

5167

2013-2014 Regular Sessions

I N A S S E M B L Y

February 20, 2013

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.