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

7194

I N S E N A T E

March 19, 2010

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to site selection of a hospice residence

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 4014-a to read as follows:

S 4014-A. HOSPICE RESIDENCES; SITE SELECTION. 1. FOR THE PURPOSES OF THIS SECTION, "MUNICIPALITY" MEANS A VILLAGE; A TOWN, WITH RESPECT TO ANY LOCATION THAT IS IN A TOWN BUT NOT IN A VILLAGE IN THAT TOWN; OR A CITY, EXCEPT THAT IN THE CITY OF NEW YORK, THE COMMUNITY BOARD WITH JURISDICTION OVER A LOCATION SHALL BE CONSIDERED THE MUNICIPALITY.

2. IF A HOSPICE INTENDS TO ESTABLISH A HOSPICE RESIDENCE WITHIN A MUNICIPALITY BUT DOES NOT HAVE A SPECIFIC SITE SELECTED, IT MAY NOTIFY THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPALITY AND THE COMMISSIONER IN WRITING OF ITS INTENTIONS AND INCLUDE IN THE NOTICE A DESCRIPTION OF THE NATURE AND SIZE OF THE PROGRAM, INCLUDING THE INTENDED NUMBER OF BEDS. THIS SUBDIVISION SHALL NOT PRECLUDE THE ESTABLISHMENT OF A HOSPICE RESIDENCE UNDER SUBDIVISION THREE OF THIS SECTION.

3. (A) IF A HOSPICE INTENDS TO ESTABLISH A HOSPICE RESIDENCE WITHIN A MUNICIPALITY AND HAS A SPECIFIC SITE SELECTED, IT SHALL NOTIFY THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPALITY AND THE COMMISSIONER IN WRITING AND INCLUDE IN THE NOTICE A DESCRIPTION OF THE NATURE AND SIZE OF THE PROGRAM, INCLUDING THE ADDRESS OF THE SITE AND THE INTENDED NUMBER OF BEDS. THE MUNICIPALITY SHALL HAVE FORTY DAYS AFTER THE RECEIPT OF THE NOTICE TO:

(I) APPROVE THE SITE SELECTED BY THE HOSPICE;

(II) SUGGEST ONE OR MORE ALTERNATIVE SUITABLE SITES WITHIN ITS JURISDICTION WHICH COULD ACCOMMODATE SUCH A FACILITY AND ARE PREFERRED BY THE MUNICIPALITY; OR

(III) OBJECT TO THE ESTABLISHMENT OF A HOSPICE RESIDENCE BECAUSE SUCH ESTABLISHMENT MAY RESULT IN THE OVERSATURATION OF THE MUNICIPALITY WITH RESIDENTIAL FACILITIES LICENSED OR OPERATED BY STATE OR LOCAL GOVERNMENT, INCLUDING COMMUNITY RESIDENCES, INTERMEDIATE CARE FACILITIES, RESIDENTIAL CARE FACILITIES FOR ADULTS AND RESIDENTIAL TREATMENT FACILITIES FOR INDIVIDUALS WITH MENTAL ILLNESS OR DEVELOPMENTAL DISABILITIES

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

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AND ALL SIMILAR RESIDENTIAL FACILITIES, NOTWITHSTANDING THE UNIQUENESS OF BOTH THE POPULATION SERVED AND THE SERVICES PROVIDED AT THE HOSPICE RESIDENCE AND THE NEED FOR THE HOSPICE RESIDENCE IN THE MUNICIPALITY.

(B) THE MUNICIPALITY SHALL SEND WRITTEN NOTICE OF ITS DETERMINATION UNDER PARAGRAPH (A) OF THIS SUBDIVISION TO THE HOSPICE AND THE COMMISSIONER. IF THE MUNICIPALITY DOES NOT MAKE A DETERMINATION WITHIN THE FORTY DAYS, THE PROPOSED HOSPICE RESIDENCE SHALL BE DEEMED APPROVED BY THE MUNICIPALITY FOR PURPOSES OF THIS SECTION.

(C) PRIOR TO MAKING A DETERMINATION UNDER PARAGRAPH (A) OF THIS SUBDIVISION, THE MUNICIPALITY MAY HOLD A PUBLIC HEARING.

