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

8185--A

2009-2010 Regular Sessions

I N A S S E M B L Y

May 7, 2009

Introduced by M. of A. GOTTFRIED -- Multi-Sponsored by -- M. of A. DINOWITZ -- (at request of the Department of Health) -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, the state finance law, the mental hygiene law, the public health law and chapter 462 of the laws of 1996, relating to establishing a quality incentive payment program for adult homes, in relation to the appointment of a temporary operator or voluntary receiver of adult care facilities, death and felony crime reports, ban on admissions and approval of applications for establishment of adult care facilities

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

Section 1. Subdivision 7 of section 460-d of the social services law is amended by adding a new paragraph (e) to read as follows:

(E) RECTIFICATION SHALL NOT PRECLUDE THE ASSESSMENT OF A PENALTY IF THE DEPARTMENT ESTABLISHES THAT A VIOLATION, ALTHOUGH CORRECTED, WAS A VIOLATION IN THE SAME AREA OF OPERATION AS A VIOLATION CITED BY THE DEPARTMENT AT THE PREVIOUS FACILITY INSPECTION.

S 2. Paragraphs (b) and (c) of subdivision 4 of section 460-d of the social services law, paragraph (b) as amended and paragraph (c) as added by chapter 733 of the laws of 1994 and subparagraph (i) of paragraph (c) as amended by section 50 of part B of chapter 58 of the laws of 2004, are amended to read as follows:

(b) No operating certificate shall be revoked, suspended or limited without a hearing held in accordance with procedures established by department regulations, which procedures shall require that notice of the time and place of the hearing, and notice of the charges, shall be served in person or by certified mail addressed to the facility at least thirty days prior to the date of the hearing. A written answer to the

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

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charges may be filed with the department not less than ten business days prior to the date of the hearing. An operating certificate may, nevertheless, be suspended or limited without a hearing for a period not in excess of sixty days, upon written notice to the facility following a finding by the department that the public health, or an individual's health, safety or welfare, are in imminent danger; PROVIDED, HOWEVER, THAT IF THE DEPARTMENT MAKES REASONABLE EFFORTS TO COMMENCE A HEARING WITHIN SUCH SIXTY DAY PERIOD AND TO COMPLETE SUCH HEARING WITHIN A REASONABLE PERIOD OF TIME, THE HEARING OFFICER MAY AUTHORIZE THE DEPARTMENT TO EXTEND THE PERIOD OF SUSPENSION OR LIMITATION FOR AN APPROPRIATE PERIOD OF TIME, BUT IN NO EVENT BEYOND THE DATE WHEN THE HEARING IS COMPLETED AND AVAILABLE ADMINISTRATIVE APPEALS ARE EXHAUSTED.

(c) Any order or determination to suspend any operating certificate will specify the conditions of the suspension. These conditions may include but need not be limited to the following:

(i) if required for the protection of the health, safety or welfare of the residents, the immediate transfer of some or all residents to other appropriate facilities or to the custody of their legal guardians, if any;

(ii) the appointment of a temporary operator to operate the facility during the term of the suspension. THE POWERS AND PROTECTIONS OF A TEMPORARY OPERATOR UNDER THIS SUBDIVISION SHALL INCLUDE THE POWERS AND PROTECTIONS OF A RECEIVER AS SET FORTH IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED SIXTY-ONE-F OF THIS ARTICLE;

(iii) the immediate transfer of all records concerning the operation of the facility, including resident records, facility business records and any other records related to the operation of the facility to the department immediately. The department shall control the records for the term of the suspension;

(iv) the operator or operators of the facility shall be barred from access to the facility during the term of the suspension; or

(v) the requirement that the operator, if replaced by a temporary operator, provide the temporary operator with any funds received by the operator for the operation of the facility.

S 3. Subdivision 11 of section 460-d of the social services law, as amended by section 42 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

11. On or before issuance by the department to an adult care facility operator of official written notice of: the proposed revocation, suspension or denial of the operator's operating certificate; the limitation of the operating certificate with respect to new admissions; the issuance of a department order or commissioner's order; the seeking of equitable relief pursuant to this section; the proposed assessment of civil penalties for violations of the provisions of subparagraph two of paragraph (b) of subdivision seven of this section or placement on the "do not refer list" pursuant to subdivision fifteen of this section, written notice also shall be given to the appropriate office of the department of mental hygiene, department of correctional services, state division of parole and local social services districts, and provided further that the department of health shall notify hospitals, RESIDENTIAL HEALTH CARE FACILITIES AND ADULT CARE FACILITIES in the locality in which such facility is located that such notice has been issued. Upon resolution of such enforcement action the department shall notify the appropriate office of the department of mental hygiene, department of correctional services, state division of parole, local social services districts

[and], hospitals, RESIDENTIAL HEALTH CARE FACILITIES AND ADULT CARE FACILITIES.

