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

865

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DelMONTE, ROSENTHAL, FIELDS, LUPARDO, KOON, GUNTHER, ALFANO, GORDON -- Multi-Sponsored by -- M. of A. ABBATE, BROOK-KRASNY, CLARK, EDDINGTON, HOOPER, HYER-SPENCER, JOHN, MAGEE, MAISEL, MAYERSOHN, McENENY, PHEFFER, REILLY, ROBINSON, SWEENEY, WEISENBERG -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to establishing family directed home care demonstration programs

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 3623 to read as follows:

S 3623. FAMILY DIRECTED HOME CARE DEMONSTRATION PROGRAMS. 1. THE COMMISSIONER IS AUTHORIZED TO ESTABLISH DEMONSTRATION PROGRAMS UNDER SUBDIVISION TWO OF THIS SECTION DESIGNED TO PROVIDE ADDITIONAL EXPERIENCE AND INFORMATION CONCERNING THE ALTERNATIVE DELIVERY OF HOME CARE SERVICES TO FAMILIES WHO SEEK GREATER FLEXIBILITY AND FREEDOM OF CHOICE IN OBTAINING SUCH SERVICES FOR THEIR FAMILY MEMBERS. THE FAMILY DIRECTED HOME CARE DEMONSTRATION PROGRAMS ARE INTENDED TO PROVIDE GREATER CONTROL TO FAMILIES OVER THE FAMILY MEMBER'S CARE AND CAREGIVERS, DELIVER HOME CARE SERVICES IN A MORE COST-EFFECTIVE MANNER, INCREASE THE POOL OF NURSES WILLING TO PROVIDE HOME CARE SERVICES, AND RETAIN SUCH NURSES SO AS TO ENSURE THE AVAILABILITY OF HOME CARE TO A GROWING NUMBER OF INDIVIDUALS.

2. APPROVAL TO OPERATE A FAMILY DIRECTED HOME CARE DEMONSTRATION PROGRAM MAY BE GRANTED BY THE COMMISSIONER TO HOME CARE AGENCIES THAT ARE LICENSED UNDER THIS ARTICLE THAT VOLUNTEER TO PARTICIPATE, OR THAT ACCEPT AN OFFER FROM THE COMMISSIONER TO PARTICIPATE. ONE DEMONSTRATION PROGRAM SHALL TAKE PLACE IN EACH REGION REPRESENTED BY A HEALTH SYSTEM AGENCY, AS DEFINED IN SECTION TWENTY-NINE HUNDRED FOUR-B OF THIS CHAP-

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

LBD01131-01-9

TER. THE COMMISSIONER SHALL APPROVE PLANS FOR DEMONSTRATION PROGRAMS SUBMITTED PURSUANT TO THIS SECTION THAT:

(A) ASSURE ACCESS TO DELIVERY OF HIGH QUALITY, APPROPRIATE NURSING SERVICES TO ELIGIBLE INDIVIDUALS. FOR PURPOSES OF THIS SECTION, AN "ELIGIBLE INDIVIDUAL" IS A PERSON WHO:

(I) IS ELIGIBLE FOR NURSING SERVICES PROVIDED BY A LICENSED HOME CARE SERVICES AGENCY AUTHORIZED PURSUANT TO THIS ARTICLE;

(II) HAS BEEN DETERMINED BY THE LICENSED HOME CARE SERVICES AGENCY, PURSUANT TO AN ASSESSMENT OF THE PERSON'S APPROPRIATENESS FOR THE PROGRAM CONDUCTED BY SUCH AN AGENCY, AS BEING IN NEED OF NURSING SERVICES AT HOME AND HAS THE SKILLS AND WILLINGNESS OR HAS A LEGAL GUARDIAN WHO HAS THE SKILLS AND WILLINGNESS TO MAKE INFORMED CHOICES, OR HAS DESIGNATED A RELATIVE OR OTHER ADULT WHO HAS THE SKILLS AND WILLINGNESS TO ASSIST IN MAKING INFORMED CHOICES REGARDING SUCH NURSING SERVICES, INCLUDING BUT NOT LIMITED TO THE RECRUITMENT, SELECTION, SCHEDULING, AND MANAGING OF NURSE CAREGIVERS; AND

(III) MEETS SUCH OTHER CRITERIA, AS MAY BE ESTABLISHED BY THE COMMISSIONER, WHICH ARE NECESSARY TO EFFECTIVELY IMPLEMENT THE OBJECTIVES OF THIS SECTION.

