

4865

2011-2012 Regular Sessions

I N   S E N A T E

April 27, 2011

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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:

- 1     Section 1. The town law is amended by adding a new section 274-c to  
2     read as follows:
- 3     S 274-C. ZONING PROVISIONS FOR TEMPORARY FAMILY HEALTH CARE STRUC-  
4     TURES. 1. FOR PURPOSES OF THIS SECTION:
- 5     (A) "CAREGIVER" MEANS AN ADULT WHO PROVIDES CARE FOR A MENTALLY DISA-  
6     BLED OR PHYSICALLY IMPAIRED PERSON WITHIN THE STATE. A CAREGIVER SHALL  
7     BE EITHER RELATED BY BLOOD, MARRIAGE, OR ADOPTION TO OR THE LEGALLY  
8     APPOINTED GUARDIAN OF THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED  
9     PERSON FOR WHOM HE OR SHE IS CARING.
- 10    (B) "PHYSICALLY IMPAIRED PERSON" MEANS A PERSON WHO IS A RESIDENT OF  
11    THE STATE AND WHO REQUIRES ASSISTANCE WITH TWO OR MORE ACTIVITIES OF  
12    DAILY LIVING AS CERTIFIED IN A STATEMENT OF A PHYSICIAN DULY LICENSED TO  
13    PRACTICE MEDICINE.
- 14    (C) "MENTALLY DISABLED PERSON" MEANS A PERSON WITH A MENTAL ILLNESS,  
15    MENTAL RETARDATION, DEVELOPMENTAL DISABILITY, ALCOHOLISM, SUBSTANCE  
16    DEPENDENCE, OR CHEMICAL DEPENDENCE AS DEFINED IN SUBDIVISION THREE OF  
17    SECTION 1.03 OF THE MENTAL HYGIENE LAW.
- 18    (D) "TEMPORARY FAMILY HEALTH CARE STRUCTURE" MEANS A TRANSPORTABLE  
19    RESIDENTIAL STRUCTURE, PROVIDING AN ENVIRONMENT FACILITATING A  
20    CAREGIVER'S PROVISION OF CARE FOR A MENTALLY DISABLED OR PHYSICALLY  
21    IMPAIRED PERSON, THAT (I) IS PRIMARILY ASSEMBLED AT A LOCATION OTHER  
22    THAN ITS SITE OF INSTALLATION, (II) IS LIMITED TO ONE OCCUPANT WHO SHALL  
23    BE THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON, (III) HAS NO  
24    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.

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

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

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

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

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

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

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

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

55 7. THE PLANNING BOARD OR OTHER SUCH ADMINISTRATIVE BODY MAY REVOKE THE  
56 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

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

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

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

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

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

23 S 4. This act shall take effect immediately.