S 4. Subdivision 12 of section 460-d of the social services law, as amended by section 42 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

12. [Social] HOSPITALS, RESIDENTIAL HEALTH CARE FACILITIES, ADULT CARE FACILITIES, SOCIAL services districts and other local government entities established pursuant to this chapter shall be prohibited from making referrals for admissions to adult care facilities that have received official written notice regarding: the proposed revocation, suspension or denial of the operator's operating certificate; the limitation of the operating certificate with respect to new admissions; the issuance of department order or commissioner's orders; the seeking of equitable relief pursuant to this section; the proposed assessment of civil penalties for violations of the provisions of subparagraph two of paragraph (b) of subdivision seven of this section; or the facility's placement on the "do not refer list" pursuant to subdivision fifteen of this section.

S 5. Subdivision 1 of section 461-f of the social services law, as amended by section 44 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

1. As a means of protecting the health, safety and welfare of the residents of an adult care facility subject to inspection and supervision by the department, it may become necessary under certain circumstances to authorize the continuing operation of such facility for a temporary period by a court appointed receiver, at the discretion of the commissioner, as provided in this section or with respect to an adult home, enriched housing program or residence for adults, a receiver approved by the department of health pursuant to written agreement between the department, THE RECEIVER and the operator or operators of such facility[, provided that such agreement shall not exceed a period of sixty days but may be extended for an additional sixty day period upon agreement by the parties]. SUCH RECEIVERSHIP SHALL TERMINATE AT SUCH TIME AND IN SUCH MANNER AS IS AGREED UPON BY THE PARTIES.

S 6. Subdivision 2 of section 461-f of the social services law, as added by section 45 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

2. The operator or operators of any adult home, enriched housing program or residence for adults may at any time request the department of health to appoint a receiver to take over the operation of such facility. Upon receiving such a request, the department of health may, if it deems such action desirable, enter into an agreement with any such operator or operators AND THE RECEIVER for the appointment of a receiver to take charge of the facility under whatever conditions as shall be found acceptable by the parties[, provided that such agreement shall not exceed a period of sixty days but may be extended for an additional sixty day period upon agreement by the parties]. SUCH RECEIVERSHIP SHALL TERMINATE AT SUCH TIME AND IN SUCH MANNER AS IS AGREED UPON BY THE PARTIES.

S 7. Section 461-m of the social services law, as amended by chapter 462 of the laws of 1996, is amended to read as follows:

S 461-m. Death and felony crime reporting. The operator of an adult home, ENRICHED HOUSING PROGRAM or residence for adults shall have an affirmative duty to report any death, or attempted suicide of a resident to the department OF HEALTH within twenty-four hours of its occurrence, and shall also have an affirmative duty to report to an appropriate law

enforcement authority if [it is believed that] THE OPERATOR DISCOVERS AN INCIDENT THAT THE OPERATOR BELIEVES OR REASONABLY SHOULD BELIEVE WOULD CONSTITUTE a felony crime [may have been committed] against a resident of such facility as soon as possible, or in any event within [forty-eight] TWENTY-FOUR hours. In addition, the operator shall send any reports involving a resident who had at any time received services from a mental hygiene service provider to the state commission on quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS WITH DISABILITIES WITHIN TWENTY-FOUR HOURS OF THE OCCURRENCE OF THE DEATH OR ATTEMPTED SUICIDE OR OF THE DISCOVERY OF AN INCIDENT THAT THE OPERATOR BELIEVED OR REASONABLY SHOULD HAVE BELIEVED TO BE A FELONY CRIME.

