

7291

I N S E N A T E

May 9, 2014

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Aging

AN ACT to amend the elder law, in relation to enacting the "public nursing home protection act of 2014"; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. The elder law is amended by adding a new article III to
2 read as follows:

3 ARTICLE III
4 PUBLIC NURSING HOME PROTECTION
5 ACT OF 2014

6 SECTION 301. SHORT TITLE.

7 302. LEGISLATIVE FINDINGS AND INTENT.

8 303. DEFINITIONS.

9 304. COMPREHENSIVE REPORT ON PUBLIC NURSING HOMES.

10 305. RESTRICTION ON DIVESTITURE AND ELIMINATION OF SERVICES.

11 S 301. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
12 THE "PUBLIC NURSING HOME PROTECTION ACT OF 2014".

13 S 302. LEGISLATIVE FINDINGS AND INTENT. THE LEGISLATURE HEREBY FINDS
14 THAT IT IS THE GOAL OF THE STATE TO ENSURE THAT PUBLIC NURSING HOMES
15 REMAIN AVAILABLE FOR THE FUTURE CARE OF PEOPLE IN NEED. THE LEGISLATURE
16 FURTHER FINDS THAT PUBLIC NURSING HOMES ARE A CRITICAL COMPONENT TO THE
17 HEALTH CARE INFRASTRUCTURE OF THIS STATE AND OFTEN REPRESENT THE CARE-
18 GIVER OF LAST RESORT FOR MANY NEW YORKERS. THE LEGISLATURE FURTHER FINDS
19 THAT THE LOSS OF SUCH PUBLIC NURSING HOMES MAY LEAD TO COMPROMISED OR
20 INADEQUATE CARE FOR MANY PEOPLE IN NEED. THE LEGISLATURE FURTHER FINDS
21 THAT MANY MUNICIPALITIES OF THE STATE HAVE SOLD, CLOSED, PRIVATIZED,
22 TRANSFERRED OWNERSHIP, OR OTHERWISE LIMITED OR ELIMINATED PUBLICLY
23 AVAILABLE NURSING HOME SERVICES OVER THE PAST SEVERAL YEARS. THE LEGIS-
24 LATURE FURTHER FINDS THAT FUNDING FROM THE FEDERAL, STATE AND LOCAL
25 GOVERNMENTS HAS DECREASED FOR PUBLIC NURSING HOMES OVER THE PAST SEVERAL
26 YEARS. THE LEGISLATURE FURTHER FINDS THAT THE DEMAND FOR NURSING HOMES
27 IS LIKELY TO INCREASE OVER THE COMING YEARS AS A RESULT OF AN AGING

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

LBD15081-01-4

POPULATION, AND THE STATE SHOULD ENSURE THAT PUBLIC NURSING HOMES REMAIN AVAILABLE FOR FUTURE CARE.

S 303. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "COMMISSIONER" SHALL MEAN THE COMMISSIONER OF HEALTH.

2. "ELIMINATE RESIDENTIAL SERVICES" SHALL MEAN THE CLOSURE, SALE, TRANSFER, DIVESTMENT, DEFUNDING, DOWNSIZING OR REASSIGNMENT OF OWNERSHIP OF A PUBLIC NURSING HOME FROM A MUNICIPALITY TO ANY OTHER PERSON OR ENTITY.

3. "MUNICIPALITY" SHALL MEAN ANY COUNTY, EXCEPT A COUNTY WHOLLY CONTAINED WITHIN A CITY HAVING A POPULATION OF ONE MILLION OR MORE PERSONS.

4. "PUBLIC NURSING HOME" SHALL MEAN ANY NURSING HOME OR RESIDENTIAL HEALTH CARE FACILITY ESTABLISHED UNDER ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW THAT IS OPERATED OR OWNED BY A MUNICIPALITY.