(D) (I) IF THE MUNICIPALITY APPROVES THE SITE PROPOSED BY THE HOSPICE, THE HOSPICE MAY, FOR PURPOSES OF THIS SECTION, ESTABLISH THE PROPOSED HOSPICE RESIDENCE AT THE SITE.

(II) IF AN ALTERNATIVE SITE OR SITES SUGGESTED BY THE MUNICIPALITY ARE ACCEPTABLE TO THE HOSPICE, THE HOSPICE MAY, FOR PURPOSES OF THIS SECTION, ESTABLISH THE PROPOSED HOSPICE RESIDENCE AT ONE OF THE ALTERNATIVE SITES.

(III) IF NONE OF THE ALTERNATIVE SITES SUGGESTED BY THE MUNICIPALITY IS ACCEPTABLE TO THE HOSPICE, THE HOSPICE MAY SO NOTIFY THE MUNICIPALITY, WHICH SHALL HAVE FIFTEEN DAYS AFTER RECEIPT OF THE NOTICE TO SUGGEST AN ALTERNATIVE SITE OR SITES FOR THE PROPOSED HOSPICE RESIDENCE.

(IV) IF THE MUNICIPALITY OBJECTS TO ESTABLISHMENT OF A HOSPICE RESIDENCE IN THE MUNICIPALITY UNDER SUBPARAGRAPH (III) OF PARAGRAPH (A) OF THIS SUBDIVISION, OR THE HOSPICE DOES NOT ACCEPT ANY SITE SUGGESTED BY THE MUNICIPALITY, AND THE MUNICIPALITY AND THE HOSPICE CANNOT AGREE ON A SITE, THEN EITHER THE HOSPICE OR THE MUNICIPALITY MAY REQUEST AN IMMEDIATE HEARING BEFORE THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE. IN REVIEWING ANY SUCH OBJECTIONS, THE NEED FOR A HOSPICE RESIDENCE IN THE MUNICIPALITY SHALL BE CONSIDERED AS SHALL THE EXISTING CONCENTRATION OF RESIDENTIAL FACILITIES AND OTHER SIMILAR FACILITIES LICENSED BY OTHER STATE AGENCIES IN THE MUNICIPALITY OR IN THE AREA IN PROXIMITY TO THE SITE SELECTED AND ANY OTHER FACILITIES IN THE MUNICIPALITY OR IN THE AREA IN PROXIMITY TO THE SITE SELECTED. THE COMMISSIONER SHALL SUSTAIN THE OBJECTION IF HE OR SHE DETERMINES THAT THE NATURE AND CHARACTER OF THE AREA IN WHICH THE FACILITY IS TO BE BASED MAY BE SUBSTANTIALLY ALTERED AS A RESULT OF ESTABLISHMENT OF THE HOSPICE RESIDENCE, OR APPROVE THE ESTABLISHMENT OF THE PROPOSED HOSPICE RESIDENCE FOR THE PURPOSES OF THIS SECTION. THE COMMISSIONER SHALL MAKE A DETERMINATION WITHIN THIRTY DAYS OF THE HEARING.

4. A DECISION BY THE COMMISSIONER UNDER THIS SECTION MAY BE REVIEWED IN A PROCEEDING PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

5. THE DEPARTMENT SHALL NOT ISSUE AN OPERATING CERTIFICATE TO A HOSPICE FOR OPERATION OF A HOSPICE RESIDENCE IF THE HOSPICE DOES NOT NOTIFY THE MUNICIPALITY OF ITS INTENTION TO ESTABLISH THE HOSPICE RESIDENCE AS REQUIRED BY SUBDIVISION THREE OF THIS SECTION. ANY OPERATING CERTIFICATE ISSUED WITHOUT COMPLIANCE WITH THIS SECTION SHALL BE CONSIDERED NULL AND VOID AND CONTINUED OPERATION OF THE FACILITY MAY BE ENJOINED.

6. THIS SECTION SHALL NOT APPLY TO THE ESTABLISHMENT OF A HOSPICE RESIDENCE WITHIN AN ESTABLISHED FACILITY SUCH AS, BUT NOT LIMITED TO, A NURSING HOME OR ADULT HOME.

7. A HOSPICE RESIDENCE APPROVED FOR PURPOSES OF THIS SECTION SHALL BE DEEMED A FAMILY UNIT, FOR THE PURPOSES OF LOCAL LAWS AND ORDINANCES.

S 2. This act shall take effect immediately.