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

4865

2011-2012 Regular Sessions

I N S E N A T E

April 27, 2011

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the town law, the village law and the general city law, in relation to zoning provisions for temporary family health care structures

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

Section 1. The town law is amended by adding a new section 274-c to read as follows:

S 274-C. ZONING PROVISIONS FOR TEMPORARY FAMILY HEALTH CARE STRUCTURES. 1. FOR PURPOSES OF THIS SECTION:

(A) "CAREGIVER" MEANS AN ADULT WHO PROVIDES CARE FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON WITHIN THE STATE. A CAREGIVER SHALL BE EITHER RELATED BY BLOOD, MARRIAGE, OR ADOPTION TO OR THE LEGALLY APPOINTED GUARDIAN OF THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON FOR WHOM HE OR SHE IS CARING.

(B) "PHYSICALLY IMPAIRED PERSON" MEANS A PERSON WHO IS A RESIDENT OF THE STATE AND WHO REQUIRES ASSISTANCE WITH TWO OR MORE ACTIVITIES OF DAILY LIVING AS CERTIFIED IN A STATEMENT OF A PHYSICIAN DULY LICENSED TO PRACTICE MEDICINE.

(C) "MENTALLY DISABLED PERSON" MEANS A PERSON WITH A MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITY, ALCOHOLISM, SUBSTANCE DEPENDENCE, OR CHEMICAL DEPENDENCE AS DEFINED IN SUBDIVISION THREE OF SECTION 1.03 OF THE MENTAL HYGIENE LAW.

(D) "TEMPORARY FAMILY HEALTH CARE STRUCTURE" MEANS A TRANSPORTABLE RESIDENTIAL STRUCTURE, PROVIDING AN ENVIRONMENT FACILITATING A CAREGIVER'S PROVISION OF CARE FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON, THAT (I) IS PRIMARILY ASSEMBLED AT A LOCATION OTHER THAN ITS SITE OF INSTALLATION, (II) IS LIMITED TO ONE OCCUPANT WHO SHALL BE THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON, (III) HAS NO MORE THAN THREE HUNDRED GROSS SQUARE FEET, AND (IV) COMPLIES WITH APPLI-

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

LBD01120-01-1

CABLE PROVISIONS OF SECTION ONE HUNDRED THIRTY OF THIS CHAPTER. PLACING THE TEMPORARY FAMILY HEALTH CARE STRUCTURE ON A PERMANENT FOUNDATION SHALL NOT BE REQUIRED OR PERMITTED.

2. ZONING ORDINANCES FOR ALL PURPOSES SHALL CONSIDER TEMPORARY FAMILY HEALTH CARE STRUCTURES FOR USE BY A CAREGIVER IN PROVIDING CARE FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON AND ON PROPERTY OWNED OR OCCUPIED BY THE CAREGIVER AS HIS OR HER RESIDENCE AS A PERMITTED ACCESSORY FOR USE IN ANY SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT ON LOTS ZONED FOR SINGLE-FAMILY DETACHED DWELLINGS. SUCH STRUCTURES SHALL NOT REQUIRE A SPECIAL USE PERMIT OR BE SUBJECTED TO ANY OTHER LOCAL REQUIREMENTS BEYOND THOSE IMPOSED UPON OTHER AUTHORIZED ACCESSORY STRUCTURES, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION. SUCH STRUCTURES SHALL COMPLY WITH ALL SETBACK REQUIREMENTS THAT APPLY TO THE PRIMARY STRUCTURE AND WITH ANY MAXIMUM FLOOR AREA RATION LIMITATIONS THAT MAY APPLY TO THE PRIMARY STRUCTURE. ONLY ONE FAMILY HEALTH CARE STRUCTURE SHALL BE ALLOWED ON A LOT OR PARCEL OF LAND.

