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

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I N A S S E M B L Y

January 9, 2009

Introduced by M. of A. GOTTFRIED, GUNTHER, P. RIVERA, MILLMAN, TITONE, COOK, JACOBS, PEOPLES-STOKES, JOHN, TITUS, COLTON, PAULIN, SCARBOROUGH -- Multi-Sponsored by -- M. of A. ALESSI, BENEDETTO, BING, BOYLAND, BRENNAN, CLARK, DESTITO, FIELDS, GLICK, HEASTIE, HOOPER, HYER-SPENCER, JAFFEE, JEFFRIES, LIFTON, MAISEL, McENENY, PERRY, PHEFFER, J. RIVERA, ROBINSON, ROSENTHAL, SCHIMEL, STIRPE, SWEENEY, TOWNS, WEISENBERG -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to nursing home staffing levels

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 2895-b to read as follows:

S 2895-B. NURSING HOME STAFFING LEVELS. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "ADVISORY COUNCIL" MEANS THE ADVISORY COUNCIL ON NURSING HOME STAFFING CREATED IN SUBDIVISION TWO OF THIS SECTION.

(B) "CERTIFIED NURSE AIDE" MEANS ANY PERSON INCLUDED IN THE NURSING HOME NURSE AIDE REGISTRY PURSUANT TO SECTION TWENTY-EIGHT HUNDRED THREE-J OF THIS CHAPTER.

(C) "STAFFING RATIO" MEANS THE QUOTIENT OF THE NUMBER OF PERSONNEL IN A PARTICULAR CATEGORY REGULARLY ON DUTY FOR A PARTICULAR TIME PERIOD IN A NURSING HOME DIVIDED BY THE NUMBER OF RESIDENTS OF THE NURSING HOME AT THAT TIME.

2. ADVISORY COUNCIL ON NURSING HOME STAFFING. THERE IS HEREBY CREATED IN THE DEPARTMENT AN ADVISORY COUNCIL ON NURSING HOME STAFFING TO STUDY AND MAKE RECOMMENDATIONS RELATING TO THE STAFFING STANDARDS UNDER THIS SECTION. THE ADVISORY COUNCIL SHALL BE APPOINTED BY THE COMMISSIONER AND

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

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SHALL BE COMPOSED OF REPRESENTATIVES OF NURSING HOME OPERATORS, CONSUMERS, AND NON-ADMINISTRATIVE NURSING HOME EMPLOYEES AND THE PUBLIC. THE ADVISORY COUNCIL SHALL, FROM TIME TO TIME, REPORT TO THE GOVERNOR, THE LEGISLATURE, THE PUBLIC AND THE COMMISSIONER ANY RECOMMENDATIONS REGARDING STAFFING LEVELS IN NURSING HOMES.

3. STAFFING STANDARDS. (A) THE COMMISSIONER, IN CONSULTATION WITH THE ADVISORY COUNCIL, SHALL, BY REGULATION, ESTABLISH STAFFING STANDARDS FOR NURSING HOME MINIMUM STAFFING LEVELS TO MEET APPLICABLE STANDARDS OF SERVICE AND CARE AND TO PROVIDE SERVICES TO ATTAIN OR MAINTAIN THE HIGHEST PRACTICABLE PHYSICAL, MENTAL, AND PSYCHOSOCIAL WELL-BEING OF EACH RESIDENT OF THE NURSING HOME. THE COMMISSIONER SHALL ALSO REQUIRE BY REGULATION THAT EVERY NURSING HOME MAINTAIN RECORDS ON ITS STAFFING LEVELS, REPORT ON SUCH RECORDS TO THE DEPARTMENT, AND MAKE SUCH RECORDS AVAILABLE FOR INSPECTION BY THE DEPARTMENT.

(B) EVERY NURSING HOME SHALL:

(I) COMPLY WITH THE STAFFING STANDARDS UNDER THIS SECTION; AND

(II) EMPLOY SUFFICIENT STAFFING LEVELS TO MEET APPLICABLE STANDARDS OF SERVICE AND CARE AND TO PROVIDE SERVICE AND CARE AND TO PROVIDE SERVICES TO ATTAIN OR MAINTAIN THE HIGHEST PRACTICABLE PHYSICAL, MENTAL, AND PSYCHOSOCIAL WELL-BEING OF EACH RESIDENT OF THE NURSING HOME.

