

3959--A

2015-2016 Regular Sessions

I N   A S S E M B L Y

January 28, 2015

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Introduced by M. of A. FITZPATRICK -- Multi-Sponsored by -- M. of A. THIELE -- read once and referred to the Committee on Health -- recommended to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to requiring the prior approval of a municipality with respect to site selection for adult care facilities

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

1     Section 1. Section 461-b of the social services law is amended by  
2     adding a new subdivision 11 to read as follows:  
3     11. (A) FOR THE PURPOSES OF THIS SUBDIVISION, THE FOLLOWING DEFINI-  
4     TIONS SHALL APPLY:  
5     (I) "ADULT CARE FACILITY" MEANS AN ADULT CARE FACILITY AS DEFINED  
6     UNDER SUBDIVISION TWENTY-ONE OF SECTION TWO OF THIS CHAPTER.  
7     (II) "SPONSORING AGENCY" MEANS AN AGENCY OR UNIT OF GOVERNMENT, A  
8     VOLUNTARY AGENCY OR ANY OTHER PERSON OR ORGANIZATION WHICH INTENDS TO  
9     ESTABLISH OR OPERATE AN ADULT CARE FACILITY.  
10    (III) "MUNICIPALITY" MEANS AN INCORPORATED VILLAGE IF A FACILITY IS TO  
11    BE LOCATED THEREIN, A TOWN IF THE FACILITY IS TO BE LOCATED THEREIN AND  
12    NOT SIMULTANEOUSLY WITHIN AN INCORPORATED VILLAGE, OR A CITY, EXCEPT  
13    THAT IN THE CITY OF NEW YORK, THE COMMUNITY BOARD WITH JURISDICTION OVER  
14    THE AREA IN WHICH SUCH A FACILITY IS TO BE LOCATED SHALL BE CONSIDERED  
15    THE MUNICIPALITY.  
16    (IV) "COMMISSIONER" MEANS THE COMMISSIONER OF THE OFFICE OF THE  
17    DEPARTMENT RESPONSIBLE FOR ISSUANCE OF LICENSE AND OPERATING CERTIFICATE  
18    TO THE PROPOSED ADULT CARE FACILITY.  
19    (B) IF A SPONSORING AGENCY INTENDS TO ESTABLISH AN ADULT CARE FACILITY  
20    WITHIN A MUNICIPALITY BUT DOES NOT HAVE A SPECIFIC SITE SELECTED, IT MAY  
21    NOTIFY THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPALITY IN WRITING OF ITS

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

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1 INTENTIONS AND INCLUDE IN SUCH NOTICE A DESCRIPTION OF THE NATURE, SIZE  
2 AND COMMUNITY SUPPORT REQUIREMENTS OF THE PROGRAM. PROVIDED, HOWEVER,  
3 NOTHING IN THIS PARAGRAPH SHALL PRECLUDE THE PROPOSED ESTABLISHMENT OF A  
4 SITE PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION.

5 (C) (I) WHEN A SITE HAS BEEN SELECTED BY THE SPONSORING AGENCY, IT  
6 SHALL NOTIFY THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPALITY IN WRITING  
7 AND INCLUDE IN SUCH NOTICE THE SPECIFIC ADDRESS OF THE SITE, THE TYPE OF  
8 COMMUNITY RESIDENCE, THE NUMBER OF RESIDENTS AND THE COMMUNITY SUPPORT  
9 REQUIREMENTS OF THE PROGRAM. SUCH NOTICE SHALL ALSO CONTAIN THE MOST  
10 RECENTLY PUBLISHED DATA COMPILED PURSUANT TO SECTION FOUR HUNDRED  
11 SIXTY-THREE-A OF THIS ARTICLE WHICH CAN REASONABLY BE EXPECTED TO PERMIT  
12 THE MUNICIPALITY TO EVALUATE ALL SUCH FACILITIES AFFECTING THE NATURE  
13 AND CHARACTER OF THE AREA WHEREIN SUCH PROPOSED FACILITY IS TO BE  
14 LOCATED. THE MUNICIPALITY SHALL HAVE FORTY DAYS AFTER THE RECEIPT OF  
15 SUCH NOTICE TO:

16 (1) APPROVE THE SITE RECOMMENDED BY THE SPONSORING AGENCY;