3. ANY PERSON PROPOSING TO INSTALL A TEMPORARY FAMILY HEALTH CARE STRUCTURE SHALL FIRST OBTAIN A PERMIT FROM THE PLANNING BOARD OR SUCH OTHER ADMINISTRATIVE BODY, FOR WHICH THE LOCALITY MAY CHARGE A UNIFORM FEE OF UP TO ONE HUNDRED DOLLARS. THE LOCALITY MAY NOT WITHHOLD SUCH PERMIT IF THE APPLICANT PROVIDES SUFFICIENT PROOF OF COMPLIANCE WITH THIS SECTION. THE LOCALITY MAY REQUIRE THAT THE APPLICANT PROVIDE EVIDENCE OF COMPLIANCE WITH THIS SECTION ON AN ANNUAL BASIS AS LONG AS THE TEMPORARY FAMILY HEALTH CARE STRUCTURE REMAINS ON THE PROPERTY. SUCH EVIDENCE MAY INVOLVE THE INSPECTION BY THE LOCALITY OF THE TEMPORARY FAMILY HEALTH CARE STRUCTURE AT REASONABLE TIMES CONVENIENT TO THE CAREGIVER, NOT LIMITED TO ANY ANNUAL COMPLIANCE CONFIRMATION.

4. ANY TEMPORARY FAMILY HEALTH CARE STRUCTURE INSTALLED PURSUANT TO THIS SECTION MAY BE REQUIRED TO CONNECT TO ANY WATER, SEWER, AND ELECTRIC UTILITIES THAT ARE SERVING THE PRIMARY RESIDENCE ON THE PROPERTY AND SHALL COMPLY WITH ALL APPLICABLE REQUIREMENTS OF SECTION ONE HUNDRED THIRTY OF THIS CHAPTER.

5. NO SIGNAGE ADVERTISING OR OTHERWISE PROMOTING THE EXISTENCE OF THE STRUCTURE SHALL BE PERMITTED EITHER ON THE EXTERIOR OF THE TEMPORARY FAMILY HEALTH CARE STRUCTURE OR ELSEWHERE ON THE PROPERTY.

6. ANY TEMPORARY FAMILY HEALTH CARE STRUCTURE INSTALLED PURSUANT TO THIS SECTION SHALL BE REMOVED WITHIN THIRTY DAYS AFTER THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON IS NO LONGER RECEIVING OR IS NO LONGER IN NEED OF THE ASSISTANCE PROVIDED FOR IN THIS SECTION.

7. THE PLANNING BOARD OR OTHER SUCH ADMINISTRATIVE BODY MAY REVOKE THE PERMIT GRANTED PURSUANT TO SUBDIVISION THREE OF THIS SECTION IF THE PERMIT HOLDER VIOLATES ANY PROVISION OF THIS SECTION. ADDITIONALLY, THE LOCAL GOVERNING BODY MAY SEEK INJUNCTIVE RELIEF OR OTHER APPROPRIATE ACTIONS OR PROCEEDINGS TO ENSURE COMPLIANCE WITH THIS SECTION. THE PLANNING BOARD OR OTHER SUCH ADMINISTRATIVE BODY IS VESTED WITH ALL NECESSARY AUTHORITY ON BEHALF OF THE GOVERNING BODY OF THE LOCALITY TO ENSURE COMPLIANCE WITH THIS SECTION.

S 2. The village law is amended by adding a new section 7-725-c to read as follows:

S 7-725-C ZONING PROVISIONS FOR TEMPORARY FAMILY HEALTH CARE STRUCTURES. 1. FOR PURPOSES OF THIS SECTION:

(A) "CAREGIVER" MEANS AN ADULT WHO PROVIDES CARE FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON WITHIN THE STATE. A CAREGIVER SHALL BE EITHER RELATED BY BLOOD, MARRIAGE, OR ADOPTION TO OR THE LEGALLY APPOINTED GUARDIAN OF THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON FOR WHOM HE OR SHE IS CARING.

(B) "PHYSICALLY IMPAIRED PERSON" MEANS A PERSON WHO IS A RESIDENT OF THE STATE AND WHO REQUIRES ASSISTANCE WITH TWO OR MORE ACTIVITIES OF DAILY LIVING AS CERTIFIED IN A STATEMENT OF A PHYSICIAN DULY LICENSED TO PRACTICE MEDICINE.

(C) "MENTALLY DISABLED PERSON" MEANS A PERSON WITH A MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITY, ALCOHOLISM, SUBSTANCE DEPENDENCE, OR CHEMICAL DEPENDENCE AS DEFINED IN SUBDIVISION THREE OF SECTION 1.03 OF THE MENTAL HYGIENE LAW.

