

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GOTTFRIED, DINOWITZ -- Multi-Sponsored by -- M.
of A. PHEFFER -- read once and referred to the Committee on Health

AN ACT to amend the social services law, the mental hygiene law and
chapter 462 of the laws of 1996, relating to establishing a quality
incentive payment program for adult homes, in relation to violations
of safety conditions in adult care facilities

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

1 Section 1. Subdivision 7 of section 460-d of the social services law
2 is amended by adding a new paragraph (e) to read as follows:
3 (E) RECTIFICATION SHALL NOT PRECLUDE THE ASSESSMENT OF A PENALTY IF
4 THE DEPARTMENT ESTABLISHES THAT A VIOLATION, ALTHOUGH CORRECTED, WAS A
5 VIOLATION IN THE SAME AREA OF OPERATION AS A VIOLATION CITED BY THE
6 DEPARTMENT AT THE PREVIOUS FACILITY INSPECTION.
7 S 2. Paragraph (b) of subdivision 4 of section 460-d of the social
8 services law, as amended by chapter 733 of the laws of 1994, is amended
9 to read as follows:
10 (b) No operating certificate shall be revoked, suspended or limited
11 without a hearing held in accordance with procedures established by
12 department regulations, which procedures shall require that notice of
13 the time and place of the hearing, and notice of the charges, shall be
14 served in person or by certified mail addressed to the facility at least
15 thirty days prior to the date of the hearing. A written answer to the
16 charges may be filed with the department not less than ten business days
17 prior to the date of the hearing. An operating certificate may, never-
18 theless, be suspended or limited without a hearing for a period not in
19 excess of sixty days, upon written notice to the facility following a
20 finding by the department that the public health, or an individual's
21 health, safety or welfare, are in imminent danger; PROVIDED, HOWEVER,
22 THAT IF THE DEPARTMENT MAKES REASONABLE EFFORTS TO COMMENCE A HEARING
23 WITHIN SUCH SIXTY DAY PERIOD AND TO COMPLETE SUCH HEARING WITHIN A
24 REASONABLE PERIOD OF TIME, THE HEARING OFFICER MAY AUTHORIZE THE DEPART-
25 MENT TO EXTEND THE PERIOD OF SUSPENSION OR LIMITATION FOR AN APPROPRIATE

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

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1 PERIOD OF TIME, BUT IN NO EVENT BEYOND THE DATE WHEN THE HEARING IS
2 COMPLETED AND AVAILABLE ADMINISTRATIVE APPEALS ARE EXHAUSTED.

3 S 3. Subdivision 11 of section 460-d of the social services law, as
4 amended by section 42 of part B of chapter 58 of the laws of 2004, is
5 amended to read as follows:

6 11. On or before issuance by the department to an adult care facility
7 operator of official written notice of: the proposed revocation, suspen-
8 sion or denial of the operator's operating certificate; the limitation
9 of the operating certificate with respect to new admissions; the issu-
10 ance of a department order or commissioner's order; the seeking of equi-
11 table relief pursuant to this section; the proposed assessment of civil
12 penalties for violations of the provisions of subparagraph two of para-
13 graph (b) of subdivision seven of this section or placement on the "do
14 not refer list" pursuant to subdivision fifteen of this section, written
15 notice also shall be given to the appropriate office of the department
16 of mental hygiene, department of correctional services, state division
17 of parole and local social services districts, and provided further that
18 the department of health shall notify hospitals, RESIDENTIAL HEALTH CARE
19 FACILITIES AND ADULT CARE FACILITIES in the locality in which such
20 facility is located that such notice has been issued. Upon resolution of
21 such enforcement action the department shall notify the appropriate
22 office of the department of mental hygiene, department of correctional
23 services, state division of parole, local social services districts
24 [and], hospitals, RESIDENTIAL HEALTH CARE FACILITIES AND ADULT CARE
25 FACILITIES.

