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

763

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. GOTTFRIED, PAULIN, GALEF, ROBINSON, JAFFEE, MILLMAN, COLTON, CHRISTENSEN, LANCMAN, HOOPER, GREENE, SCARBOROUGH, CAHILL -- Multi-Sponsored by -- M. of A. BRENNAN, DINOWITZ, EDDINGTON, GLICK, JACOBS, LIFTON, McENENY, McKEVITT, MOLINARO, PERRY, STIRPE, TOWNS, WALKER, WEISENBERG -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to private rights of action by patients in residential health care facilities

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

Section 1. Subdivision 1 of section 2801-d of the public health law, as added by chapter 658 of the laws of 1975, is amended to read as follows:

1. Any residential health care facility that deprives any patient of said facility of any right or benefit, as hereinafter defined, shall be liable to said patient for injuries suffered as a result of said deprivation, except as hereinafter provided. For purposes of this section a "right or benefit" of a patient of a residential health care facility shall mean any right or benefit created or established for the well-being of the patient by the terms of any contract, by any state statute, code, rule or regulation or by any applicable federal statute, code, rule or regulation, where noncompliance by said facility with such statute, code, rule or regulation has not been expressly authorized by the appropriate governmental authority. No person who pleads and proves, as an affirmative defense, that the facility exercised all care reasonably necessary to prevent and limit the deprivation and injury for which liability is asserted shall be liable under this section. FOR THE PURPOSES OF THIS SECTION, "INJURY" SHALL INCLUDE, BUT NOT BE LIMITED TO, PHYSICAL HARM TO A PATIENT; EMOTIONAL HARM TO A PATIENT; DEATH OF A PATIENT; AND FINANCIAL LOSS TO A PATIENT.

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

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S 2. Subdivision 4 of section 2801-d of the public health law, as added by chapter 658 of the laws of 1975, is amended to read as follows:

4. Any damages recoverable pursuant to this section, including minimum damages as provided by subdivision two of this section, may be recovered in any action which a court may authorize to be brought as a class action pursuant to article nine of the civil practice law and rules. The remedies provided in this section are in addition to and cumulative with any other remedies available to a patient, at law or in equity or by administrative proceedings, INCLUDING TORT CAUSES OF ACTION, AND MAY BE GRANTED REGARDLESS OF WHETHER SUCH OTHER REMEDIES ARE AVAILABLE OR ARE SOUGHT. A VIOLATION OF SUBDIVISION THREE OF SECTION TWENTY-EIGHT HUNDRED THREE-C OF THIS ARTICLE IS NOT A PREREQUISITE FOR A CLAIM UNDER THIS SECTION. Exhaustion of any available administrative remedies shall not be required prior to commencement of suit hereunder.

S 3. This act shall take effect immediately.