(D) "TEMPORARY FAMILY HEALTH CARE STRUCTURE" MEANS A TRANSPORTABLE RESIDENTIAL STRUCTURE, PROVIDING AN ENVIRONMENT FACILITATING A CAREGIVER'S PROVISION OF CARE FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON, THAT (I) IS PRIMARILY ASSEMBLED AT A LOCATION OTHER THAN ITS SITE OF INSTALLATION, (II) IS LIMITED TO ONE OCCUPANT WHO SHALL BE THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON, (III) HAS NO MORE THAN THREE HUNDRED GROSS SQUARE FEET, AND (IV) COMPLIES WITH APPLICABLE PROVISIONS OF SECTION 7-700 OF THIS ARTICLE. PLACING THE TEMPORARY FAMILY HEALTH CARE STRUCTURE ON A PERMANENT FOUNDATION SHALL NOT BE REQUIRED OR PERMITTED.

2. ZONING ORDINANCES FOR ALL PURPOSES SHALL CONSIDER TEMPORARY FAMILY HEALTH CARE STRUCTURES FOR USE BY A CAREGIVER IN PROVIDING CARE FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON AND ON PROPERTY OWNED OR OCCUPIED BY THE CAREGIVER AS HIS OR HER RESIDENCE AS A PERMITTED ACCESSORY FOR USE IN ANY SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT ON LOTS ZONED FOR SINGLE-FAMILY DETACHED DWELLINGS. SUCH STRUCTURES SHALL NOT REQUIRE A SPECIAL USE PERMIT OR BE SUBJECTED TO ANY OTHER LOCAL REQUIREMENTS BEYOND THOSE IMPOSED UPON OTHER AUTHORIZED ACCESSORY STRUCTURES, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION. SUCH STRUCTURES SHALL COMPLY WITH ALL SETBACK REQUIREMENTS THAT APPLY TO THE PRIMARY STRUCTURE AND WITH ANY MAXIMUM FLOOR AREA RATION LIMITATIONS THAT MAY APPLY TO THE PRIMARY STRUCTURE. ONLY ONE FAMILY HEALTH CARE STRUCTURE SHALL BE ALLOWED ON A LOT OR PARCEL OF LAND.

3. ANY PERSON PROPOSING TO INSTALL A TEMPORARY FAMILY HEALTH CARE STRUCTURE SHALL FIRST OBTAIN A PERMIT FROM THE PLANNING BOARD OR SUCH OTHER ADMINISTRATIVE BODY, FOR WHICH THE LOCALITY MAY CHARGE A UNIFORM FEE OF UP TO ONE HUNDRED DOLLARS. THE LOCALITY MAY NOT WITHHOLD SUCH PERMIT IF THE APPLICANT PROVIDES SUFFICIENT PROOF OF COMPLIANCE WITH THIS SECTION. THE LOCALITY MAY REQUIRE THAT THE APPLICANT PROVIDE EVIDENCE OF COMPLIANCE WITH THIS SECTION ON AN ANNUAL BASIS AS LONG AS THE TEMPORARY FAMILY HEALTH CARE STRUCTURE REMAINS ON THE PROPERTY. SUCH EVIDENCE MAY INVOLVE THE INSPECTION BY THE LOCALITY OF THE TEMPORARY FAMILY HEALTH CARE STRUCTURE AT REASONABLE TIMES CONVENIENT TO THE CAREGIVER, NOT LIMITED TO ANY ANNUAL COMPLIANCE CONFIRMATION.

4. ANY TEMPORARY FAMILY HEALTH CARE STRUCTURE INSTALLED PURSUANT TO THIS SECTION MAY BE REQUIRED TO CONNECT TO ANY WATER, SEWER, AND ELECTRIC UTILITIES THAT ARE SERVING THE PRIMARY RESIDENCE ON THE PROPERTY AND SHALL COMPLY WITH ALL APPLICABLE REQUIREMENTS OF SECTIONS 11-1112 AND 14-1438 OF THIS CHAPTER.

5. NO SIGNAGE ADVERTISING OR OTHERWISE PROMOTING THE EXISTENCE OF THE STRUCTURE SHALL BE PERMITTED EITHER ON THE EXTERIOR OF THE TEMPORARY FAMILY HEALTH CARE STRUCTURE OR ELSEWHERE ON THE PROPERTY.

