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

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I N A S S E M B L Y

January 23, 2013

Introduced by M. of A. GOTTFRIED, CLARK, DINOWITZ, ORTIZ, TITUS, ENGLEBRIGHT, PAULIN -- Multi-Sponsored by -- M. of A. AUBRY, BRENNAN, CAHILL, COLTON, GUNTHER, HOOPER, JACOBS, JAFFEE, LIFTON, ROBINSON, SWEENEY, 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and intent. The legislature finds that in many New York state nursing homes, residents are not getting adequate or proper care.

Adequate direct nursing care is especially important to the health and safety of nursing home residents. A recent congressionally-mandated study by centers for medicare and medicaid services concluded that if nursing home residents receive less than three hours a day per resident of direct nursing care, they are "substantially at risk of quality problems."

If a nursing home is not providing its residents adequate and proper food, bedding, heating, cooling, or nursing care, it is dangerous to place additional residents in that nursing home.

Therefore, the legislature establishes the nursing home diversion program, to provide that in the event that a nursing home is not providing its residents adequate and proper food, bedding, heating, cooling, or nursing care, it shall not admit new residents until it provides adequate and proper care.

S 2. The public health law is amended by adding a new section 2808-e to read as follows:

S 2808-E. NURSING HOME DIVERSION. 1. DEFINITIONS. AS USED IN THIS SECTION, UNLESS THE CONTEXT CLEARLY REQUIRES OTHERWISE, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 3. This act shall take effect on the one hundred eightieth 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 is authorized and directed to be made and completed by the department of health on or before such effective date.