

5167

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 20, 2013

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Introduced by M. of A. GOTTFRIED, DINOWITZ -- 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 ASSEMBLY, 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

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

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1 REASONABLE PERIOD OF TIME, THE HEARING OFFICER MAY AUTHORIZE THE DEPART-  
2 MENT TO EXTEND THE PERIOD OF SUSPENSION OR LIMITATION FOR AN APPROPRIATE  
3 PERIOD OF TIME, BUT IN NO EVENT BEYOND THE DATE WHEN THE HEARING IS  
4 COMPLETED AND AVAILABLE ADMINISTRATIVE APPEALS ARE EXHAUSTED.

5 S 3. Subdivision 11 of section 460-d of the social services law, as  
6 amended by section 154 of subpart B of part C of chapter 62 of the laws  
7 of 2011, is amended to read as follows:

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

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

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

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

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

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

1 Waiver of any provision [contained within] OF this subdivision by a  
2 resident of an adult care facility OR BY THE RESIDENT'S LEGAL REPRESENTATIVE OR RESIDENT REPRESENTATIVE, WITH RESPECT TO A RESIDENT OF AN  
3 ADULT HOME, RESIDENCE FOR ADULTS OR ENRICHED HOUSING PROGRAM, shall be  
4 void.

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

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

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

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

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

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

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

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

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

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

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

1 staff training, air conditioning in residents' areas, furnishings,  
2 equipment, maintenance or repairs to the facility or expenditures  
3 related to corrective action as required by the most recent inspection  
4 report. Such expenditure plan shall be accompanied by an operator attes-  
5 tation. It shall be an affirmative duty of an operator of an adult care  
6 facility to notify the department within three working days after the  
7 issuance of a court order or court approved settlement agreement which  
8 has found that the rights of a resident, as provided for by section  
9 461-d of the social services law or the rules and regulations of the  
10 department have been violated.

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

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

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

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