(C) SUBJECT TO SUBDIVISION FIVE OF THIS SECTION, STAFFING STANDARDS UNDER THIS SECTION SHALL, AT A MINIMUM, BE THE STAFFING STANDARDS UNDER SUBDIVISION FOUR OF THIS SECTION.

(D) IN DETERMINING COMPLIANCE WITH THE STAFFING STANDARDS UNDER THIS SECTION, AN INDIVIDUAL SHALL NOT BE COUNTED WHILE PERFORMING SERVICES THAT ARE NOT DIRECT NURSING CARE, SUCH AS ADMINISTRATIVE SERVICES, FOOD PREPARATION, HOUSEKEEPING, LAUNDRY, MAINTENANCE SERVICES, OR OTHER ACTIVITIES THAT ARE NOT DIRECT NURSING CARE.

4. STATUTORY STANDARD. BEGINNING TWO YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION, EVERY NURSING HOME SHALL MAINTAIN A STAFFING RATIO EQUAL TO AT LEAST THE FOLLOWING:

(A) FROM 2.4 TO 2.8 HOURS OF CARE PER RESIDENT PER DAY BY A CERTIFIED NURSE AIDE;

(B) FROM 1.15 TO 1.3 HOURS OF CARE PER RESIDENT PER DAY BY A LICENSED PRACTICAL NURSE OR A REGISTERED NURSE; AND

(C) FROM 0.55 TO 0.75 HOURS OF CARE PER RESIDENT PER DAY BY A REGISTERED NURSE.

5. PHASE-IN. (A) THE COMMISSIONER SHALL MAKE THE FIRST REGULATIONS UNDER SUBDIVISION THREE OF THIS SECTION WITHIN ONE YEAR AFTER THIS SECTION BECOMES A LAW.

(B) IF THE COMMISSIONER DETERMINES THAT COMPLIANCE WITH THE STATUTORY STANDARD UNDER SUBDIVISION FOUR OF THIS SECTION IS NOT REASONABLY FEASIBLE FOR NURSING HOMES BY THE TIME SPECIFIED IN THAT SUBDIVISION, THE COMMISSIONER MAY DELAY THE IMPLEMENTATION OF THAT STAFFING STANDARD FOR A PHASE-IN PERIOD NOT TO EXCEED FIVE YEARS AFTER THIS SECTION BECOMES A LAW. IF THE COMMISSIONER DELAYS IMPLEMENTATION OF THAT STAFFING STANDARD, THE COMMISSIONER SHALL PHASE IN, OVER THE PHASE-IN PERIOD, STAFFING STANDARDS THAT GRADUALLY INCREASE IN EACH OF THE YEARS OF THE PHASE-IN PERIOD UNTIL THE STAFFING STANDARD MEETS AT LEAST THE STATUTORY STANDARD UNDER SUBDIVISION FOUR OF THIS SECTION.

6. PUBLIC DISCLOSURE OF STAFFING LEVELS. (A) A NURSING HOME SHALL POST INFORMATION REGARDING NURSE STAFFING THAT THE NURSING HOME IS REQUIRED TO MAKE AVAILABLE TO THE PUBLIC UNDER SECTION TWENTY-EIGHT HUNDRED FIVE-T OF THIS CHAPTER. INFORMATION UNDER THIS PARAGRAPH SHALL BE DISPLAYED IN A FORM APPROVED BY THE DEPARTMENT AND BE POSTED IN A MANNER

WHICH IS VISIBLE AND ACCESSIBLE TO RESIDENTS, THEIR FAMILIES AND THE STAFF, AS REQUIRED BY THE COMMISSIONER.

(B) A NURSING HOME SHALL POST A SUMMARY OF THIS SECTION, PROVIDED BY THE DEPARTMENT, IN CLOSE PROXIMITY TO EACH POSTING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION.

S 2. This act shall take effect immediately.