S 304. COMPREHENSIVE REPORT ON PUBLIC NURSING HOMES. 1. THE COMMISSIONER, IN CONJUNCTION WITH THE DIRECTOR OF THE DIVISION OF THE BUDGET, SHALL STUDY AND ISSUE A COMPREHENSIVE REPORT ON PUBLIC NURSING HOMES IN THE STATE. SUCH STUDY AND REPORT CARRIED OUT PURSUANT TO THIS SECTION SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(A) THE CURRENT AND EXPECTED FUTURE FINANCIAL CONDITION OF PUBLIC NURSING HOMES, INCLUDING:

(1) THE CURRENT AND EXPECTED FUTURE SUPPORT FROM MEDICAID, AND THE STATE AND LOCAL GOVERNMENTS,

(2) MEDICARE AND MEDICAID RATE TRENDS OVER THE PREVIOUS TWENTY YEARS,

(3) FINANCIAL SUPPORT TRENDS FROM LOCAL GOVERNMENTS OVER THE PREVIOUS TWENTY YEARS,

(4) ADDITIONAL AID FROM STATE OR LOCAL GOVERNMENTS,

(5) EXPECTED IMPACT OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT, AND

(6) THE IMPACT OF THE STATE'S FOUR PERCENT MEDICAID GLOBAL SPENDING CAP;

(B) THE CURRENT USAGE OF PUBLIC NURSING HOMES, INCLUDING, BUT NOT LIMITED TO:

(1) THE AVERAGE BED COUNT PER FACILITY,

(2) THE MOST DEMANDED SERVICES PER FACILITY, AND

(3) SPECIALTY SERVICES THAT ARE NOT PROVIDED BY NON-PUBLIC NURSING HOMES;

(C) THE EXPECTED FUTURE NEED FOR PUBLIC NURSING HOMES, INCLUDING, BUT NOT LIMITED TO:

(1) THE EXPECTED FUTURE DEMAND FOR VARIOUS SERVICES, AND

(2) PROJECTIONS OF FACILITY POPULATIONS AGED SIXTY-FIVE OR OLDER, SEVENTY-FIVE OR OLDER, AND EIGHTY-FIVE OR OLDER FOR THE NEXT THREE DECADES; AND

(D) THE EFFECTS THAT THE ELIMINATION OF THE RESIDENTIAL SERVICES OF A PUBLIC NURSING HOME WOULD HAVE ON THE RESIDENTS OF SUCH FACILITY, INCLUDING THE IMPACT ON THE PHYSICAL AND MENTAL HEALTH OF THE RESIDENTS, THE AVAILABILITY OF SERVICES FOR HARD-TO-PLACE RESIDENTS, AND THE IMPACT ON FAMILY MEMBERS OF RESIDENTS.

2. THE COMMISSIONER MAY REQUEST AND SHALL RECEIVE FROM ANY AGENCY IN THE STATE, AND FROM ANY SUBDIVISION, DEPARTMENT, BOARD, BUREAU, COMMISSION, OFFICE, AGENCY, OR OTHER INSTRUMENTALITY OF THE STATE OR OF ANY POLITICAL SUBDIVISION THEREOF SUCH INFORMATION, ASSISTANCE AND DATA DEEMED NECESSARY OR DESIRABLE TO EFFECTUATE THE PURPOSES SET FORTH IN THIS SECTION. SUCH INFORMATION RECEIVED BY THE COMMISSIONER SHALL BE SUBJECT TO THE SAME REQUIREMENTS AND CONFIDENTIALITY AND LIMITATIONS ON

1 USE, IF ANY, AS ARE APPLICABLE TO THE DEPARTMENT OF HEALTH'S USE OF SUCH
2 INFORMATION.

3 3. THE COMMISSIONER SHALL MAKE A REPORT OF HIS OR HER FINDINGS TO THE
4 GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE
5 ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF
6 THE ASSEMBLY WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ARTICLE.

7 S 305. RESTRICTION ON DIVESTITURE AND ELIMINATION OF SERVICES.
8 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO PUBLIC NURSING HOME SHALL
9 DIVEST OR ELIMINATE RESIDENTIAL SERVICES UNTIL ONE YEAR AFTER THE
10 COMMISSIONER SHALL HAVE REPORTED HIS OR HER FINDINGS PURSUANT TO SUBDI-
11 VISION THREE OF SECTION THREE HUNDRED FOUR OF THIS ARTICLE.

12 S 2. This act shall take effect immediately and shall expire and be
13 deemed repealed 2 years after it shall take effect.