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

7654

2009-2010 Regular Sessions

I N A S S E M B L Y

April 17, 2009

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Aging

AN ACT to amend the public health law and the social services law, in relation to assisted living programs

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

Section 1. Paragraph (e) of subdivision one of section 4651 of the public health law, as added by chapter 2 of the laws of 2004, is amended to read as follows:

(e) assisted living programs approved by the department pursuant to section four hundred sixty-one-l of the social services law, EXCEPT THAT AN ENHANCED ASSISTED LIVING RESIDENCE MAY INCLUDE SUCH ASSISTED LIVING PROGRAM BEDS FOR PURPOSES OF SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION TWO OF SUCH SECTION FOUR HUNDRED SIXTY-ONE-L;

S 2. Subdivision 4 of section 4655 of the public health law, as added by chapter 2 of the laws of 2004, is amended to read as follows:

4. If a resident reaches the point where he or she is in need of twenty-four hour skilled nursing care or medical care required to be provided by facilities licensed pursuant to article twenty-eight of this chapter or article nineteen, thirty-one or thirty-two of the mental hygiene law, then the resident must be discharged from the residence and the operator shall initiate proceedings for the termination of the residency agreement of such resident [in accordance with the provisions of] UNDER section four hundred sixty-one-h of the social services law. [Provided, however] HOWEVER, a resident may remain at the residence if each of the following conditions are met:

(a) (I) THE RESIDENT OCCUPIES AN ASSISTED LIVING PROGRAM BED UNDER SECTION FOUR HUNDRED SIXTY-ONE-L OF THE SOCIAL SERVICES LAW OR (II) a resident in need of twenty-four hour skilled nursing care or medical care hires appropriate nursing, medical or hospice staff to care for his or her increased needs;

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

LBD11171-01-9

(b) the resident's physician and home care services agency both determine and document that, with the provision of such additional nursing, medical or hospice care, the resident can be safely cared for in the residence, and would not require placement in a hospital, nursing home or other facility licensed under article twenty-eight of this chapter or article nineteen, thirty-one or thirty-two of the mental hygiene law;

(c) the operator agrees to retain the resident and to coordinate the care provided by the operator and the additional nursing, medical or hospice staff; and

(d) the resident is otherwise eligible to reside at the residence.

S 3. Paragraph (a) of subdivision 2 of section 461-l of the social services law, as added by chapter 165 of the laws of 1991, is amended to read as follows:

(a) Applicability. (I) Unless expressly provided otherwise in this article or article thirty-six of the public health law, an assisted living program shall be subject to any other law, rule or regulation governing adult care facilities, long term home health care programs, certified home health agencies, licensed home care agencies or personal care services.

(II) IN ADDITION, ALL ASSISTED LIVING PROGRAM BEDS AUTHORIZED UNDER PARAGRAPH (I) OF SUBDIVISION THREE OF THIS SECTION, AND ALL OTHER ASSISTED LIVING PROGRAM BEDS AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, SHALL BE SUBJECT TO ARTICLE FORTY-SIX-B OF THE PUBLIC HEALTH LAW AS IF THEY WERE PART OF AN ASSISTED LIVING RESIDENCE. HOWEVER, THE COMMISSIONER MAY WAIVE OR LIMIT THE APPLICABILITY OF ANY PROVISION OF SUCH ARTICLE FORTY-SIX-B OR REGULATION UNDER THAT ARTICLE TO ASSISTED LIVING BEDS THAT ARE SUBJECT TO THAT ARTICLE SOLELY BECAUSE OF THIS SUBPARAGRAPH, WHERE THE COMMISSIONER DETERMINES THAT THE PROVISION BEING WAIVED OR LIMITED:

(A) SUBSTANTIALLY DUPLICATES A PROVISION OF LAW OR REGULATION APPLICABLE TO THE ASSISTED LIVING PROGRAM THAT ADEQUATELY PROTECTS ASSISTED LIVING PROGRAM RECIPIENTS' RIGHTS AND QUALITY OF CARE, OR

(B) IS INAPPROPRIATE OR UNNECESSARY FOR PROTECTING ASSISTED LIVING PROGRAM RECIPIENTS' RIGHTS AND QUALITY OF CARE.

S 4. This act shall take effect immediately.