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

2857

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. WEINSTEIN, LANCMAN, GOTTFRIED -- Multi-Sponsored by -- M. of A. CLARK, COOK, GANTT, GLICK, HIKIND, McENENY, PAULIN -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to confidential visits with patients of residential health care facilities

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

Section 1. Paragraph l of subdivision 3 of section 2803-c of the public health law, as amended by chapter 719 of the laws of 1989, is amended to read as follows:

1. (I) Pursuant to regulations promulgated by the commissioner, no facility or individual and no general hospital providing medical care to persons having been admitted from such facilities or from adult care facilities covered by the provisions of section four hundred sixty-one-b of the social services law, or to applicants for readmission to such facilities or to adult care facilities covered by the provisions of section four hundred sixty-one-b of the social services law, shall restrict or prohibit the access to the facility or general hospital nor interfere with the performance of the official duties, including confidential visits with residents, of duly designated persons participating in the long term care ombudsman program as provided for in [sections five hundred forty-four and five hundred forty-five] SECTION TWO HUNDRED EIGHTEEN of the [executive] ELDER law.

(II) IN ADDITION, NO FACILITY WHICH PROVIDES RESIDENTIAL HEALTH CARE AND SERVICES FOR RESIDENT PATIENTS SHALL RESTRICT OR PROHIBIT THE ACCESS TO THE FACILITY NOR INTERFERE WITH CONFIDENTIAL VISITS WITH PATIENTS BY:

(A) FAMILY MEMBERS, GUARDIANS, FRIENDS OF AN INDIVIDUAL PATIENT, AND LEGAL REPRESENTATIVES, LEGAL COUNSELS AND CASE MANAGERS.

(B) AN EMPLOYEE OR REPRESENTATIVE OF ANY PUBLIC OR PRIVATE NOT-FOR-PROFIT CORPORATION, COMMUNITY ORGANIZATION OR ASSOCIATION WHOSE PRIMARY PURPOSES FOR VISITING INCLUDE ASSISTING PATIENTS IN RESOLVING

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

LBD06359-01-9

PROBLEMS AND COMPLAINTS CONCERNING THEIR CARE AND TREATMENT, AND IN SECURING ADEQUATE SERVICES TO MEET THEIR NEEDS. THE OPERATOR SHALL MAKE AVAILABLE A COMMON AREA OF THE FACILITY FOR SUCH VISITS.

(III) PERSONS ASSURED ACCESS TO A RESIDENTIAL HEALTH CARE FACILITY PURSUANT TO CLAUSE (B) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL NOT ENTER THE LIVING AREA OF ANY PATIENT WITHOUT IDENTIFYING THEMSELVES TO THE PATIENT STATING THE PURPOSE OF THE VISIT, AND RECEIVING THE PERMISSION OF THE PATIENT AND THE PATIENT'S ROOMMATE TO ENTER THE LIVING AREA.

(IV) INDIVIDUAL PATIENTS SHALL HAVE THE RIGHT TO TERMINATE OR DENY ANY VISIT TO THEM BY PERSONS ASSURED ACCESS TO THE FACILITY PURSUANT TO THIS PARAGRAPH.

(V) VISITS BY INDIVIDUALS ASSURED ACCESS TO RESIDENTIAL HEALTH CARE FACILITIES PURSUANT TO CLAUSES (A) AND (B) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL BE PERMITTED, EXCEPT IN EXTRAORDINARY CIRCUMSTANCES SUCH AS HEALTH EMERGENCIES, DURING VISITING HOURS ENCOMPASSING AT LEAST TEN HOURS WITHIN A TWENTY-FOUR HOUR PERIOD, INCLUDING AT LEAST TWO MEAL PERIODS, UNLESS EXTENDED BY ARRANGEMENT WITH THE FACILITY.

(VI) NOTWITHSTANDING ANY PROVISION OF SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE OPERATOR OF A RESIDENTIAL HEALTH CARE FACILITY MAY RESTRICT OR PROHIBIT ACCESS TO THE FACILITY OR INTERFERE WITH CONFIDENTIAL VISITS WITH PATIENTS BY INDIVIDUALS WHO THE OPERATOR HAS REASONABLE CAUSE TO BELIEVE WOULD DIRECTLY ENDANGER THE SAFETY OF SUCH PATIENTS.

(VII) WHENEVER AN INDIVIDUAL IS DENIED ACCESS PURSUANT TO SUBPARAGRAPH (VI) OF THIS PARAGRAPH THE OPERATOR MUST RECORD A DETAILED WRITTEN STATEMENT DESCRIBING THE REASONS FOR DENIAL OF ACCESS TO ANY SUCH INDIVIDUAL. THIS STATEMENT SHALL BE MAINTAINED BY THE FACILITY AND BE ACCESSIBLE TO PATIENTS, PERSONS DENIED ACCESS AND THE DEPARTMENT.

(VIII) IF THE OPERATOR OF A FACILITY DENIES ACCESS PURSUANT TO SUBPARAGRAPH (VI) OF THIS PARAGRAPH, THE PERSON DENIED ACCESS MAY BRING AN ACTION IN SUPREME COURT IN THE COUNTY IN WHICH THE FACILITY IS LOCATED FOR AN ORDER GRANTING SUCH PERSON ACCESS TO THE FACILITY. IF THE COURT FINDS THAT SUCH DENIAL WAS MADE IN BAD FAITH, THE OPERATOR OF THE FACILITY SHALL BE LIABLE FOR ALL COSTS, INCLUDING REASONABLE ATTORNEY'S FEES, AND THE COURT MAY, IN ITS DISCRETION, ASSESS A CIVIL PENALTY NOT TO EXCEED FIFTY DOLLARS PER DAY FOR EACH DAY SUCH ACCESS WAS DENIED.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.