17 (2) SUGGEST ONE OR MORE SUITABLE SITES WITHIN ITS JURISDICTION WHICH  
18 COULD ACCOMMODATE SUCH A FACILITY; OR

19 (3) OBJECT TO THE ESTABLISHMENT OF A FACILITY OF THE KIND DESCRIBED BY  
20 THE SPONSORING AGENCY BECAUSE TO DO SO WOULD RESULT IN SUCH A CONCEN-  
21 TRATION OF ADULT CARE FACILITIES IN THE MUNICIPALITY OR IN THE AREA IN  
22 PROXIMITY TO THE SITE SELECTED OR A COMBINATION OF SUCH FACILITIES WITH  
23 OTHER COMMUNITY RESIDENCES OR SIMILAR FACILITIES LICENSED BY OTHER AGEN-  
24 CIES OF STATE GOVERNMENT, INCLUDING ALL COMMUNITY RESIDENCES, INTERMEDI-  
25 ATE CARE FACILITIES, RESIDENTIAL CARE FACILITIES FOR ADULTS AND RESIDEN-  
26 TIAL TREATMENT FACILITIES FOR INDIVIDUALS WITH MENTAL ILLNESS OR  
27 DEVELOPMENTAL DISABILITIES OPERATED PURSUANT TO ARTICLE SIXTEEN OR ARTI-  
28 CLE THIRTY-ONE OF THE MENTAL HYGIENE LAW AND ALL SIMILAR RESIDENTIAL  
29 FACILITIES OF FOURTEEN OR FEWER RESIDENTS OPERATED OR LICENSED BY ANOTH-  
30 ER STATE AGENCY, THAT THE NATURE AND CHARACTER OF THE AREAS WITHIN THE  
31 MUNICIPALITY WOULD BE SUBSTANTIALLY ALTERED.

32 SUCH RESPONSE SHALL BE FORWARDED TO THE SPONSORING AGENCY AND THE  
33 COMMISSIONER. IF THE MUNICIPALITY DOES NOT RESPOND WITHIN FORTY DAYS,  
34 THE SPONSORING AGENCY MAY ESTABLISH AN ADULT CARE FACILITY AT A SITE  
35 RECOMMENDED IN ITS NOTICE.

36 (II) PRIOR TO FORWARDING A RESPONSE TO THE SPONSORING AGENCY AND THE  
37 COMMISSIONER, THE MUNICIPALITY MAY HOLD A PUBLIC HEARING PURSUANT TO  
38 LOCAL LAW.

39 (III) IF THE MUNICIPALITY APPROVES THE SITE RECOMMENDED BY THE SPON-  
40 SORING AGENCY, THE SPONSORING AGENCY SHALL SEEK TO ESTABLISH THE FACILI-  
41 TY AT THE APPROVED SITE.

42 (IV) IF THE SITE OR SITES SUGGESTED BY THE MUNICIPALITY ARE SATISFAC-  
43 TORY WITH REGARD TO THE NATURE, SIZE AND COMMUNITY SUPPORT REQUIREMENTS  
44 OF THE PROGRAM OF THE PROPOSED FACILITY AND THE AREA IN WHICH SUCH SITE  
45 OR SITES ARE LOCATED DOES NOT ALREADY INCLUDE AN EXCESSIVE NUMBER OF  
46 ADULT CARE FACILITIES OR SIMILAR FACILITIES LICENSED BY OTHER STATE  
47 AGENCIES, THE SPONSORING AGENCY SHALL SEEK TO ESTABLISH ITS FACILITY AT  
48 ONE OF THE SITES DESIGNATED BY THE MUNICIPALITY. IF THE MUNICIPALITY  
49 SUGGESTS A SITE OR SITES WHICH ARE NOT SATISFACTORY TO THE SPONSORING  
50 AGENCY, THE AGENCY SHALL SO NOTIFY THE MUNICIPALITY WHICH SHALL HAVE  
51 FIFTEEN DAYS TO SUGGEST AN ALTERNATIVE SITE OR SITES FOR THE PURPOSED  
52 ADULT CARE FACILITY.

53 (V) IN THE EVENT THE MUNICIPALITY OBJECTS TO ESTABLISHMENT OF A FACIL-  
54 ITY IN THE MUNICIPALITY BECAUSE TO DO SO WOULD RESULT IN SUCH A CONCEN-  
55 TRATION OF ADULT CARE FACILITIES OR COMBINATION OF SUCH FACILITIES AND  
56 OTHER FACILITIES LICENSED BY OTHER STATE AGENCIES THAT THE NATURE AND

