S T A T E O F N E W Y O R K

5319

2015-2016 Regular Sessions

I N A S S E M B L Y

February 18, 2015

Introduced by M. of A. CYMBROWITZ -- read once and referred to the Committee on Aging

AN ACT to amend the elder law, in relation to creating a temporary state commission to study and investigate the effects of closures of long term care facilities on the residents of such facilities and their families; 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:

Section 1. The elder law is amended by adding a new article 3 to read as follows:

ARTICLE III

LONG TERM CARE FACILITIES

SECTION 300. DEFINITIONS.

301. COMMISSION ON LONG TERM CARE FACILITIES.

S 300. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "DIRECTOR" SHALL MEAN THE DIRECTOR OF THE OFFICE FOR THE AGING.

2. "LONG TERM CARE FACILITIES" SHALL MEAN RESIDENTIAL HEALTH CARE FACILITIES AS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-EIGHT HUNDRED ONE OF THE PUBLIC HEALTH LAW, AND ASSISTED LIVING RESIDENCES, AS DEFINED IN ARTICLE FORTY-SIX-B OF THE PUBLIC HEALTH LAW, OR ANY FACILITIES WHICH HOLD THEMSELVES OUT OR ADVERTISE THEMSELVES AS PROVIDING ASSISTED LIVING SERVICES AND WHICH ARE REQUIRED TO BE LICENSED OR CERTIFIED UNDER THE SOCIAL SERVICES LAW OR THE PUBLIC HEALTH LAW AND ADULT CARE FACILITIES AS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION TWO OF THE SOCIAL SERVICES LAW.

3. "STATE OMBUDSMAN" SHALL MEAN THE STATE LONG TERM CARE OMBUDSMAN APPOINTED BY THE DIRECTOR PURSUANT TO SUBDIVISION THREE OF SECTION TWO HUNDRED EIGHTEEN OF THIS CHAPTER.

S 301. COMMISSION ON LONG TERM CARE FACILITIES. 1. A TEMPORARY STATE COMMISSION, TO BE KNOWN AS THE COMMISSION ON LONG TERM CARE FACILITIES

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

LBD06109-02-5

(HEREINAFTER THE "COMMISSION"), IS HEREBY CREATED TO STUDY AND MAKE RECOMMENDATIONS CONCERNING THE FOLLOWING:

(A) THE EFFECTS OF CLOSURES OF LONG TERM CARE FACILITIES ON THE RESIDENTS OF SUCH FACILITIES, INCLUDING THE IMPACT ON THE PHYSICAL AND MENTAL HEALTH OF THE RESIDENTS AND THE LOSS OF THE RESIDENTIAL COMMUNITY;

(B) THE AVAILABILITY OF LONG TERM CARE FACILITY PLACEMENTS FOR NEW YORK STATE RESIDENTS SUFFERING FROM DEMENTIA, INCLUDING, BUT NOT LIMITED TO ALZHEIMER'S DISEASE;

(C) THE AVAILABILITY OF LONG TERM CARE FACILITY PLACEMENTS FOR NEW YORK STATE RESIDENTS REQUIRING SKILLED NURSING CARE;

(D) THE EFFECTS OF RELOCATING RESIDENTS OF A CLOSING LONG TERM CARE FACILITY TO ANOTHER FACILITY WITHIN THE SAME GEOGRAPHICAL AREA AS COMPARED WITH RELOCATING SUCH RESIDENTS TO A LONG TERM CARE FACILITY NOT WITHIN THE GEOGRAPHICAL AREA;

(E) FEASIBILITY OF ARRANGING COMPARABLE PLACEMENTS, AS OPPOSED TO APPROPRIATE PLACEMENTS, IN OTHER FACILITIES WITHIN THE SAME GEOGRAPHICAL AREA WHEN A LONG TERM CARE FACILITY WITH A CAPACITY OF SERVING FIFTY OR MORE RESIDENTS CLOSES;

(F) THE IMPACT ON FAMILY MEMBERS OF RESIDENTS OF THE CLOSING OF A LONG TERM CARE FACILITY;

(G) THE SUFFICIENCY OF CURRENT LAWS, RULES AND REGULATIONS GOVERNING THE RELOCATION OF RESIDENTS OF A CLOSING LONG TERM CARE FACILITY; AND

(H) SUCH OTHER MATTERS AS THE COMMISSION DEEMS APPROPRIATE.

2. THE COMMISSION SHALL MAKE RECOMMENDATIONS FOR ADDITIONAL LEGISLATION AND/OR REGULATIONS TO GOVERN THE CLOSING OF LONG TERM CARE FACILITIES AND FACILITATE THE RELOCATION OF LONG TERM CARE FACILITY RESIDENTS IN A MANNER THAT IS IN THE BEST INTERESTS OF THE RESIDENTS IN THE EVENT OF A CLOSURE OF A LONG TERM CARE FACILITY. THE COMMISSION SHALL FURTHER STUDY THE NEED, IF ANY, TO DEVISE A NOTIFICATION SYSTEM TO ALERT RESIDENTS AND FAMILIES NOT LESS THAN ONE YEAR IN ADVANCE OF THE CLOSURE OR POTENTIAL CLOSURE OF A LONG TERM CARE FACILITY.