26 S 4. Subdivision 12 of section 460-d of the social services law, as
27 amended by section 42 of part B of chapter 58 of the laws of 2004, is
28 amended to read as follows:

29 12. [Social] HOSPITALS, RESIDENTIAL HEALTH CARE FACILITIES, ADULT CARE
30 FACILITIES, SOCIAL services districts and other local government enti-
31 ties established pursuant to this chapter shall be prohibited from
32 making referrals for admissions to adult care facilities that have
33 received official written notice regarding: the proposed revocation,
34 suspension or denial of the operator's operating certificate; the limi-
35 tation of the operating certificate with respect to new admissions; the
36 issuance of department order or commissioner's orders; the seeking of
37 equitable relief pursuant to this section; the proposed assessment of
38 civil penalties for violations of the provisions of subparagraph two of
39 paragraph (b) of subdivision seven of this section; or the facility's
40 placement on the "do not refer list" pursuant to subdivision fifteen of
41 this section.

42 S 5. Section 460-d of the social services law is amended by adding a
43 new subdivision 17 to read as follows:

44 17. WHEN THE DEPARTMENT OF HEALTH ISSUES OFFICIAL WRITTEN NOTICE TO AN
45 OPERATOR OF A PROPOSED ACTION SPECIFIED IN SUBDIVISION ELEVEN OF THIS
46 SECTION, AND THE DEPARTMENT DETERMINES THAT THERE IS A CONDITION WHICH
47 CONSTITUTES AN IMMINENT DANGER TO THE HEALTH, SAFETY OR WELFARE OF ANY
48 RESIDENT, THE DEPARTMENT MAY PROHIBIT THAT OPERATOR FROM ADMITTING ANY
49 NEW RESIDENT TO THE FACILITY UNTIL THE DEPARTMENT DETERMINES THAT THERE
50 IS NO LONGER AN IMMINENT DANGER TO THE HEALTH, SAFETY OR WELFARE OF ANY
51 RESIDENT.

52 S 6. The closing paragraph of subdivision 3 of section 461-d of the
53 social services law, as added by chapter 601 of the laws of 1981, is
54 amended to read as follows:

55 Waiver of any provision [contained within] OF this subdivision by a
56 resident of an adult care facility OR BY THE RESIDENT'S LEGAL REPRESENTATIVE

1 TATIVE OR RESIDENT REPRESENTATIVE, WITH RESPECT TO A RESIDENT OF AN
2 ADULT HOME, RESIDENCE FOR ADULTS OR ENRICHED HOUSING PROGRAM, shall be
3 void.

4 S 7. Paragraphs (a) and (b) of subdivision 2 of section 461-a of the
5 social services law, paragraph (a) as amended by chapter 735 of the laws
6 of 1994 and paragraph (b) as amended by chapter 601 of the laws of 1981,
7 are amended to read as follows:

8 (a) With respect to adult care facilities the department shall conduct
9 a minimum of one unannounced inspection of each such facility to deter-
10 mine the adequacy of care being rendered, pursuant to the following:

11 (1) Such facilities [receiving the department's highest rating] DETER-
12 MINED BY THE DEPARTMENT TO BE IN COMPLIANCE OR SUBSTANTIAL COMPLIANCE
13 WITH APPLICABLE STATUTES AND REGULATIONS, BASED ON THE FACILITY'S MOST
14 RECENT INSPECTION, shall be inspected at least once every eighteen
15 months on an unannounced basis.

16 (2) All other such facilities shall be inspected on an unannounced
17 basis no less than annually. The commissioner may provide for more
18 frequent inspections of any such facilities. Such inspection shall not
19 be required with respect to any facility for which the commissioner has
20 delegated responsibility for inspection and supervision to a social
21 services official pursuant to section four hundred sixty-c of this
22 [chapter] ARTICLE. Any employee of the department or a social services
23 district who gives or causes to be given advance notice of such unan-
24 nounced inspections to any unauthorized persons shall, in addition to
25 any other penalty provided by law, be suspended by the department or the
26 social services district from all duties without pay for at least five
27 days or for such greater period of time as the department or social
28 services district shall determine. Any such suspension shall be made by
29 the department or social services district in accordance with all other
30 applicable provisions of law.

