this paragraph shall be limited to adult homes estab-  
10 lished pursuant to section four hundred sixty-one-b of this article  
11 with, as of September first, two thousand twelve, a certified capacity  
12 of eighty beds or more in which twenty-five percent or more of the resi-  
13 dent population are persons with serious mental illness as defined in  
14 regulations promulgated by the commissioner of health. The commissioner  
15 of health shall not be required to review on a comparative basis appli-  
16 cations submitted for assisted living program beds made available under  
17 this paragraph.

18 (k) Beginning July first, two thousand seventeen, the commissioner of  
19 health and the public health and health planning council are authorized  
20 to approve assisted living program beds for any eligible applicant that  
21 satisfactorily demonstrates the public need for such beds in the area to  
22 be served and meets all other applicable requirements of this section.  
23 Assisted living program availability determinations and limitations in  
24 place prior to July first, two thousand seventeen shall no longer be  
25 applicable, and assisted living program beds shall be generally avail-  
26 able to meet demonstrated public need on a case by case basis whenever  
27 the commissioner and public health and health planning council are  
28 satisfied public need exists at the time and place and under circum-  
29 stances proposed by the applicant; provided, however, the prior bed  
30 authorizations in paragraphs (h), (i) and (j) of this subdivision shall  
31 continue in full force and effect.

32 (l) Notwithstanding any other provision of law to the contrary, the  
33 department of health shall develop an expedited review and approval  
34 process for applications for up to nine additional beds to an existing  
35 assisted living program qualified as being in good standing under  
36 section four hundred sixty-one-b of this article.

37 § 2. Notwithstanding any provision of law to the contrary, there shall  
38 be a moratorium on the authorization of new assisted living program  
39 beds; whenever the director of the budget determines that the addition  
40 of new assisted living program beds would have a net negative fiscal  
41 impact on the medicaid program. In determining the net fiscal impact on  
42 the medicaid program, the director of the budget shall include estimates  
43 of savings that may accrue from the utilization of assisted living  
44 program beds in lieu of nursing home beds or other levels of care;  
45 whether the average case mix of nursing homes increases or decreases due  
46 to the increase in assisted living program beds; whether managed care  
47 savings are accrued by the addition of assisted living program beds and  
48 overall medicaid expenditures for the assisted living program and nurs-  
49 ing homes from the effective date of this section.

50 § 3. This act shall take effect immediately.