S 8. Section 460-d of the social services law is amended by adding a new subdivision 17 to read as follows:

17. WHEN THE DEPARTMENT OF HEALTH ISSUES OFFICIAL WRITTEN NOTICE TO AN OPERATOR OF A PROPOSED ACTION SPECIFIED IN SUBDIVISION ELEVEN OF THIS SECTION, AND THE DEPARTMENT DETERMINES THAT THERE IS A CONDITION WHICH CONSTITUTES AN IMMINENT DANGER TO THE HEALTH, SAFETY OR WELFARE OF ANY RESIDENT, THE DEPARTMENT MAY PROHIBIT THAT OPERATOR FROM ADMITTING ANY NEW RESIDENT TO THE FACILITY UNTIL THE DEPARTMENT DETERMINES THAT THERE IS NO LONGER AN IMMINENT DANGER TO THE HEALTH, SAFETY OR WELFARE OF ANY RESIDENT.

S 9. Section 2 of the social services law is amended by adding two new subdivisions 38 and 39 to read as follows:

38. RESIDENT REPRESENTATIVE MEANS A FAMILY MEMBER OR OTHER PERSON DESIGNATED BY A RESIDENT OF AN ADULT HOME, ENRICHED HOUSING PROGRAM OR RESIDENCE FOR ADULTS IN THE ADMISSIONS AGREEMENT TO ADVOCATE ON BEHALF OF THE RESIDENT. THE ADMISSIONS AGREEMENT SHALL BE AMENDED AT ANY TIME AT THE REQUEST OF THE RESIDENT TO DESIGNATE OR CHANGE A RESIDENT REPRESENTATIVE.

39. LEGAL REPRESENTATIVE MEANS A PERSON AUTHORIZED UNDER APPLICABLE LAW TO TAKE CERTAIN ACTION ON BEHALF OF A RESIDENT OF AN ADULT HOME, ENRICHED HOUSING PROGRAM OR RESIDENCE FOR ADULTS. SUCH LEGAL REPRESENTATIVE MAY INCLUDE, BUT IS NOT LIMITED TO, LEGAL COUNSEL, A COURT-APPOINTED GUARDIAN, AN ATTORNEY-IN-FACT UNDER A POWER OF ATTORNEY, AN AGENT UNDER A HEALTH CARE PROXY OR A REPRESENTATIVE PAYEE, DEPENDING UPON THE ACTION TO BE TAKEN.

S 10. Subdivision 3 of section 461-d of the social services law is amended by adding three new paragraphs (l), (m) and (n) to read as follows:

(L) EVERY RESIDENT SHALL HAVE THE RIGHT TO BE FULLY INFORMED BY HIS OR HER PHYSICIAN, OR OTHER HEALTH OR MENTAL HEALTH PROVIDER OF HIS OR HER MEDICAL CONDITION AND PROPOSED MEDICATION, TREATMENT AND SERVICES, UNLESS MEDICALLY CONTRAINDICATED, AND TO REFUSE MEDICATION, TREATMENT OR SERVICES AFTER BEING FULLY INFORMED OF THE CONSEQUENCES OF SUCH ACTIONS.

(M) EVERY RESIDENT SHALL HAVE THE RIGHT TO CHOOSE HIS OR HER OWN HEALTH CARE PROVIDERS FOR SERVICES NOT COVERED BY HIS OR HER ADMISSION AGREEMENT, SUBJECT TO LIMITATIONS THAT MAY APPLY AS A RESULT OF A RESIDENT'S THIRD PARTY PAYOR COVERAGE.

(N) EVERY RESIDENT SHALL HAVE THE RIGHT TO CHOOSE HIS OR HER OWN LEGAL REPRESENTATIVE AND HIS OR HER OWN RESIDENT REPRESENTATIVE.

S 11. The closing paragraph of subdivision 3 of section 461-d of the social services law, as added by chapter 601 of the laws of 1981, is amended to read as follows:

Waiver of any provision [contained within] OF this subdivision by a resident of an adult care facility OR BY THE RESIDENT'S LEGAL REPRESENTATIVE OR RESIDENT REPRESENTATIVE, WITH RESPECT TO A RESIDENT OF AN

ADULT HOME, RESIDENCE FOR ADULTS OR ENRICHED HOUSING PROGRAM, shall be void.

S 12. Section 91-f of the state finance law, as added by section 51 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

S 91-f. Adult home, ENRICHED HOUSING PROGRAM AND RESIDENCE FOR ADULTS quality enhancement fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special revenue fund to be known as the adult home, ENRICHED HOUSING PROGRAM AND RESIDENCE FOR ADULTS quality enhancement fund.

