

6274

I N   S E N A T E

January 19, 2012

---

Introduced by Sens. MONTGOMERY, GRISANTI -- read twice and ordered printed, and when printed to be committed to the Committee on Aging

AN ACT to amend the public health law, in relation to requiring a registered nurse on staff at facilities certified for enhanced assisted living or special needs assisted living

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

- 1     Section 1. Section 4655 of the public health law, as added by chapter  
2     2 of the laws of 2004, is amended to read as follows:  
3     S 4655. Certification procedures and requirements. 1. Notwithstanding  
4     any other provision of law, an assisted living operator may apply to the  
5     department to obtain an enhanced assisted living certificate pursuant to  
6     this section.  
7     (a) Such application shall be on a form approved by the department.  
8     (b) An assisted living operator may apply for such a certificate for  
9     the entire facility or any number of beds at the facility.  
10    (c) To obtain an enhanced assisted living certificate, the applicant  
11    must submit a plan to the department setting forth how the additional  
12    needs of residents will be safely and appropriately met at such resi-  
13    dence. Such plan shall include, but need not be limited to, a written  
14    description of services, staffing levels, staff education and training,  
15    work experience, and any environmental modifications that have been made  
16    or will be made to protect the health, safety and welfare of such  
17    persons in the residence. *THE PLAN SHALL DESCRIBE HOW THE FACILITY WILL*  
18    *MEET THE REGISTERED NURSE STAFFING REQUIREMENT.*  
19    (d) In addition to any other requirements of assisted living, an oper-  
20    ator of enhanced assisted living may hire care staff directly pursuant  
21    to standards developed by the department or contract with a home care  
22    services agency which has been approved to operate pursuant to article  
23    thirty-six of this chapter.  
24    (e) No assisted living residence shall be certified as enhanced  
25    assisted living unless and until the applicant obtains the written  
26    approval of the department.

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

LBD13782-01-2

1 (F) (I) TO OBTAIN OR RENEW AN ENHANCED ASSISTED LIVING CERTIFICATE,  
2 THE APPLICANT SHALL BE REQUIRED TO HAVE A STAFF MEMBER ONSITE TO ASSESS  
3 AND MONITOR THE CONDITION OF RESIDENTS. AT A MINIMUM, THIS INDIVIDUAL  
4 SHALL BE A REGISTERED NURSE.

5 (II) THE REGISTERED NURSE SHALL BE AT THE FACILITY A MINIMUM OF ONE  
6 SHIFT PER DAY, FIVE DAYS PER WEEK. THE PRINCIPAL DUTIES OF THE REGIS-  
7 TERED NURSE SHALL BE COORDINATING RESIDENT CARE, PROVIDING ONGOING RESI-  
8 DENT ASSESSMENT AND MONITORING, AND ENSURING THAT ALL RESIDENTS ARE  
9 RECEIVING APPROPRIATE CARE.

10 (III) FACILITIES WITH RESIDENT POPULATIONS THAT DO NOT NECESSITATE THE  
11 MONITORING OR OVERSIGHT SERVICES OF A REGISTERED NURSE ON A FULL TIME  
12 BASIS MAY ALSO EMPLOY THE REGISTERED NURSE IN AN ADMINISTRATIVE OR OTHER  
13 CAPACITY, AS APPROPRIATE FOR THE FACILITY. FACILITIES CHOOSING THIS  
14 OPTION MUST DEMONSTRATE THAT RESIDENTS ARE RECEIVING ADEQUATE ASSESSMENT  
15 AND MONITORING.

16 (IV) EXISTING ENHANCED ASSISTED LIVING RESIDENCES SHALL BE REQUIRED TO  
17 FURNISH PROOF OF COMPLIANCE WITH THIS PARAGRAPH NO LATER THAN EIGHTEEN  
18 MONTHS AFTER THIS PARAGRAPH SHALL HAVE BECOME A LAW.

19 2. No resident shall be permitted to continue to age in place under  
20 the terms of an enhanced assisted living certificate unless the opera-  
21 tor, the resident's physician, THE FACILITY'S STAFF REGISTERED NURSE,  
22 and, if applicable, the resident's licensed or certified home care agen-  
23 cy, agree that the additional needs of the resident can be safely and  
24 appropriately met at the residence. A resident eligible for enhanced  
25 assisted living or his or her representative shall submit to the resi-  
26 dence a written report from a physician, which report shall state that:

27 (a) the physician has physically examined the resident within the last  
28 month; and

29 (b) the resident is not in need of twenty-four hour skilled nursing  
30 care or medical care which would require placement in a hospital or  
31 residential health care facility.