6. ANY TEMPORARY FAMILY HEALTH CARE STRUCTURE INSTALLED PURSUANT TO THIS SECTION SHALL BE REMOVED WITHIN THIRTY DAYS AFTER THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON IS NO LONGER RECEIVING OR IS NO LONGER IN NEED OF THE ASSISTANCE PROVIDED FOR IN THIS SECTION.

7. THE PLANNING BOARD OR OTHER SUCH ADMINISTRATIVE BODY MAY REVOKE THE PERMIT GRANTED PURSUANT TO SUBDIVISION THREE OF THIS SECTION IF THE

PERMIT HOLDER VIOLATES ANY PROVISION OF THIS SECTION. ADDITIONALLY, THE LOCAL GOVERNING BODY MAY SEEK INJUNCTIVE RELIEF OR OTHER APPROPRIATE ACTIONS OR PROCEEDINGS TO ENSURE COMPLIANCE WITH THIS SECTION. THE PLANNING BOARD OR OTHER SUCH ADMINISTRATIVE BODY IS VESTED WITH ALL NECESSARY AUTHORITY ON BEHALF OF THE GOVERNING BODY OF THE LOCALITY TO ENSURE COMPLIANCE WITH THIS SECTION.

S 3. The general city law is amended by adding a new section 82 to read as follows:

S 82. ZONING PROVISIONS FOR TEMPORARY FAMILY HEALTH CARE STRUCTURES. 1. FOR PURPOSES OF THIS SECTION:

(A) "CAREGIVER" MEANS AN ADULT WHO PROVIDES CARE FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON WITHIN THE STATE. A CAREGIVER SHALL BE EITHER RELATED BY BLOOD, MARRIAGE, OR ADOPTION TO OR THE LEGALLY APPOINTED GUARDIAN OF THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON FOR WHOM HE OR SHE IS CARING.

(B) "PHYSICALLY IMPAIRED PERSON" MEANS A PERSON WHO IS A RESIDENT OF THE STATE AND WHO REQUIRES ASSISTANCE WITH TWO OR MORE ACTIVITIES OF DAILY LIVING AS CERTIFIED IN A STATEMENT OF A PHYSICIAN DULY LICENSED TO PRACTICE MEDICINE.

(C) "MENTALLY DISABLED PERSON" MEANS A PERSON WITH A MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITY, ALCOHOLISM, SUBSTANCE DEPENDENCE, OR CHEMICAL DEPENDENCE AS DEFINED IN SUBDIVISION THREE OF SECTION 1.03 OF THE MENTAL HYGIENE LAW.

(D) "TEMPORARY FAMILY HEALTH CARE STRUCTURE" MEANS A TRANSPORTABLE RESIDENTIAL STRUCTURE, PROVIDING AN ENVIRONMENT FACILITATING A CAREGIVER'S PROVISION OF CARE FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON, THAT (I) IS PRIMARILY ASSEMBLED AT A LOCATION OTHER THAN ITS SITE OF INSTALLATION, (II) IS LIMITED TO ONE OCCUPANT WHO SHALL BE THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON, (III) HAS NO MORE THAN THREE HUNDRED GROSS SQUARE FEET, AND (IV) COMPLIES WITH APPLICABLE PROVISIONS OF SUBDIVISIONS TWENTY-FOUR AND TWENTY-FIVE OF SECTION TWENTY OF THIS CHAPTER. PLACING THE TEMPORARY FAMILY HEALTH CARE STRUCTURE ON A PERMANENT FOUNDATION SHALL NOT BE REQUIRED OR PERMITTED.