2. The adult home, ENRICHED HOUSING PROGRAM AND RESIDENCE FOR ADULTS quality enhancement fund shall consist of moneys received by the state pursuant to section four hundred sixty-d of the social services law and all other moneys appropriated, credited or transferred thereto from any other fund or source.

3. The moneys from the adult home, ENRICHED HOUSING PROGRAM AND RESIDENCE FOR ADULTS quality enhancement fund shall be disbursed by the department of health to promote programs to improve the quality of care in adult homes, ENRICHED HOUSING PROGRAMS AND RESIDENCES FOR ADULTS.

S 13. Paragraphs (a) and (b) of subdivision 2 of section 461-a of the social services law, paragraph (a) as amended by chapter 735 of the laws of 1994 and paragraph (b) as amended by chapter 601 of the laws of 1981, are amended to read as follows:

(a) With respect to adult care facilities the department shall conduct a minimum of one unannounced inspection of each such facility to determine the adequacy of care being rendered, pursuant to the following:

(1) Such facilities [receiving the department's highest rating] DETERMINED BY THE DEPARTMENT TO BE IN COMPLIANCE OR SUBSTANTIAL COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS, BASED ON THE FACILITY'S MOST RECENT INSPECTION, shall be inspected at least once every eighteen months on an unannounced basis.

(2) All other such facilities shall be inspected on an unannounced basis no less than annually. The commissioner may provide for more frequent inspections of any such facilities. Such inspection shall not be required with respect to any facility for which the commissioner has delegated responsibility for inspection and supervision to a social services official pursuant to section four hundred sixty-c of this [chapter] ARTICLE. Any employee of the department or a social services district who gives or causes to be given advance notice of such unannounced inspections to any unauthorized persons shall, in addition to any other penalty provided by law, be suspended by the department or the social services district from all duties without pay for at least five days or for such greater period of time as the department or social services district shall determine. Any such suspension shall be made by the department or social services district in accordance with all other applicable provisions of law.

(b) [The department or a social services district, where appropriate, shall each year conduct a minimum of one full inspection of each adult care facility. Such inspection] AN INSPECTION OF AN ADULT CARE FACILITY UNDER THIS SECTION shall include, but shall not be limited to, examination of the medical, dietary and social services records of the facility as well as the minimum standards of construction, life safety standards, quality and adequacy of care, rights of residents, payments and all other areas of operation. The purpose of any inspection shall be to determine compliance with requirements of applicable provisions of law and regulations of the department.

S 14. Paragraph (c) of subdivision 2 of section 461-a of the social services law, as amended by chapter 735 of the laws of 1994, is amended to read as follows:

(c) (I) An inspection report shall be made of each inspection which shall clearly identify and indicate in detail each area of operation, including, but not limited to, the premises, equipment, personnel, resident care and services, and whether [each] ANY such area of operation or any of its component parts is [or is] not in compliance with the regulations of the department and all other applicable requirements. It also shall identify those areas of operation or any of its component parts found not in compliance as a result of failure in systemic practices and procedures. The operator shall be notified of the results of the inspection in a manner to be determined by regulations of the department AND SHALL SUBMIT A WRITTEN PLAN OF CORRECTION TO THE DEPARTMENT WITHIN THIRTY CALENDAR DAYS FROM THE DATE THE INSPECTION REPORT IS RECEIVED. THE DEPARTMENT SHALL NOTIFY THE OPERATOR OF THE ACCEPTABILITY OF THE PLAN OF CORRECTION WITHIN THIRTY CALENDAR DAYS OF THE DEPARTMENT'S RECEIPT OF SUCH PLAN. Such notification [shall] MAY contain directions as may be appropriate as to the manner and time in which compliance with applicable requirements of law or regulations of the department shall be effected. (II) The department shall also require the operator of an adult home, ENRICHED HOUSING PROGRAM or residence for adults to develop, biannually update and implement plans for quality assurance activities for each area of operation. Quality assurance activities include but are not limited to, development and maintenance of performance standards, measurement of adherence to such standards and to applicable state and local laws and regulations, identification of performance failures, design, and implementation of corrective action.

S 15. Section 461-b of the social services law is amended by adding a new subdivision 9 to read as follows:

9. AN INDIVIDUAL OR ENTITY WHICH IS NOT THE APPROVED OPERATOR OF AN ADULT HOME, ENRICHED HOUSING PROGRAM OR RESIDENCE FOR ADULTS SHALL NOT PARTICIPATE IN THE TOTAL GROSS INCOME OR NET REVENUE OF SUCH FACILITY.