(B) REQUIRE THAT THE AGENCY AND ELIGIBLE INDIVIDUAL ENTER INTO AN AGREEMENT WHICH AT MINIMUM, STATES:

(I) THE AGENCY SHALL PROVIDE AN INITIAL ORIENTATION AND ON-GOING EDUCATION AND ASSISTANCE AS IS NECESSARY TO THE ELIGIBLE INDIVIDUALS, THEIR LEGAL GUARDIANS, AND/OR DESIGNATED REPRESENTATIVES REGARDING THE RECRUITMENT, SELECTION, SCHEDULING, AND MANAGING OF THE NURSES WHO PROVIDE SERVICES TO THE ELIGIBLE INDIVIDUALS;

(II) THE AGENCY SHALL EXERCISE REASONABLE CARE IN PROPERLY CARRYING OUT ITS RESPONSIBILITIES UNDER THE DEMONSTRATION PROGRAM, WHICH SHALL INCLUDE MONITORING THE CONTINUING ABILITY OF ELIGIBLE INDIVIDUALS, THEIR LEGAL GUARDIANS AND/OR DESIGNATED REPRESENTATIVES TO FULFILL THOSE RESPONSIBILITIES DOCUMENTED IN SUCH AGREEMENT OR MEDICAL RECORD; HOWEVER, THE AGENCY SHALL NOT BE LIABLE FOR FULFILLMENT OF RESPONSIBILITIES AGREED TO BE UNDERTAKEN BY THE ELIGIBLE INDIVIDUALS, THEIR LEGAL GUARDIANS, AND/OR DESIGNATED REPRESENTATIVES; AND

(III) THAT FAILURE OF ELIGIBLE INDIVIDUALS, THEIR LEGAL GUARDIANS, AND/OR DESIGNATED REPRESENTATIVES TO CARRY OUT THEIR AGREED-TO RESPONSIBILITIES MAY BE CONSIDERED IN DETERMINING THE ELIGIBLE INDIVIDUAL'S CONTINUED APPROPRIATENESS FOR THE PROGRAM.

(C) DESCRIBE THE QUALITY ASSURANCE MECHANISMS TO BE IMPLEMENTED, AS WELL AS OTHER MECHANISMS DESIGNED TO PROTECT ELIGIBLE INDIVIDUAL'S RIGHTS UNDER THE PROGRAM.

3. THIS SECTION SHALL NOT BE INTERPRETED TO RESTRICT A MEDICAL ASSISTANCE RECIPIENT'S CHOICE OF PROVIDER OF SERVICES TO WHICH HE OR SHE IS ENTITLED PURSUANT TO TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW OR TO AUTHORIZE ANY CHANGE IN THE ELIGIBILITY CRITERIA ENTITLING ANY INDIVIDUAL TO MEDICAL ASSISTANCE.

4. THE COMMISSIONER MAY, SUBJECT TO THE APPROVAL OF THE DIRECTOR OF THE BUDGET, FILE FOR SUCH FEDERAL WAIVERS OR STATE PLAN AMENDMENTS AS MAY BE NEEDED FOR THE IMPLEMENTATION OF THE PROGRAM AND CONTINUED FEDERAL PARTICIPATION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COMMISSIONER IS AUTHORIZED TO WAIVE ANY PROVISION OF SECTION THREE HUNDRED SIXTY-SEVEN-B OF THE SOCIAL SERVICES LAW RELATED TO PAYMENT AND MAY PROMULGATE REGULATIONS NECESSARY TO CARRY OUT THE OBJECTIVES OF THE PROGRAM, AND DESCRIBE THE RESPONSIBILITIES OF THE ELIGIBLE INDIVIDUALS IN ARRANGING FOR SERVICES AND THE PROTECTIONS ASSURED SUCH INDIVIDUALS IF THEY ARE UNABLE OR NO LONGER DESIRE TO CONTINUE IN THE PROGRAM.

5. THE DEPARTMENT SHALL BE RESPONSIBLE FOR REVIEWING THE QUALITY, APPROPRIATENESS, AND COST-EFFECTIVENESS OF THE CARE PROVIDED PURSUANT TO THE DEMONSTRATION PROGRAMS. THE DEPARTMENT SHALL ISSUE AN ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE. SUCH REPORT SHALL CONTAIN, AT A MINIMUM, THE FOLLOWING INFORMATION: THE PROGRAMS IMPLEMENTED PURSUANT TO THIS SECTION, THEIR DATE OF IMPLEMENTATION, THEIR ACCOMPLISHMENTS, THEIR PROGRESS MADE IN ACHIEVING THE OBJECTIVES OF THE PROGRAM, INCLUDING THE SATISFACTION OF ELIGIBLE INDIVIDUALS AND THEIR FAMILIES, AND THE APPROPRIATENESS OF SUCH PROGRAMS TO RECRUIT AND RETAIN NURSES TO SERVE THE STATE'S ESCALATING NEED FOR A HIGHLY TRAINED NURSING WORKFORCE.

6. THIS SECTION SHALL PREEMPT AND SUPERSEDE ANY LOCAL OR COUNTY LAWS, REGULATIONS AND REQUIREMENTS WHICH ARE INCONSISTENT WITH OR CONTRARY TO THE OBJECTIVES OF THIS SECTION.

S 2. This act shall take effect immediately.