3. (A) THE COMMISSION SHALL CONSIST OF NINE MEMBERS TO BE APPOINTED AS FOLLOWS: THREE MEMBERS SHALL BE APPOINTED BY THE GOVERNOR AND SHALL INCLUDE THE DIRECTOR OF THE OFFICE FOR THE AGING, THE STATE OMBUDSMAN AND ONE ADDITIONAL MEMBER WHO SHALL BE A RESIDENT OF THE STATE WITH EXPERTISE AND EXPERIENCE IN THE FIELDS OF LONG TERM CARE AND ADVOCACY; TWO MEMBERS SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE; TWO MEMBERS SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY; ONE MEMBER SHALL BE APPOINTED BY THE MINORITY LEADER OF THE SENATE; AND ONE MEMBER SHALL BE APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY. ALL OF THE MEMBERS APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF THE ASSEMBLY SHALL BE RESIDENTS OF THE STATE WITH EXPERTISE AND EXPERIENCE IN THE FIELDS OF LONG TERM CARE AND ADVOCACY. NO PERSON SHALL BE A MEMBER OF SUCH COMMISSION WHILE SUCH PERSON IS A MEMBER OF THE SENATE OR ASSEMBLY. ANY VACANCY ON SUCH COMMISSION SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT WAS MADE. A CHAIRPERSON AND VICE-CHAIRPERSON OF SUCH COMMISSION SHALL BE ELECTED BY THE MAJORITY OF ITS MEMBERS, ALL MEMBERS BEING PRESENT.

(B) EXCEPT AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION, NO MEMBER, OFFICER OR EMPLOYEE OF THE COMMISSION SHALL BE DISQUALIFIED FROM HOLDING ANY OTHER PUBLIC OFFICE OR EMPLOYMENT, NOR SHALL HE OR SHE FORFEIT ANY SUCH OFFICE OR EMPLOYMENT BY REASON OF HIS OR HER APPOINTMENT HEREUNDER, NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL, SPECIAL OR LOCAL LAW, ORDINANCE OR CITY CHARTER.

(C) ALL MEMBERS OF THE COMMISSION SHALL BE APPOINTED WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION. THE FIRST MEETING OF THE COMMISSION SHALL TAKE PLACE WITHIN THIRTY DAYS AFTER APPOINTMENT OF ALL MEMBERS OF THE COMMISSION.

4. THE MEMBERS OF THE COMMISSION SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES HEREUNDER.

5. THE COMMISSION MAY EMPLOY AND AT PLEASURE REMOVE SUCH PERSONNEL AS IT MAY DEEM NECESSARY FOR THE PERFORMANCE OF ITS FUNCTIONS AND FIX THEIR COMPENSATION WITHIN THE AMOUNTS MADE AVAILABLE BY APPROPRIATION THEREFOR, IF ANY, OR BY DONATION, IF ANY. THE COMMISSION MAY MEET AND HOLD PUBLIC AND/OR PRIVATE HEARINGS WITHIN OR WITHOUT THE STATE, AND SHALL HAVE ALL THE POWERS OF A LEGISLATIVE COMMITTEE PURSUANT TO THE LEGISLATIVE LAW.

6. FOR THE ACCOMPLISHMENT OF ITS PURPOSES, THE COMMISSION SHALL BE AUTHORIZED AND EMPOWERED TO UNDERTAKE ANY STUDIES, INQUIRIES, SURVEYS OR ANALYSES IT MAY DEEM RELEVANT THROUGH ITS OWN PERSONNEL OR IN COOPERATION WITH OR BY AGREEMENT WITH ANY OTHER PUBLIC OR PRIVATE AGENCY.

7. THE COMMISSION 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 FACILITIES, ASSISTANCE AND DATA AS IT DEEMS NECESSARY OR DESIRABLE FOR THE PROPER EXECUTION OF ITS POWERS AND DUTIES AND TO EFFECTUATE THE PURPOSES SET FORTH IN THIS SECTION.

8. THE COMMISSION IS HEREBY AUTHORIZED AND EMPOWERED TO ENTER INTO ANY AGREEMENTS AND TO DO AND PERFORM ANY ACTS THAT MAY BE NECESSARY, DESIRABLE OR PROPER TO CARRY OUT THE PURPOSES AND OBJECTIVES OF THIS SECTION.

9. THE COMMISSION SHALL MAKE A REPORT OF ITS FINDINGS AND SHALL SUBMIT ITS RECOMMENDATIONS, INCLUDING ANY RECOMMENDATIONS FOR LEGISLATIVE ACTION AS IT MAY DEEM NECESSARY AND APPROPRIATE, TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF THE ASSEMBLY ONE YEAR AFTER THE FIRST MEETING OF THE COMMISSION.

10. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO LONG TERM CARE FACILITY SHALL BE CLOSED OR CONVERTED TO ANY OTHER USE, OR CAUSE REDUCTIONS IN SUFFICIENT STAFFING LEVELS TO OCCUR, UNTIL ONE YEAR AFTER THE COMMISSION REPORTS ITS FINDINGS AND PROVIDED RECOMMENDATIONS AS PROVIDED IN SUBDIVISION NINE OF THIS SECTION.

11. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO A NON-PROFIT LONG TERM CARE FACILITY OPERATED BY A RELIGIOUS GROUP WHICH QUALIFIES AS A TAX-EXEMPT ENTITY UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE.

S 2. This act shall take effect immediately and shall continue in full force and effect until one year after the report and recommendations of the commission on long term care facilities is delivered to the governor and the legislature when upon such date the provisions of this act shall be deemed repealed; provided that the office for the aging shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in section one of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.