S 16. Section 461-b of the social services law is amended by adding a new subdivision 10 to read as follows:

10. ANY FEE FOR THE LEASE OF THE REAL PROPERTY ON WHICH AN ADULT HOME, ENRICHED HOUSING PROGRAM OR RESIDENCE FOR ADULTS IS LOCATED AND/OR FOR THE LEASE OF THE PREMISES OCCUPIED BY SUCH A FACILITY, PROGRAM OR RESIDENCE SHALL BE NO GREATER THAN THE COMMERCIALLY REASONABLE FAIR MARKET VALUE FOR SIMILAR PROPERTIES OR PREMISES IN THE GEOGRAPHIC REGION IN WHICH SUCH A FACILITY, PROGRAM OR RESIDENCE IS LOCATED.

S 17. Subparagraphs (I) and (II) of paragraph 2 of subdivision (i) of section 29.15 of the mental hygiene law, as amended by chapter 534 of the laws of 2006, are amended to read as follows:

(I) A patient about to be discharged or conditionally released from a department facility licensed or operated by the office of mental retardation and developmental disabilities or from an inpatient facility operated or licensed by the office of [alcohol] ALCOHOLISM and substance abuse services or the office of mental health to an adult home, ENRICHED HOUSING PROGRAM or residence for adults, as defined in section two of the social services law, shall be referred only to such home, PROGRAM or residence that is consistent with that patient's needs and that operates pursuant to section four hundred sixty of the social services law, provided further that: (A) for a department facility licensed or operated by the office of mental retardation and developmental disabilities or for an inpatient facility operated by the office of [alcohol] ALCO-

HOLISM and substance abuse services or the office of mental health, the facility director retains authority to determine whether the home, program or residence is consistent with that patient's needs and (B) such referral shall be made to the patient's home county whenever possible or appropriate.

(II) No patient about to be discharged or conditionally released from a department facility licensed or operated by the office of mental retardation and developmental disabilities or from an inpatient facility operated or licensed by the office of [alcohol] ALCOHOLISM and substance abuse services or the office of mental health shall be referred to any adult home, ENRICHED HOUSING PROGRAM or residence for adults, as defined in section two of the social services law, which has received an official written notice from the department of health of: (A) the proposed revocation, suspension or denial of its operating certificate; (B) the limitation of its operating certificate with respect to new admissions; (C) the issuance of a department of health order or commissioner of health's order or the seeking of equitable relief pursuant to section four hundred sixty-d of the social services law; (D) the proposed assessment of civil penalties for violations of the provisions of subparagraph two of paragraph (b) of subdivision seven of section four hundred sixty-d of the social services law; or placement on the "do not refer list" pursuant to subdivision fifteen of section four hundred sixty-d of the social services law. Referrals may resume when such enforcement actions are resolved.

S 18. Subdivisions 13 and 15 of section 4651 of the public health law, as added by chapter 2 of the laws of 2004, are amended to read as follows:

13. "Aging in place" means, care and services at a facility which possesses an enhanced assisted living certificate which, to the extent practicable, within the scope of services set forth in the written residency agreement executed pursuant to section four thousand six hundred fifty-eight of this article, accommodates a resident's changing needs and preferences in order to allow such resident to BE ADMITTED TO OR remain in the residence as long as the residence is able and authorized to accommodate the resident's current and changing needs. A residence that does not possess an enhanced assisted living certificate shall not be deemed able to accommodate a resident's needs if the resident requires or is in need of either enhanced assisted living or twenty-four hour skilled nursing care or medical care 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.

15. "Enhanced assisted living certificate" means a certificate issued by the department which authorizes an assisted living residence to provide aging in place by EITHER ADMITTING OR retaining residents who desire [to continue] to age in place and who: (a) are chronically chairfast and unable to transfer, or chronically require the physical assistance of another person to transfer; (b) chronically require the physical assistance of another person in order to walk; (c) chronically require the physical assistance of another person to climb or descend stairs; (d) are dependent on medical equipment and require more than intermittent or occasional assistance from medical personnel; or (e) has chronic unmanaged urinary or bowel incontinence. IN NO EVENT SHALL A PERSON BE ADMITTED TO AN ASSISTED LIVING RESIDENCE WHO IS IN NEED OF CONTINUAL TWENTY-FOUR HOUR NURSING OR MEDICAL CARE, WHO IS CHRONICALLY BEDFAST, OR WHO IS COGNITIVELY, PHYSICALLY OR MEDICALLY IMPAIRED TO SUCH A DEGREE THAT HIS OR HER SAFETY WOULD BE ENDANGERED.

