

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GOTTFRIED, CLARK, DINOWITZ, ORTIZ, TITUS, ENGLE-
BRIGHT, PAULIN -- Multi-Sponsored by -- M. of A. AUBRY, BRENNAN,
CAHILL, COLTON, GUNTHER, HOOPER, JACOBS, JAFFEE, LIFTON, McENENY,
PHEFFER, P. RIVERA, ROBINSON, SWEENEY, TOWNS, WEISENBERG, WRIGHT --
read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to establishing the
nursing home diversion program

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

1 Section 1. Legislative findings and intent. The legislature finds that
2 in many New York state nursing homes, residents are not getting adequate
3 or proper care.
4 Adequate direct nursing care is especially important to the health and
5 safety of nursing home residents. A recent congressionally-mandated
6 study by centers for medicare and medicaid services concluded that if
7 nursing home residents receive less than three hours a day per resident
8 of direct nursing care, they are "substantially at risk of quality prob-
9 lems."
10 If a nursing home is not providing its residents adequate and proper
11 food, bedding, heating, cooling, or nursing care, it is dangerous to
12 place additional residents in that nursing home.
13 Therefore, the legislature establishes the nursing home diversion
14 program, to provide that in the event that a nursing home is not provid-
15 ing its residents adequate and proper food, bedding, heating, cooling,
16 or nursing care, it shall not admit new residents until it provides
17 adequate and proper care.
18 S 2. The public health law is amended by adding a new section 2807-z
19 to read as follows:

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

LBD02352-01-1

1 S 2807-Z. NURSING HOME DIVERSION. 1. DEFINITIONS. AS USED IN THIS
2 SECTION, UNLESS THE CONTEXT CLEARLY REQUIRES OTHERWISE, THE FOLLOWING
3 TERMS HAVE THE FOLLOWING MEANINGS:

4 (A) "BASIC STANDARD OF CARE" MEANS ANY OF THE STANDARDS OF CARE SET
5 OUT IN SUBDIVISION FIVE OF THIS SECTION.

6 (B) "ON DIVERSION" MEANS THE STATE OF BEING SUBJECT TO NURSING HOME
7 DIVERSION AND REQUIRED TO SUSPEND ADMISSIONS UNDER THIS SECTION.

8 2. WHEN TO PLACE ON DIVERSION. (A) WHEREVER A NURSING HOME HAS NOT
9 BEEN PROVIDING ONE OF THE BASIC STANDARDS OF CARE FOR A PERIOD OF AT
10 LEAST FORTY-EIGHT CONSECUTIVE HOURS, IT SHALL IMMEDIATELY BE SUBJECT TO
11 NURSING HOME DIVERSION AND SHALL IMMEDIATELY NOTIFY THE DEPARTMENT OF
12 THAT FACT AND THE REASONS FOR IT.

13 (B) WHENEVER THE DEPARTMENT DETERMINES THAT A NURSING HOME HAS NOT
14 BEEN PROVIDING ONE OF THE BASIC STANDARDS OF CARE FOR A PERIOD OF AT
15 LEAST FORTY-EIGHT CONSECUTIVE HOURS, THE NURSING HOME SHALL IMMEDIATELY
16 BE SUBJECT TO NURSING HOME DIVERSION AND THE DEPARTMENT SHALL IMMEDIATE-
17 LY NOTIFY THE NURSING HOME OF THAT FACT AND THE REASONS FOR IT.

18 3. DIVERSION; CONSEQUENCES. (A) WHEN A NURSING HOME IS ON DIVERSION,
19 IT SHALL NOT ADMIT ANY ADDITIONAL PERSONS AS A RESIDENT OF THE NURSING
20 HOME. HOWEVER, A PERSON WHO HAS BEEN A RESIDENT OF THE NURSING HOME BUT
21 HAS BEEN TEMPORARILY ABSENT FROM THE NURSING HOME MAY BE RE-ADMITTED TO
22 THE NURSING HOME EVEN WHEN IT IS ON DIVERSION.

23 (B) THE DEPARTMENT SHALL IMMEDIATELY NOTIFY APPROPRIATE HOSPITALS AND
24 NURSING HOMES THAT THE NURSING HOME IS ON DIVERSION, AND SHALL PLACE A
25 NOTICE ON ITS WEBSITE THAT THE NURSING HOME IS ON DIVERSION. WHILE A
26 NURSING HOME IS ON DIVERSION, IT SHALL NOTIFY ANY PERSON OR REPRESENTATIVE
27 OF A PERSON WHO APPLIES FOR ADMISSION THAT IT IS ON DIVERSION,
28 AND SHALL PLACE A CONSPICUOUS, EASILY-READABLE NOTICE THAT IT IS ON
29 DIVERSION WHERE IT WILL BE READILY SEEN BY RESIDENTS OF THE NURSING
30 HOME.

31 4. TERMINATION OF DIVERSION. (A) A NURSING HOME ON DIVERSION SHALL
32 REMAIN ON DIVERSION UNTIL IT HAS RESUMED PROVIDING ALL BASIC STANDARDS
33 OF CARE FOR AT LEAST SIX CONSECUTIVE DAYS, AT WHICH TIME IT MAY NOTIFY
34 THE DEPARTMENT THAT IT IS COMPLYING WITH THIS SUBDIVISION AND IS NO
35 LONGER ON DIVERSION. THE NURSING HOME MAY THEN RESUME ADMITTING RESI-
36 DENTS.

37 (B) THE DEPARTMENT SHALL THEN IMMEDIATELY SO NOTIFY EVERY ENTITY IT
38 HAD NOTIFIED THAT THE NURSING HOME WAS ON DIVERSION AND DELETE THE
39 NOTICE FROM THE DEPARTMENT'S WEBSITE. THE NURSING HOME SHALL REMOVE THE
40 NOTICE IT HAD POSTED THAT IT WAS ON DIVERSION.

41 5. BASIC STANDARDS OF CARE. THE BASIC STANDARDS OF CARE FOR PURPOSES
42 OF THIS SECTION ARE THE FOLLOWING, INCLUDING COMPLIANCE WITH DEPARTMENT
43 REGULATIONS RELATING TO THE FOLLOWING:

44 (A) ADEQUATE QUANTITY AND QUALITY OF FOOD FOR EACH RESIDENT.

45 (B) ONE BED FOR EACH RESIDENT, WITH APPROPRIATE BEDDING.

46 (C) ADEQUATE HEATING AND COOLING OF ALL PARTS OF THE NURSING HOME.

47 (D) ADEQUATE DIRECT CARE NURSING STAFF. THIS MEANS, FOR EACH DAY, AN
48 AVERAGE OF AT LEAST THREE HOURS OF DIRECT NURSING CARE PER RESIDENT,
49 INCLUDING AT LEAST ONE HOUR OF CARE BY A REGISTERED NURSE OR A LICENSED
50 PRACTICAL NURSE, OF WHICH AT LEAST THIRTY MINUTES SHALL BE CARE BY A
51 REGISTERED NURSE.

52 6. COMPLIANCE. THE DEPARTMENT SHALL MONITOR COMPLIANCE WITH THIS
53 SECTION THROUGH AUDITS, INSPECTIONS, REQUIRED REPORTING BY NURSING
54 HOMES, AND OTHER APPROPRIATE MEANS.

55 S 3. This act shall take effect on the one hundred eightieth day after
56 it shall have become a law, provided, however, that effective immediate-

1 ly, the addition, amendment and/or repeal of any rule or regulation
2 necessary for the implementation of this act on its effective date is
3 authorized and directed to be made and completed by the department of
4 health on or before such effective date.