

3297

2009-2010 Regular Sessions

I N S E N A T E

March 16, 2009

Introduced by Sen. DUANE -- (at request of the Department of Health) --  
read twice and ordered printed, and when printed to be committed to  
the Committee on Social Services

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 opera-  
tor 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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

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

3 (E) RECTIFICATION SHALL NOT PRECLUDE THE ASSESSMENT OF A PENALTY IF  
4 THE DEPARTMENT ESTABLISHES THAT A PARTICULAR VIOLATION, ALTHOUGH  
5 CORRECTED, WAS A VIOLATION CITED BY THE DEPARTMENT AT THE PREVIOUS  
6 FACILITY INSPECTION.

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

12 (b) No operating certificate shall be revoked, suspended or limited  
13 without a hearing held in accordance with procedures established by  
14 department regulations, which procedures shall require that notice of  
15 the time and place of the hearing, and notice of the charges, shall be  
16 served in person or by certified mail addressed to the facility at least  
17 thirty days prior to the date of the hearing. A written answer to the  
18 charges may be filed with the department not less than ten business days  
19 prior to the date of the hearing. An operating certificate may, never-

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

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1 theless, be suspended or limited without a hearing for a period not in  
2 excess of sixty days, upon written notice to the facility following a  
3 finding by the department that the public health, or an individual's  
4 health, safety or welfare, are in imminent danger; PROVIDED, HOWEVER,  
5 THAT IF THE DEPARTMENT MAKES REASONABLE EFFORTS TO COMMENCE A HEARING  
6 WITHIN SUCH SIXTY DAY PERIOD AND TO COMPLETE SUCH HEARING WITHIN A  
7 REASONABLE PERIOD OF TIME, THE HEARING OFFICER MAY AUTHORIZE THE DEPART-  
8 MENT TO EXTEND THE PERIOD OF SUSPENSION OR LIMITATION FOR AN APPROPRIATE  
9 PERIOD OF TIME, BUT IN NO EVENT BEYOND THE DATE WHEN THE HEARING IS  
10 COMPLETED AND AVAILABLE ADMINISTRATIVE APPEALS ARE EXHAUSTED.

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

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

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

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

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

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

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

36 11. On or before issuance by the department to an adult care facility  
37 operator of official written notice of: the proposed revocation, suspen-  
38 sion or denial of the operator's operating certificate; the limitation  
39 of the operating certificate with respect to new admissions; the issu-  
40 ance of a department order or commissioner's order; the seeking of equi-  
41 table relief pursuant to this section; the proposed assessment of civil  
42 penalties for violations of the provisions of subparagraph two of para-  
43 graph (b) of subdivision seven of this section or placement on the "do  
44 not refer list" pursuant to subdivision fifteen of this section, written  
45 notice also shall be given to the appropriate office of the department  
46 of mental hygiene, department of correctional services, state division  
47 of parole and local social services districts, and provided further that  
48 the department of health shall notify hospitals AND ADULT CARE FACILI-  
49 TIES in the locality in which such facility is located that such notice  
50 has been issued. Upon resolution of such enforcement action the depart-  
51 ment shall notify the appropriate office of the department of mental  
52 hygiene, department of correctional services, state division of parole,  
53 local social services districts [and], hospitals AND ADULT CARE FACILI-  
54 TIES.

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

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

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

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

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

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

47 S 7. Section 461-m of the social services law, as amended by chapter  
48 462 of the laws of 1996, is amended to read as follows:

49 S 461-m. Death and felony crime reporting. The operator of an adult  
50 home, ENRICHED HOUSING PROGRAM or residence for adults shall have an  
51 affirmative duty to report any death, or attempted suicide of a resident  
52 to the department OF HEALTH within twenty-four hours of its occurrence,  
53 and shall also have an affirmative duty to report to an appropriate law  
54 enforcement authority if it is believed that a felony crime may have  
55 been committed against a resident of such facility as soon as possible,  
56 or in any event within [forty-eight] TWENTY-FOUR hours. In addition,

1 the operator shall send any reports involving a resident who had at any  
2 time received services from a mental hygiene service provider to the  
3 state commission on quality of care [for the mentally disabled] AND  
4 ADVOCACY FOR PERSONS WITH DISABILITIES WITHIN TWENTY-FOUR HOURS OF THE  
5 OCCURRENCE OF THE DEATH, ATTEMPTED SUICIDE OR FELONY CRIME.