S 19. Subdivision 5 of section 4655 of the public health law, as added by chapter 2 of the laws of 2004, is amended to read as follows:

5. In addition to the requirements otherwise required for licensure as assisted living, any [residence] ADULT CARE FACILITY SUBJECT TO THE INSPECTION AND SUPERVISION OF THE DEPARTMENT that advertises or markets itself as serving individuals with special needs, including, but not limited to, individuals with dementia or cognitive impairments, must submit a special needs plan to the department setting forth how the special needs of such residents will be safely and appropriately met at such [residence] FACILITY. Such plan shall include, but need not be limited to, a written description of specialized services, staffing levels, staff education and training, work experience, professional affiliations or special characteristics relevant to serving persons with special needs, and any environmental modifications that have been made or will be made to protect the health, safety and welfare of such persons in the [residence] FACILITY. In approving an application for special needs certification, the department shall develop standards to ensure adequate staffing and training in order to safely meet the needs of the resident. The standards shall be based upon recommendations of the task force established by section five of [the] chapter TWO of the laws of two thousand four [which added this section]. No [residence] ADULT CARE FACILITY SUBJECT TO THE INSPECTION AND SUPERVISION OF THE DEPARTMENT shall market [themselves] ITSELF as providing specialized services unless and until the department has approved such applicant for a special needs assisted living certificate.

S 20. Section 1 of chapter 462 of the laws of 1996, relating to establishing a quality incentive payment program for adult homes, as amended by section 36 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

Section 1. Quality incentive payment program. Subject to amounts appropriated for the quality incentive payment program, the department of health may make a payment to each operator of an adult home, residence for adults or enriched housing program that is in compliance with applicable statutes and regulations based on the facility's most recent inspection. Such payment shall be based on the number of SSI recipients and recipients of safety net assistance residing in such facilities. Payment may also be made to a receiver of an existing adult home, enriched housing program or residence for adults. Provided, however, the department of health may deny payment to any facility that HAS RECEIVED OFFICIAL WRITTEN NOTICE FROM THE DEPARTMENT OF HEALTH OF A PROPOSED ASSESSMENT OF CIVIL PENALTIES FOR A VIOLATION OF SUBPARAGRAPH 2 OF PARAGRAPH (B) OF SUBDIVISION 7 OF SECTION 460-D OF THE SOCIAL SERVICES LAW, OR, after a hearing conducted pursuant to subparagraph 1 of paragraph (b) of subdivision 7 of section 460-d of the social services law, has been adjudicated to not be providing care in compliance with applicable statutes and regulations. The department of health shall promulgate regulations to implement the provisions of this section.

No payment shall be made to an operator that has received official written notice from the department of a proposed revocation, suspension, limitation or denial of the operator's operating certificate[; or proposed assessment of civil penalties for a violation of subparagraph 2 of paragraph (b) of subdivision 7 of section 460-d of the social services law]; issuance of a department order under subdivision 2 of section 460-d of the social services law; the granting of equitable relief under subdivision 5 of section 460-d of the social services law; or the issuance of a commissioner's order under subdivision 8 of section

460-d of the social services law; or the issuance by a court of competent jurisdiction of an order or approval of a settlement agreement which affirms that the rights afforded to residents of adult care facilities as provided for by section 461-d of the social services law have been violated. Provided further that prior to receiving quality incentive payment program funds, an operator shall consult with the residents' council for such facility and, following such council's approval, shall submit an expenditure plan to the department. Such plan shall detail how quality incentive payment program funds will be used to improve the physical environment of the facility or the quality of care and services rendered to residents and may include but not be limited to staff training, air conditioning in residents' areas, furnishings, equipment, maintenance or repairs to the facility or expenditures related to corrective action as required by the most recent inspection report. Such expenditure plan shall be accompanied by an operator attestation. It shall be an affirmative duty of an operator of an adult care facility to notify the department within three working days after the issuance of a court order or court approved settlement agreement which has found that the rights of a resident, as provided for by section 461-d of the social services law or the rules and regulations of the department have been violated.

S 21. This act shall take effect immediately, except that section twenty of this act shall take effect on the eightieth day after it shall have become a law.