S T A T E O F N E W Y O R K

2607

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. RABBITT, RAIA, HAWLEY, FINCH -- Multi-Sponsored by -- M. of A. WALKER, WEISENBERG -- read once and referred to the Committee on Aging

AN ACT to amend the public health law, in relation to establishing a bill of rights for residents in continuing care retirement communities

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

Section 1. The public health law is amended by adding a new section 4603-b to read as follows:

S 4603-B. RIGHTS OF RESIDENTS IN CONTINUING CARE RETIREMENT COMMUNITIES. 1. THE PRINCIPLES ENUNCIATED IN SUBDIVISION THREE OF THIS SECTION ARE DECLARED TO BE THE PUBLIC POLICY OF THE STATE AND A COPY OF SUCH STATEMENT OF RIGHTS AND RESPONSIBILITIES SHALL BE POSTED CONSPICUOUSLY IN A PUBLIC PLACE IN EACH COMMUNITY COVERED HEREUNDER.

2. THE COMMISSIONER SHALL REQUIRE THAT EVERY CONTINUING CARE RETIREMENT COMMUNITY, AS DEFINED IN SUBDIVISION TWO-B OF SECTION FORTY-SIX HUNDRED ONE OF THIS ARTICLE, SHALL ADOPT AND MAKE PUBLIC A STATEMENT OF THE RIGHTS AND RESPONSIBILITIES OF THE RESIDENTS WHO ARE RECEIVING CARE IN SUCH COMMUNITIES, AND SHALL TREAT SUCH RESIDENTS IN ACCORDANCE WITH THE PROVISIONS OF SUCH STATEMENT.

3. SAID STATEMENT OF RIGHTS AND RESPONSIBILITIES SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING:

A. EVERY RESIDENT'S CIVIL AND RELIGIOUS LIBERTIES, INCLUDING THE RIGHT TO INDEPENDENT PERSONAL DECISIONS AND KNOWLEDGE OF AVAILABLE CHOICES, SHALL NOT BE INFRINGED AND THE COMMUNITY SHALL ENCOURAGE AND ASSIST IN THE FULLEST POSSIBLE EXERCISE OF THESE RIGHTS.

B. EVERY RESIDENT SHALL HAVE THE RIGHT TO HAVE PRIVATE COMMUNICATIONS AND CONSULTATIONS WITH HIS OR HER PHYSICIAN, ATTORNEY, AND ANY OTHER PERSON.

C. EVERY RESIDENT SHALL HAVE THE RIGHT TO PRESENT GRIEVANCES ON BEHALF OF HIMSELF OR HERSELF OR OTHERS, TO THE COMMUNITY'S STAFF OR ADMINISTRA-

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

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TOR, TO GOVERNMENTAL OFFICIALS, OR TO ANY OTHER PERSON WITHOUT FEAR OF REPRISAL, AND TO JOIN WITH OTHER RESIDENTS OR INDIVIDUALS WITHIN OR OUTSIDE OF THE COMMUNITY TO WORK FOR IMPROVEMENTS IN RESIDENT CARE.

D. EVERY RESIDENT SHALL HAVE THE RIGHT TO MANAGE HIS OR HER OWN FINANCIAL AFFAIRS, OR TO HAVE AT LEAST A QUARTERLY ACCOUNTING OF ANY PERSONAL FINANCIAL TRANSACTIONS UNDERTAKEN IN HIS OR HER BEHALF BY THE COMMUNITY DURING ANY PERIOD OF TIME THE RESIDENT HAS DELEGATED SUCH RESPONSIBILITIES TO THE COMMUNITY.

E. EVERY RESIDENT SHALL HAVE THE RIGHT TO RECEIVE ADEQUATE AND APPROPRIATE MEDICAL CARE, TO BE FULLY INFORMED OF HIS OR HER MEDICAL CONDITION AND PROPOSED TREATMENT UNLESS MEDICALLY CONTRAINDICATED, AND TO REFUSE MEDICATION AND TREATMENT AFTER BEING FULLY INFORMED OF AND UNDERSTANDING THE CONSEQUENCES OF SUCH ACTIONS.

F. EVERY RESIDENT SHALL HAVE THE RIGHT TO HAVE PRIVACY IN TREATMENT AND IN CARING FOR PERSONAL NEEDS, CONFIDENTIALITY IN THE TREATMENT OF PERSONAL AND MEDICAL RECORDS, AND SECURITY IN STORING PERSONAL POSSESSIONS.

G. EVERY RESIDENT SHALL HAVE THE RIGHT TO RECEIVE COURTEOUS, FAIR, AND RESPECTFUL SERVICE AND CARE AND A WRITTEN STATEMENT OF THE SERVICES PROVIDED BY THE COMMUNITY, INCLUDING THOSE REQUIRED TO BE OFFERED ON AN AS-NEEDED BASIS.

