

3139

2013-2014 Regular Sessions

I N A S S E M B L Y

January 23, 2013

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, 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 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 2808-e  
19 to read as follows:

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

23 (A) "BASIC STANDARD OF CARE" MEANS ANY OF THE STANDARDS OF CARE SET  
24 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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1 (B) "ON DIVERSION" MEANS THE STATE OF BEING SUBJECT TO NURSING HOME  
2 DIVERSION AND REQUIRED TO SUSPEND ADMISSIONS UNDER THIS SECTION.

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

8 (B) WHENEVER THE DEPARTMENT DETERMINES THAT 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, THE NURSING HOME SHALL IMMEDIATELY  
11 BE SUBJECT TO NURSING HOME DIVERSION AND THE DEPARTMENT SHALL IMMEDIATE-  
12 LY NOTIFY THE NURSING HOME OF THAT FACT AND THE REASONS FOR IT.

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

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

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

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

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

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

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

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

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

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

50 S 3. This act shall take effect on the one hundred eightieth day after  
51 it shall have become a law, provided, however, that effective immediate-  
52 ly, the addition, amendment and/or repeal of any rule or regulation  
53 necessary for the implementation of this act on its effective date is  
54 authorized and directed to be made and completed by the department of  
55 health on or before such effective date.