31 (b) [The department or a social services district, where appropriate,
32 shall each year conduct a minimum of one full inspection of each adult
33 care facility. Such inspection] AN INSPECTION OF AN ADULT CARE FACILITY
34 UNDER THIS SECTION shall include, but shall not be limited to, examina-
35 tion of the medical, dietary and social services records of the facility
36 as well as the minimum standards of construction, life safety standards,
37 quality and adequacy of care, rights of residents, payments and all
38 other areas of operation. The purpose of any inspection shall be to
39 determine compliance with requirements of applicable provisions of law
40 and regulations of the department.

41 S 8. Paragraph (c) of subdivision 2 of section 461-a of the social
42 services law, as amended by chapter 735 of the laws of 1994, is amended
43 to read as follows:

44 (c) (I) An inspection report shall be made of each inspection which
45 shall clearly identify and indicate in detail each area of operation,
46 including, but not limited to, the premises, equipment, personnel, resi-
47 dent care and services, and whether [each] ANY such area of operation or
48 any of its component parts is [or is] not in compliance with the regu-
49 lations of the department and all other applicable requirements. It also
50 shall identify those areas of operation or any of its component parts
51 found not in compliance as a result of failure in systemic practices and
52 procedures. The operator shall be notified of the results of the
53 inspection in a manner to be determined by regulations of the department
54 AND SHALL SUBMIT A WRITTEN PLAN OF CORRECTION TO THE DEPARTMENT WITHIN
55 THIRTY CALENDAR DAYS FROM THE DATE THE INSPECTION REPORT IS RECEIVED.
56 THE DEPARTMENT SHALL NOTIFY THE OPERATOR OF THE ACCEPTABILITY OF THE

1 PLAN OF CORRECTION WITHIN THIRTY CALENDAR DAYS OF THE DEPARTMENT'S
2 RECEIPT OF SUCH PLAN. Such notification [shall] MAY contain directions
3 as may be appropriate as to the manner and time in which compliance with
4 applicable requirements of law or regulations of the department shall be
5 effected. (II) The department shall also require the operator of an
6 adult home, ENRICHED HOUSING PROGRAM or residence for adults to develop,
7 biannually update and implement plans for quality assurance activities
8 for each area of operation. Quality assurance activities include but are
9 not limited to, development and maintenance of performance standards,
10 measurement of adherence to such standards and to applicable state and
11 local laws and regulations, identification of performance failures,
12 design, and implementation of corrective action.

13 S 9. Section 1 of chapter 462 of the laws of 1996, relating to estab-
14 lishing a quality incentive payment program for adult homes, as amended
15 by section 36 of part B of chapter 58 of the laws of 2004, is amended to
16 read as follows:

17 Section 1. Quality incentive payment program. Subject to amounts
18 appropriated for the quality incentive payment program, the department
19 of health may make a payment to each operator of an adult home, resi-
20 dence for adults or enriched housing program that is in compliance with
21 applicable statutes and regulations based on the facility's most recent
22 inspection. Such payment shall be based on the number of SSI recipients
23 and recipients of safety net assistance residing in such facilities.
24 Payment may also be made to a receiver of an existing adult home,
25 enriched housing program or residence for adults. Provided, however, the
26 department of health may deny payment to any facility that HAS RECEIVED
27 OFFICIAL WRITTEN NOTICE FROM THE DEPARTMENT OF HEALTH OF A PROPOSED
28 ASSESSMENT OF CIVIL PENALTIES FOR A VIOLATION OF SUBPARAGRAPH 2 OF PARA-
29 GRAPH (B) OF SUBDIVISION 7 OF SECTION 460-D OF THE SOCIAL SERVICES LAW,
30 OR, after a hearing conducted pursuant to subparagraph 1 of paragraph
31 (b) of subdivision 7 of section 460-d of the social services law, has
32 been adjudicated to not be providing care in compliance with applicable
33 statutes and regulations. The department of health shall promulgate
34 regulations to implement the provisions of this section.

