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

964

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GOTTFRIED, DINOWITZ -- Multi-Sponsored by -- M. of A. PHEFFER -- read once and referred to the Committee on Health

AN ACT to amend the social services law, the mental hygiene law and chapter 462 of the laws of 1996, relating to establishing a quality incentive payment program for adult homes, in relation to violations of safety conditions in 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. Paragraph (b) of subdivision 4 of section 460-d of the social services law, as amended by chapter 733 of the laws of 1994, is 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 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

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

PERIOD OF TIME, BUT IN NO EVENT BEYOND THE DATE WHEN THE HEARING IS COMPLETED AND AVAILABLE ADMINISTRATIVE APPEALS ARE EXHAUSTED.

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. 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 6. 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 REPRESEN-

TATIVE OR RESIDENT REPRESENTATIVE, WITH RESPECT TO A RESIDENT OF AN ADULT HOME, RESIDENCE FOR ADULTS OR ENRICHED HOUSING PROGRAM, shall be void.

S 7. 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 8. 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 9. 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 10. Subparagraphs (I) and (II) of paragraph 2 of subdivision (i) of section 29.15 of the mental hygiene law, as amended by chapter 168 of the laws of 2010, 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 for people with developmental disabilities or from an inpatient facility operated or licensed by the office of 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 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 for people with developmental disabilities or for an inpatient facility operated by the office of alcoholism 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 for people with developmental disabilities or from an inpatient facility operated or licensed by the office of 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 11. This act shall take effect on the ninetieth day after it shall have become a law, provided, however, that the commissioner of health may adopt, amend, suspend or repeal any regulations or take other action necessary to enforce or implement the law prior to and in preparation for the taking effect of the law; provided, however, such adoption, amendment, suspension or repeal of regulations shall not have legal effect until the law takes effect.