H. EVERY RESIDENT SHALL BE FREE FROM MENTAL AND PHYSICAL ABUSE AND FROM PHYSICAL AND CHEMICAL RESTRAINTS, EXCEPT THOSE RESTRAINTS AUTHORIZED IN WRITING BY A PHYSICIAN FOR A SPECIFIED AND LIMITED PERIOD OF TIME OR AS ARE NECESSITATED BY AN EMERGENCY IN WHICH CASE THE RESTRAINT MAY ONLY BE APPLIED BY A QUALIFIED LICENSED NURSE WHO SHALL SET FORTH IN WRITING THE CIRCUMSTANCES REQUIRING THE USE OF RESTRAINT AND IN THE CASE OF USE OF A CHEMICAL RESTRAINT A PHYSICIAN SHALL BE CONSULTED WITHIN TWENTY-FOUR HOURS.

I. A STATEMENT OF THE COMMUNITY'S REGULATIONS AND AN EXPLANATION OF THE RESIDENT'S RESPONSIBILITY TO OBEY ALL REASONABLE REGULATIONS OF THE COMMUNITY AND TO RESPECT THE PERSONAL RIGHTS AND PRIVATE PROPERTY OF THE OTHER RESIDENTS.

J. A STATEMENT THAT SHOULD THE RESIDENT BE ADJUDICATED INCOMPETENT AND NOT BE RESTORED TO LEGAL CAPACITY, OR IF A CONSERVATOR SHOULD BE APPOINTED FOR THE RESIDENT, THE ABOVE RIGHTS AND RESPONSIBILITIES SHALL BE EXERCISED BY THE APPOINTED COMMITTEE OR CONSERVATOR IN A REPRESENTATIVE CAPACITY.

K. EVERY RESIDENT SHALL HAVE THE RIGHT TO RECEIVE UPON REQUEST KOSHER FOOD OR FOOD PRODUCTS PREPARED IN ACCORDANCE WITH THE ORTHODOX JEWISH RELIGIOUS REQUIREMENTS.

L. PURSUANT TO REGULATIONS PROMULGATED BY THE COMMISSIONER IN CONSULTATION WITH THE DIRECTOR OF THE OFFICE FOR THE AGING, NO COMMUNITY SHALL RESTRICT OR PROHIBIT ACCESS TO THE MEDICAL OR PERSONAL RECORDS OF ANY RESIDENT IF SUCH RESIDENT, OR, WHERE APPROPRIATE, COMMITTEE FOR AN INCOMPETENT, HAS GIVEN EXPRESS WRITTEN CONSENT TO SUCH DISCLOSURE; PROVIDED, HOWEVER, THAT (I) IN THE CASE OF MEDICAL RECORDS, DISCLOSURE MAY BE EXCLUSIVE OF THE PERSONAL NOTES OF THE PHYSICIAN AS DEFINED IN SUCH REGULATIONS AND (II) ACCESS MAY BE LIMITED TO SUCH TIMES AS MAY BE SPECIFIED IN SUCH REGULATIONS. SUCH RECORDS SHALL BE MADE AVAILABLE BY A MEMBER OR MEMBERS OF THE COMMUNITY'S STAFF WHO SHALL BE DESIGNATED BY THE COMMUNITY TO PROVIDE ACCESS TO AND, WHERE NECESSARY, INTERPRETATION OF SUCH RECORDS. THE COMMUNITY MAY CHARGE A REASONABLE FEE FOR PHOTOCOPYING PURSUANT TO SUCH REGULATIONS. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO LIMIT OR ABRIDGE ANY RIGHT OF ACCESS TO RECORDS, INCLUDING FINANCIAL RECORDS.

M. EVERY RESIDENT SHALL HAVE THE RIGHT TO AUTHORIZE THOSE FAMILY MEMBERS AND OTHER ADULTS WHO WILL BE GIVEN PRIORITY TO VISIT CONSISTENT WITH THE RESIDENT'S ABILITY TO RECEIVE VISITORS.

N. A STATEMENT INFORMING THE RESIDENT OF HIS OR HER RIGHT TO MAKE ORGAN, TISSUE OR WHOLE BODY DONATIONS, AND THE MEANS BY WHICH THE RESIDENT MAY MAKE SUCH A DONATION. THE COMMISSIONER SHALL PROMULGATE ANY RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS PARAGRAPH.

4. EACH COMMUNITY SHALL GIVE A COPY OF THE STATEMENT TO EACH RESIDENT AT OR PRIOR TO THE TIME OF ADMISSION TO THE COMMUNITY, OR TO THE APPOINTED PERSONAL REPRESENTATIVE AT THE TIME OF APPOINTMENT AND TO EACH MEMBER OF THE COMMUNITY'S STAFF.

5. EACH COMMUNITY SHALL PREPARE A WRITTEN PLAN AND PROVIDE APPROPRIATE STAFF TRAINING TO IMPLEMENT EACH RESIDENT'S RIGHT INCLUDED IN THE STATEMENT.

S 2. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.