32 3. The residence must notify a resident that, while the residence will  
33 make reasonable efforts to facilitate the resident's ability to age in  
34 place pursuant to an individualized service plan, there may be a point  
35 reached where the needs of the resident cannot be safely or appropriate-  
36 ly met at the residence, requiring the transfer of the resident to a  
37 more appropriate facility in accordance with the provisions of this  
38 article.

39 4. If a resident reaches the point where he or she is in need of twen-  
40 ty-four hour skilled nursing care or medical care required to be  
41 provided by facilities licensed pursuant to article twenty-eight of this  
42 chapter or article nineteen, thirty-one or thirty-two of the mental  
43 hygiene law, AS DETERMINED BY THE PATIENT'S PHYSICIAN OR THE FACILITY'S  
44 STAFF RESIDENT NURSE, then the resident must be discharged from the  
45 residence and the operator shall initiate proceedings for the termi-  
46 nation of the residency agreement of such resident in accordance with  
47 the provisions of section four hundred sixty-one-h of the social  
48 services law. Provided, however, a resident may remain at the residence  
49 if each of the following conditions are met:

50 (a) a resident in need of twenty-four hour skilled nursing care or  
51 medical care hires appropriate nursing, medical or hospice staff to care  
52 for his or her increased needs;

53 (b) the resident's physician [and], home care services agency [both]  
54 AND THE FACILITY'S STAFF REGISTERED NURSE ALL determine and document  
55 that, with the provision of such additional nursing, medical or hospice  
56 care, the resident can be safely cared for in the residence, and would

1 not require placement in a hospital, nursing home or other facility  
2 licensed under article twenty-eight of this chapter or article nineteen,  
3 thirty-one or thirty-two of the mental hygiene law;

4 (c) the operator agrees to retain the resident and to coordinate the  
5 care provided by the operator and the additional nursing, medical or  
6 hospice staff; and

7 (d) the resident is otherwise eligible to reside at the residence.

8 5. In addition to the requirements otherwise required for licensure as  
9 assisted living, any residence that advertises or markets itself as  
10 serving individuals with special needs, including, but not limited to,  
11 individuals with dementia or cognitive impairments, must submit a  
12 special needs plan to the department setting forth how the special needs  
13 of such residents will be safely and appropriately met at such resi-  
14 dence. Such plan shall include, but need not be limited to, a written  
15 description of specialized services, staffing levels, staff education  
16 and training, work experience, professional affiliations or special  
17 characteristics relevant to serving persons with special needs, and any  
18 environmental modifications that have been made or will be made to  
19 protect the health, safety and welfare of such persons in the residence.  
20 In approving an application for special needs certification, the depart-  
21 ment shall develop standards to ensure adequate staffing and training in  
22 order to safely meet the needs of the resident. The standards shall be  
23 based upon recommendations of the task force established by section five  
24 of the chapter of the laws of two thousand four which added this  
25 section. IN ADDITION TO ANY OTHER STANDARDS WHICH THE DEPARTMENT MAY  
26 DEVELOP, APPLICANTS FOR SPECIAL NEEDS ASSISTED LIVING CERTIFICATES SHALL  
27 BE SUBJECT TO THE SAME REGISTERED NURSE STAFFING REQUIREMENTS DETAILED  
28 IN PARAGRAPHS (C) AND (F) OF SUBDIVISION ONE OF THIS SECTION. No resi-  
29 dence shall market [themselves] ITSELF as providing specialized services  
30 unless and until the department has approved such applicant for a  
31 special needs assisted living certificate. EXISTING SPECIAL NEEDS  
32 ASSISTED LIVING RESIDENCES SHALL BE REQUIRED TO FURNISH PROOF OF COMPLI-  
33 ANCE WITH THE NEW STAFFING REQUIREMENTS NO LATER THAN EIGHTEEN MONTHS  
34 AFTER THIS SENTENCE SHALL HAVE BECOME A LAW.

35 6. An enhanced assisted living certificate shall not be required of an  
36 adult care facility, or part thereof, which has obtained approval by the  
37 department to operate an assisted living program pursuant to section  
38 four hundred sixty-one-1 of the social services law. Provided, however,  
39 such exemption shall only apply to those beds at the facility which are  
40 subject to the assisted living program.

41 S 2. This act shall take effect on the ninetieth day after it shall  
42 have become a law; provided that any rules and regulations, and any  
43 other actions necessary to implement the provisions of this act on its  
44 effective date are authorized and directed to be completed on or before  
45 such date.