

7387

I N S E N A T E

May 2, 2012

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to directing the commissioner of health to establish demonstration projects authorizing equity investment in the operation of residential health care facilities

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

1 Section 1. Section 2801-a of the public health law is amended by
2 adding a new subdivision 17 to read as follows:
3 17. (A) THE COMMISSIONER SHALL ON OR BEFORE DECEMBER THIRTY-FIRST, TWO
4 THOUSAND TWELVE, ESTABLISH UP TO TWO DEMONSTRATION PROJECTS TO DEVELOP,
5 EVALUATE AND IMPLEMENT AN INNOVATIVE APPROACH TO ENCOURAGING EQUITY
6 INVESTORS TO PROVIDE NEEDED FINANCIAL RESOURCES FOR AND HOLD AN EQUITY
7 INTEREST AS OPERATORS OF RESIDENTIAL HEALTH CARE FACILITIES. ONE PROJECT
8 SHALL BE IN THE UPSTATE REGION OF THE STATE. THE OTHER DEMONSTRATION
9 PROJECT SHALL BE IN A DOWNSTATE REGION IN THE STATE. IN ANTICIPATION OF
10 THE FINANCIAL IMPACT ON RESIDENTIAL HEALTH CARE FACILITIES FROM THE
11 STATE'S EXPANSION OF MANDATORY MANAGED CARE TO LONG TERM CARE SERVICES,
12 THE DEMONSTRATIONS SHALL BE DESIGNED TO PROMOTE THE DEVELOPMENT OF NEW
13 SOURCES OF CAPITAL FOR THE OPERATION OF RESIDENTIAL HEALTH CARE FACILI-
14 TIES, AND TO MEASURE THE ABILITY OF SUCH INVESTMENT TO POSITIVELY IMPACT
15 FACILITIES IN TERMS OF CAPITAL IMPROVEMENTS, INVESTMENT IN NEW TECHNOLO-
16 GY, AND IMPROVEMENT TO THE QUALITY OF CARE AND QUALITY OF LIFE FOR
17 FACILITY RESIDENTS MEASURED BY BROADLY ACCEPTED INDUSTRY METRICS INCLUD-
18 ING, BUT NOT LIMITED TO, THOSE RELATED TO REDUCTION IN RATES OF REHOSPI-
19 TALIZATION, MDS QUALITY INDICATORS, END OF LIFE CARE, MEDICAL ORDERS FOR
20 LIFE-SUSTAINING TREATMENT AND NURSING FACILITY "CULTURE CHANGE" INITI-
21 ATIVES. THE FACILITIES PARTICIPATING IN THE DEMONSTRATIONS AND THE
22 COMMISSIONER SHALL MUTUALLY DEVELOP THE APPROPRIATE METRICS TO MEASURE
23 SUCH IMPACT WHICH SHALL SERVE AS THE BASIS FOR THE REPORT TO THE GOVER-
24 NOR AND THE LEGISLATURE REQUIRED BY PARAGRAPH (H) OF THIS SUBDIVISION.
25 (B) FOR PURPOSES OF SUCH DEMONSTRATIONS, THE COMMISSIONER MAY APPROVE
26 DEMONSTRATION PROJECTS EACH INVOLVING THE PURCHASE OF UP TO FIFTEEN

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

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1 EXISTING RESIDENTIAL HEALTH CARE FACILITIES WHICH HAVE HISTORIES OF
2 PROVIDING HIGH QUALITY CARE TO RESIDENTS.

3 (C) THE EQUITY INVESTOR SHALL PARTICIPATE IN EACH FACILITY THROUGH THE
4 CREATION OF LIMITED LIABILITY COMPANIES ESTABLISHED TO OPERATE THE RESI-
5 DENTIAL HEALTH CARE FACILITIES.

6 (D) THE RESIDENTIAL HEALTH CARE FACILITIES MAY BE OPERATED BY LIMITED
7 LIABILITY COMPANIES FORMED PURSUANT TO THE LIMITED LIABILITY COMPANY
8 LAW, WHOSE MEMBERS ARE NOT NATURAL PERSONS SO LONG AS AT LEAST ONE
9 MEMBER OF SUCH LIMITED LIABILITY COMPANIES IS A NATURAL PERSON OF SUFFI-
10 CIENT EXPERIENCE AND EXPERTISE IN DELIVERING HIGH QUALITY NURSING AND
11 HEALTH RELATED CARE TO WHOM THE EQUITY INVESTOR HAS DELEGATED, TO THE
12 SATISFACTION OF THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL, RESPONSI-
13 BILITY FOR THE DAY TO DAY MANAGEMENT AND OPERATION OF THE FACILITY.