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

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

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

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

23 39. LEGAL REPRESENTATIVE MEANS A PERSON DULY AUTHORIZED UNDER APPLICA-  
24 BLE LAW TO TAKE CERTAIN ACTION ON BEHALF OF A RESIDENT OF AN ADULT HOME,  
25 ENRICHED HOUSING PROGRAM OR RESIDENCE FOR ADULTS. SUCH LEGAL REPRESENTATIVE  
26 COULD INCLUDE, BUT IS NOT NECESSARILY LIMITED TO, LEGAL COUNSEL,  
27 A COURT-APPOINTED GUARDIAN, AN ATTORNEY-IN-FACT UNDER A POWER OF ATTOR-  
28 NEY, AN AGENT UNDER A HEALTH CARE PROXY OR A REPRESENTATIVE PAYEE,  
29 DEPENDING UPON THE ACTION TO BE TAKEN.

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

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

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

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

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

47 Waiver of any provision contained within this subdivision by a resi-  
48 dent of an adult care facility OR BY THE RESIDENT'S LEGAL REPRESENTATIVE  
49 OR RESIDENT REPRESENTATIVE, WITH RESPECT TO A RESIDENT OF AN ADULT HOME,  
50 RESIDENCE FOR ADULTS OR ENRICHED HOUSING PROGRAM, shall be void.

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

53 S 91-f. Adult home, ENRICHED HOUSING PROGRAM AND RESIDENCE FOR ADULTS  
54 quality enhancement fund. 1. There is hereby established in the joint  
55 custody of the state comptroller and the commissioner of taxation and

1 finance a special revenue fund to be known as the adult home, ENRICHED  
2 HOUSING PROGRAM AND RESIDENCE FOR ADULTS quality enhancement fund.

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

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

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

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

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

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

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

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

52 (c) (I) An inspection report shall be made of each inspection which  
53 shall clearly identify and indicate in detail each area of operation,  
54 including, but not limited to, the premises, equipment, personnel, resi-  
55 dent care and services, and whether [each] ANY such area of operation or  
56 any of its component parts is [or is] not in compliance with the regu-

1 lations of the department and all other applicable requirements. It also  
2 shall identify those areas of operation or any of its component parts  
3 found not in compliance as a result of failure in systemic practices and  
4 procedures. The operator shall be notified of the results of the  
5 inspection in a manner to be determined by regulations of the department  
6 AND SHALL SUBMIT A WRITTEN PLAN OF CORRECTION TO THE DEPARTMENT WITHIN  
7 THIRTY CALENDAR DAYS FROM THE DATE THE INSPECTION REPORT IS RECEIVED.  
8 THE DEPARTMENT SHALL NOTIFY THE OPERATOR OF THE ACCEPTABILITY OF THE  
9 PLAN OF CORRECTION WITHIN THIRTY CALENDAR DAYS OF THE DEPARTMENT'S  
10 RECEIPT OF SUCH PLAN. [Such notification shall contain directions as  
11 may be appropriate as to the manner and time in which compliance with  
12 applicable requirements of law or regulations of the department shall be  
13 effected.] (II) The department shall also require the operator of an  
14 adult home, ENRICHED HOUSING PROGRAM or residence for adults to develop,  
15 biannually update and implement plans for quality assurance activities  
16 for each area of operation. Quality assurance activities include but are  
17 not limited to, development and maintenance of performance standards,  
18 measurement of adherence to such standards and to applicable state and  
19 local laws and regulations, identification of performance failures,  
20 design, and implementation of corrective action.