2. ZONING ORDINANCES FOR ALL PURPOSES SHALL CONSIDER TEMPORARY FAMILY HEALTH CARE STRUCTURES FOR USE BY A CAREGIVER IN PROVIDING CARE FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON AND ON PROPERTY OWNED OR OCCUPIED BY THE CAREGIVER AS HIS OR HER RESIDENCE AS A PERMITTED ACCESSORY FOR USE IN ANY SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT ON LOTS ZONED FOR SINGLE-FAMILY DETACHED DWELLINGS. SUCH STRUCTURES SHALL NOT REQUIRE A SPECIAL USE PERMIT OR BE SUBJECTED TO ANY OTHER LOCAL REQUIREMENTS BEYOND THOSE IMPOSED UPON OTHER AUTHORIZED ACCESSORY STRUCTURES, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION. SUCH STRUCTURES SHALL COMPLY WITH ALL SETBACK REQUIREMENTS THAT APPLY TO THE PRIMARY STRUCTURE AND WITH ANY MAXIMUM FLOOR AREA RATION LIMITATIONS THAT MAY APPLY TO THE PRIMARY STRUCTURE. ONLY ONE FAMILY HEALTH CARE STRUCTURE SHALL BE ALLOWED ON A LOT OR PARCEL OF LAND.

3. ANY PERSON PROPOSING TO INSTALL A TEMPORARY FAMILY HEALTH CARE STRUCTURE SHALL FIRST OBTAIN A PERMIT FROM THE PLANNING BOARD OR SUCH OTHER ADMINISTRATIVE BODY, FOR WHICH THE LOCALITY MAY CHARGE A UNIFORM FEE OF UP TO ONE HUNDRED DOLLARS. THE LOCALITY MAY NOT WITHHOLD SUCH PERMIT IF THE APPLICANT PROVIDES SUFFICIENT PROOF OF COMPLIANCE WITH THIS SECTION. THE LOCALITY MAY REQUIRE THAT THE APPLICANT PROVIDE EVIDENCE OF COMPLIANCE WITH THIS SECTION ON AN ANNUAL BASIS AS LONG AS THE TEMPORARY FAMILY HEALTH CARE STRUCTURE REMAINS ON THE PROPERTY. SUCH EVIDENCE MAY INVOLVE THE INSPECTION BY THE LOCALITY OF THE TEMPORARY

FAMILY HEALTH CARE STRUCTURE AT REASONABLE TIMES CONVENIENT TO THE CARE-GIVER, NOT LIMITED TO ANY ANNUAL COMPLIANCE CONFIRMATION.

4. ANY TEMPORARY FAMILY HEALTH CARE STRUCTURE INSTALLED PURSUANT TO THIS SECTION MAY BE REQUIRED TO CONNECT TO ANY WATER, SEWER, AND ELECTRIC UTILITIES THAT ARE SERVING THE PRIMARY RESIDENCE ON THE PROPERTY AND SHALL COMPLY WITH ALL APPLICABLE REQUIREMENTS OF SECTIONS TWENTY AND FIFTY-THREE OF THIS CHAPTER.

5. NO SIGNAGE ADVERTISING OR OTHERWISE PROMOTING THE EXISTENCE OF THE STRUCTURE SHALL BE PERMITTED EITHER ON THE EXTERIOR OF THE TEMPORARY FAMILY HEALTH CARE STRUCTURE OR ELSEWHERE ON THE PROPERTY.

6. ANY TEMPORARY FAMILY HEALTH CARE STRUCTURE INSTALLED PURSUANT TO THIS SECTION SHALL BE REMOVED WITHIN THIRTY DAYS AFTER THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON IS NO LONGER RECEIVING OR IS NO LONGER IN NEED OF THE ASSISTANCE PROVIDED FOR IN THIS SECTION.

7. THE PLANNING BOARD OR OTHER SUCH ADMINISTRATIVE BODY MAY REVOKE THE PERMIT GRANTED PURSUANT TO SUBDIVISION THREE OF THIS SECTION IF THE PERMIT HOLDER VIOLATES ANY PROVISION OF THIS SECTION. ADDITIONALLY, THE LOCAL GOVERNING BODY MAY SEEK INJUNCTIVE RELIEF OR OTHER APPROPRIATE ACTIONS OR PROCEEDINGS TO ENSURE COMPLIANCE WITH THIS SECTION. THE PLANNING BOARD OR OTHER SUCH ADMINISTRATIVE BODY IS VESTED WITH ALL NECESSARY AUTHORITY ON BEHALF OF THE GOVERNING BODY OF THE LOCALITY TO ENSURE COMPLIANCE WITH THIS SECTION.

S 4. This act shall take effect immediately.