1 CHARACTER OF AREAS WITHIN THE MUNICIPALITY WOULD BE SUBSTANTIALLY  
2 ALTERED; OR THE SPONSORING AGENCY OBJECTS TO THE ESTABLISHMENT OF A  
3 FACILITY IN THE AREA OR AREAS SUGGESTED BY THE MUNICIPALITY; OR IN THE  
4 EVENT THAT THE MUNICIPALITY AND SPONSORING AGENCY CANNOT AGREE UPON A  
5 SITE, EITHER THE SPONSORING AGENCY OR THE MUNICIPALITY MAY REQUEST AN  
6 IMMEDIATE HEARING BEFORE THE COMMISSIONER TO RESOLVE THE ISSUE. THE  
7 COMMISSIONER SHALL PERSONALLY OR BY A HEARING OFFICER CONDUCT SUCH A  
8 HEARING WITHIN FIFTEEN DAYS OF SUCH A REQUEST.

9 (VI) IN REVIEWING ANY SUCH OBJECTIONS, THE NEED FOR SUCH FACILITIES IN  
10 THE MUNICIPALITY SHALL BE CONSIDERED AS SHALL THE EXISTING CONCENTRATION  
11 OF SUCH FACILITIES AND OTHER SIMILAR FACILITIES LICENSED BY OTHER STATE  
12 AGENCIES IN THE MUNICIPALITY OR IN THE AREA IN PROXIMITY TO THE SITE  
13 SELECTED. THE COMMISSIONER SHALL SUSTAIN THE OBJECTION IF HE DETERMINES  
14 THAT THE NATURE AND CHARACTER OF THE AREA IN WHICH THE FACILITY IS TO BE  
15 BASED WOULD BE SUBSTANTIALLY ALTERED AS A RESULT OF ESTABLISHMENT OF THE  
16 FACILITY. THE COMMISSIONER SHALL MAKE A DETERMINATION WITHIN THIRTY DAYS  
17 OF THE HEARING.

18 (D) REVIEW OF A DECISION RENDERED BY THE COMMISSIONER PURSUANT TO THIS  
19 SECTION MAY BE HAD IN A PROCEEDING PURSUANT TO ARTICLE SEVENTY-EIGHT OF  
20 THE CIVIL PRACTICE LAW AND RULES COMMENCED WITHIN THIRTY DAYS OF THE  
21 DETERMINATION OF THE COMMISSIONER.

22 (E) (I) A LICENSING AUTHORITY SHALL NOT ISSUE AN OPERATING CERTIFICATE  
23 TO A SPONSORING AGENCY FOR OPERATION OF A FACILITY IF THE SPONSORING  
24 AGENCY DOES NOT NOTIFY THE MUNICIPALITY OF ITS INTENTION TO ESTABLISH A  
25 PROGRAM AS REQUESTED BY PARAGRAPH (C) OF THIS SUBDIVISION. ANY OPERATING  
26 CERTIFICATE ISSUED WITHOUT COMPLIANCE WITH THE PROVISIONS OF THIS  
27 SECTION SHALL BE CONSIDERED NULL AND VOID AND CONTINUED OPERATION OF THE  
28 FACILITY MAY BE ENJOINED.

29 (II) THE DEPARTMENT OF HEALTH SHALL NOT ISSUE AN OPERATING CERTIFICATE  
30 FOR THE OPERATION OF AN ADULT CARE FACILITY IF THE AGENCY OR UNIT OF  
31 GOVERNMENT, VOLUNTARY AGENCY OR ANY OTHER PERSON OR ORGANIZATION WHICH  
32 INTENDS TO ESTABLISH OR OPERATE SUCH A FACILITY DOES NOT NOTIFY THE  
33 CHIEF EXECUTIVE OFFICER OF THE MUNICIPALITY IN WHICH THAT FACILITY IS TO  
34 BE ESTABLISHED IN WRITING OF THE INTENTION TO ESTABLISH SUCH FACILITY  
35 AND INCLUDE IN SUCH NOTICE THE SPECIFIC ADDRESS OF THE SITE, THE TYPE OF  
36 RESIDENCE, THE NUMBER OF RESIDENTS AND THE COMMUNITY SUPPORT REQUIRE-  
37 MENTS OF THE PROGRAM; PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THIS  
38 PARAGRAPH SHALL EITHER BE CONSTRUED TO REQUIRE FACILITIES OF MORE THAN  
39 FOURTEEN BEDS TO MEET ANY OTHER REQUIREMENT OF THIS SECTION, OR TO DEEM  
40 SUCH FACILITIES FAMILY UNITS FOR THE PURPOSES OF LOCAL LAWS AND ORDI-  
41 NANCES.

42 S 2. This act shall take effect immediately.