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

23 9. AN INDIVIDUAL OR ENTITY WHICH IS NOT THE DULY APPROVED OPERATOR OF  
24 AN ADULT HOME, ENRICHED HOUSING PROGRAM OR RESIDENCE FOR ADULTS SHALL  
25 NOT PARTICIPATE IN THE TOTAL GROSS INCOME OR NET REVENUE OF SUCH FACILI-  
26 TY.

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

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

35 S 17. Section 461-b of the social services law is amended by adding a  
36 new subdivision 11 to read as follows:

37 11. NO OPERATOR OF AN ADULT CARE FACILITY SHALL, DIRECTLY OR INDIRECT-  
38 LY, MAKE ANY CHARITABLE CONTRIBUTION OF STATE MONIES, MEDICAL ASSISTANCE  
39 PAYMENTS OR SOCIAL SECURITY OR SUPPLEMENTAL SECURITY INCOME OR ANY  
40 INTEREST OR OTHER INCOME EARNED THEREON, EXCEPT AS EXPRESSLY AUTHORIZED  
41 BY THE COMMISSIONER.

42 S 18. Subparagraphs (I) and (II) of paragraph 2 of subdivision (i) of  
43 section 29.15 of the mental hygiene law, as amended by chapter 534 of  
44 the laws of 2006, are amended to read as follows:

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

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

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

25 S 19. Subdivisions 13 and 15 of section 4651 of the public health law,  
26 as added by chapter 2 of the laws of 2004, are amended to read as  
27 follows:

28 13. "Aging in place" means, care and services at a facility which  
29 possesses an enhanced assisted living certificate which, to the extent  
30 practicable, within the scope of services set forth in the written resi-  
31 dency agreement executed pursuant to section four thousand six hundred  
32 fifty-eight of this article, accommodates a resident's changing needs  
33 and preferences in order to allow such resident to BE ADMITTED TO OR  
34 remain in the residence as long as the residence is able and authorized  
35 to accommodate the resident's current and changing needs. A residence  
36 that does not possess an enhanced assisted living certificate shall not  
37 be deemed able to accommodate a resident's needs if the resident  
38 requires or is in need of either enhanced assisted living or twenty-four  
39 hour skilled nursing care or medical care provided by facilities  
40 licensed pursuant to article twenty-eight of this chapter or article  
41 nineteen, thirty-one or thirty-two of the mental hygiene law.

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

1 S 20. Subdivision 5 of section 4655 of the public health law, as added  
2 by chapter 2 of the laws of 2004, is amended to read as follows:

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

26 S 21. Section 1 of chapter 462 of the laws of 1996, relating to estab-  
27 lishing a quality incentive payment program for adult homes, as amended  
28 by section 36 of part B of chapter 58 of the laws of 2004, is amended to  
29 read as follows:

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

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

1 460-d of the social services law; or the issuance by a court of compe-  
2 tent jurisdiction of an order or approval of a settlement agreement  
3 which affirms that the rights afforded to residents of adult care facil-  
4 ities as provided for by section 461-d of the social services law have  
5 been violated. Provided further that prior to receiving quality incen-  
6 tive payment program funds, an operator shall consult with the resi-  
7 dents' council for such facility and, following such council's approval,  
8 shall submit an expenditure plan to the department. Such plan shall  
9 detail how quality incentive payment program funds will be used to  
10 improve the physical environment of the facility or the quality of care  
11 and services rendered to residents and may include but not be limited to  
12 staff training, air conditioning in residents' areas, furnishings,  
13 equipment, maintenance or repairs to the facility or expenditures  
14 related to corrective action as required by the most recent inspection  
15 report. Such expenditure plan shall be accompanied by an operator attes-  
16 tation. It shall be an affirmative duty of an operator of an adult care  
17 facility to notify the department within three working days after the  
18 issuance of a court order or court approved settlement agreement which  
19 has found that the rights of a resident, as provided for by section  
20 461-d of the social services law or the rules and regulations of the  
21 department have been violated.

22 S 22. This act shall take effect immediately.