14 (E) THE PROVISIONS OF PARAGRAPH (B) OF SUBDIVISION THREE AND PARAGRAPH
15 (C) OF SUBDIVISION FOUR OF THIS SECTION SHALL NOT APPLY TO THE EQUITY
16 INVESTOR OR ITS OWNERS; PROVIDED, HOWEVER, THAT THE PUBLIC HEALTH AND
17 HEALTH PLANNING COUNCIL MAY REQUIRE COMMERCIALLY REASONABLE DISCLOSURE
18 OF THE IDENTITY OF LIMITED LIABILITY COMPANY MEMBERS, PROVIDED THAT THE
19 NUMBER OF INVESTORS IS NOT GREATER THAN THIRTY-FIVE.

20 (F) THE PROVISIONS OF PARAGRAPHS (E) AND (F) OF SUBDIVISION FOUR OF
21 THIS SECTION SHALL NOT APPLY TO RESIDENTIAL HEALTH FACILITIES OPERATED
22 PURSUANT TO THIS SUBDIVISION. NOTHING IN THIS SECTION SHALL PROHIBIT A
23 LIMITED LIABILITY COMPANY FROM BEING THE SOLE MEMBER OF THE LIMITED
24 LIABILITY COMPANIES REFERRED TO IN PARAGRAPH (C) AND (D) OF THIS SUBDI-
25 VISION PROVIDED THAT THE FORMER LIMITED LIABILITY COMPANY OR AT LEAST
26 ONE OF ITS MEMBERS CONFORMS TO THE REQUIREMENTS OF SUCH PARAGRAPHS.

27 (G) RESIDENTIAL HEALTH CARE FACILITIES PARTICIPATING IN THIS DEMON-
28 STRATION PROGRAM SHALL BE SUBJECT TO ALL OPERATING STANDARDS AS SET
29 FORTH IN THIS ARTICLE AND THE REGULATIONS PROMULGATED PURSUANT THERETO
30 AND SHALL BE SUBJECT TO ANY PROVISIONS OF THIS CHAPTER FOR FAILURE TO
31 COMPLY WITH SUCH STANDARDS. ADDITIONALLY FACILITIES IN THIS DEMON-
32 STRATION PROGRAM SHALL COMPLY WITH ALL DEPARTMENT REGULATIONS PERTAINING
33 TO ADMISSIONS OF MEDICAID PATIENTS.

34 (H) NO LATER THAN TWO YEARS AFTER THE FIRST FACILITY COMMENCES OPERA-
35 TION PURSUANT TO THIS DEMONSTRATION PROGRAM, THE COMMISSIONER SHALL
36 PROVIDE THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE
37 SPEAKER OF THE ASSEMBLY WITH A WRITTEN EVALUATION OF THE DEMONSTRATION
38 PROGRAMS. SUCH EVALUATION SHALL ADDRESS THE OVERALL EFFECTIVENESS OF
39 THE PROGRAM IN PROVIDING ACCESS TO CAPITAL INVESTMENT BY RESIDENTIAL
40 HEALTH CARE FACILITIES AND EVALUATE THE IMPACT PRIVATE EQUITY INVESTMENT
41 HAS ON THE QUALITY OF CARE AS EVIDENCED BY STAFF RETENTION AND QUALITY
42 INDICATORS, AND ACCESS TO CARE FOR VARIOUS RESIDENT POPULATIONS.

43 (I) RESIDENTIAL HEALTH CARE FACILITIES PARTICIPATING IN THIS DEMON-
44 STRATION PROGRAM SHALL SUBMIT SUCH QUALITY REPORTS AS SHALL BE REQUIRED
45 AND DIRECTED BY THE COMMISSIONER, INCLUDING INFORMATION ON PATIENT CARE
46 QUALITY INDICATORS, STAFFING LEVELS AND PATTERNS AND ACCESS TO CARE FOR
47 VARIOUS PATIENT POPULATIONS.

48 S 2. This act shall take effect on the sixtieth day after it shall
49 have become a law; provided, however, that effective immediately, the
50 addition, amendment and/or repeal of any rule or regulation necessary
51 for the implementation of this act on its effective date are authorized
52 and directed to be made and completed on or before such effective date.