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

10765

I N A S S E M B L Y

June 18, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Peoples-Stokes) -- read once and referred 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:

Section 1. Section 2801-a of the public health law is amended by adding a new subdivision 17 to read as follows:

17. (A) THE COMMISSIONER SHALL ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND TWELVE, ESTABLISH UP TO TWO DEMONSTRATION PROJECTS TO DEVELOP, EVALUATE AND IMPLEMENT AN INNOVATIVE APPROACH TO ENCOURAGING EQUITY INVESTORS TO PROVIDE NEEDED FINANCIAL RESOURCES FOR AND HOLD AN EQUITY INTEREST AS OPERATORS OF RESIDENTIAL HEALTH CARE FACILITIES. ONE PROJECT SHALL BE IN THE UPSTATE REGION OF THE STATE. THE OTHER DEMONSTRATION PROJECT SHALL BE IN A DOWNSTATE REGION IN THE STATE. IN ANTICIPATION OF THE FINANCIAL IMPACT ON RESIDENTIAL HEALTH CARE FACILITIES FROM THE STATE'S EXPANSION OF MANDATORY MANAGED CARE TO LONG TERM CARE SERVICES, THE DEMONSTRATIONS SHALL BE DESIGNED TO PROMOTE THE DEVELOPMENT OF NEW SOURCES OF CAPITAL FOR THE OPERATION OF RESIDENTIAL HEALTH CARE FACILITIES, AND TO MEASURE THE ABILITY OF SUCH INVESTMENT TO POSITIVELY IMPACT FACILITIES IN TERMS OF CAPITAL IMPROVEMENTS, INVESTMENT IN NEW TECHNOLOGY, AND IMPROVEMENT TO THE QUALITY OF CARE AND QUALITY OF LIFE FOR FACILITY RESIDENTS MEASURED BY BROADLY ACCEPTED INDUSTRY METRICS INCLUDING, BUT NOT LIMITED TO, THOSE RELATED TO REDUCTION IN RATES OF REHOSPITALIZATON, MDS QUALITY INDICATORS, END OF LIFE CARE, MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT AND NURSING FACILITY "CULTURE CHANGE" INITIATIVES. THE FACILITIES PARTICIPATING IN THE DEMONSTRATIONS AND THE COMMISSIONER SHALL MUTUALLY DEVELOP THE APPROPRIATE METRICS TO MEASURE SUCH IMPACT WHICH SHALL SERVE AS THE BASIS FOR THE REPORT TO THE GOVERNOR AND THE LEGISLATURE REQUIRED BY PARAGRAPH (H) OF THIS SUBDIVISION.

(B) FOR PURPOSES OF SUCH DEMONSTRATIONS, THE COMMISSIONER MAY APPROVE 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.

LBD15664-03-2

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

(C) THE EQUITY INVESTOR SHALL PARTICIPATE IN EACH FACILITY THROUGH THE CREATION OF LIMITED LIABILITY COMPANIES ESTABLISHED TO OPERATE THE RESIDENTIAL HEALTH CARE FACILITIES.

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

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

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

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

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

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

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