35 No payment shall be made to an operator that has received official
36 written notice from the department of a proposed revocation, suspension,
37 limitation or denial of the operator's operating certificate[; or
38 proposed assessment of civil penalties for a violation of subparagraph 2
39 of paragraph (b) of subdivision 7 of section 460-d of the social
40 services law]; issuance of a department order under subdivision 2 of
41 section 460-d of the social services law; the granting of equitable
42 relief under subdivision 5 of section 460-d of the social services law;
43 or the issuance of a commissioner's order under subdivision 8 of section
44 460-d of the social services law; or the issuance by a court of compe-
45 tent jurisdiction of an order or approval of a settlement agreement
46 which affirms that the rights afforded to residents of adult care facil-
47 ities as provided for by section 461-d of the social services law have
48 been violated. Provided further that prior to receiving quality incen-
49 tive payment program funds, an operator shall consult with the resi-
50 dents' council for such facility and, following such council's approval,
51 shall submit an expenditure plan to the department. Such plan shall
52 detail how quality incentive payment program funds will be used to
53 improve the physical environment of the facility or the quality of care
54 and services rendered to residents and may include but not be limited to
55 staff training, air conditioning in residents' areas, furnishings,
56 equipment, maintenance or repairs to the facility or expenditures

1 related to corrective action as required by the most recent inspection
2 report. Such expenditure plan shall be accompanied by an operator attes-
3 tation. It shall be an affirmative duty of an operator of an adult care
4 facility to notify the department within three working days after the
5 issuance of a court order or court approved settlement agreement which
6 has found that the rights of a resident, as provided for by section
7 461-d of the social services law or the rules and regulations of the
8 department have been violated.

9 S 10. Subparagraphs (I) and (II) of paragraph 2 of subdivision (i) of
10 section 29.15 of the mental hygiene law, as amended by chapter 168 of
11 the laws of 2010, are amended to read as follows:

12 (I) A patient about to be discharged or conditionally released from a
13 department facility licensed or operated by the office for people with
14 developmental disabilities or from an inpatient facility operated or
15 licensed by the office of alcoholism and substance abuse services or the
16 office of mental health to an adult home, ENRICHED HOUSING PROGRAM or
17 residence for adults, as defined in section two of the social services
18 law, shall be referred only to such home or residence that is consistent
19 with that patient's needs and that operates pursuant to section four
20 hundred sixty of the social services law, provided further that: (A) for
21 a department facility licensed or operated by the office for people with
22 developmental disabilities or for an inpatient facility operated by the
23 office of alcoholism and substance abuse services or the office of
24 mental health, the facility director retains authority to determine
25 whether the home, program or residence is consistent with that patient's
26 needs and (B) such referral shall be made to the patient's home county
27 whenever possible or appropriate.

28 (II) No patient about to be discharged or conditionally released from
29 a department facility licensed or operated by the office for people with
30 developmental disabilities or from an inpatient facility operated or
31 licensed by the office of alcoholism and substance abuse services or the
32 office of mental health shall be referred to any adult home, ENRICHED
33 HOUSING PROGRAM or residence for adults, as defined in section two of
34 the social services law, which has received an official written notice
35 from the department of health of: (A) the proposed revocation, suspen-
36 sion or denial of its operating certificate; (B) the limitation of its
37 operating certificate with respect to new admissions; (C) the issuance
38 of a department of health order or commissioner of health's order or the
39 seeking of equitable relief pursuant to section four hundred sixty-d of
40 the social services law; (D) the proposed assessment of civil penalties
41 for violations of the provisions of subparagraph two of paragraph (b) of
42 subdivision seven of section four hundred sixty-d of the social services
43 law; or placement on the "do not refer list" pursuant to subdivision
44 fifteen of section four hundred sixty-d of the social services law.
45 Referrals may resume when such enforcement actions are resolved.

46 S 11. This act shall take effect on the ninetieth day after it shall
47 have become a law, provided, however, that the commissioner of health
48 may adopt, amend, suspend or repeal any regulations or take other action
49 necessary to enforce or implement the law prior to and in preparation
50 for the taking effect of the law; provided, however, such adoption,
51 amendment, suspension or repeal of regulations shall not have legal
52 effect until the law takes effect.