

# STATE OF NEW YORK

7727

2017-2018 Regular Sessions

## IN ASSEMBLY

May 11, 2017

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

AN ACT to amend the social services law, in relation to establishing a certificate of need process for the assisted living program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 3 of section 461-1 of the social services law,  
2 as added by chapter 165 of the laws of 1991, subparagraph (iii) of para-  
3 graph (a) as amended by chapter 438 of the laws 1994, paragraphs (b),  
4 (c), (e) and (f) as amended by section 82 of part A of chapter 58 of the  
5 laws of 2010, paragraph (d) as amended by chapter 591 of the laws of  
6 1999, paragraph (g) as amended by chapter 397 of the laws of 2012, para-  
7 graph (h) as added by section 20 of part B of chapter 58 of the laws of  
8 2007, paragraph (i) as amended by section 67 of part C of chapter 60 of  
9 the laws of 2014, and paragraph (j) as added by section 70 of part A of  
10 chapter 56 of the laws of 2013, is amended to read as follows:

11 3. Assisted living program approval. (a) An eligible applicant propos-  
12 ing to operate an assisted living program or increase the number of beds  
13 within an existing program shall submit an application to the [~~depart-~~  
14 ~~ment. Upon receipt, the department shall transmit a copy of the applica-~~  
15 ~~tion and accompanying documents to the~~] department of health. Such  
16 application shall be in a format and a quantity determined by the  
17 department of health and shall include, but not be limited to:

18 (i) a copy of or an application for an adult care facility operating  
19 certificate;

20 (ii) a copy of or an application for a home care services agency  
21 license or a copy of a certificate for a certified home health agency or  
22 authorization as a long term home health care program;

23 (iii) a copy of a proposed contract with a social services district or  
24 in a social services district with a population of one million or more,

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

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1 a copy of a proposed contract with the social services district or the  
2 department;

3 (iv) if the applicant is not a long term home health care program or  
4 certified home health agency, a copy of a proposed contract with a long  
5 term home health care program or certified home health agency for the  
6 provisions of services in accordance with article thirty-six of the  
7 public health law; and

8 (v) a detailed description of the proposed program including budget,  
9 staffing and services.

10 (b) [~~If the application for the proposed program includes an applica-~~  
11 ~~tion for licensure as a home care service agency, the~~] The department of  
12 health shall forward the application for the proposed program and accom-  
13 panying documents to the public health and health planning council for  
14 its written approval in accordance with this paragraph and the  
15 provisions of section thirty-six hundred five of the public health law.

16 (c) An application for an assisted living program shall not be  
17 approved unless the commissioner is satisfied as to:

18 (i) the character, competence and standing in the community of the  
19 operator of the adult care facility;

20 (ii) the financial responsibility of the operator of the adult care  
21 facility;

22 (iii) that the buildings, equipment, staff, standards of care and  
23 records of the adult care facility to be employed in the operation  
24 comply with applicable law, rule and regulation;

25 (iv) the commissioner of health is satisfied that the assisted living  
26 program and the licensed home care agency [~~has~~] have received the writ-  
27 ten approval of the public health and health planning council as  
28 required by paragraph (b) of this subdivision and the equipment, person-  
29 nel, rules, standards of care, and home care services provided by the  
30 licensed home care agency and certified home health agency or long term  
31 home health care program are fit and adequate and will be provided in  
32 the manner required by article thirty-six of the public health law and  
33 the rules and regulations thereunder; and

34 (v) [~~the commissioner and~~] the commissioner of health and the public  
35 health and health planning council are satisfied as to the public need  
36 for the assisted living program beds being proposed after giving consid-  
37 eration to the relative concentration of assisted living program beds  
38 and other long term care resources and capacity in existence in the area  
39 to be served.

40 (d) The department of health shall not approve an application for an  
41 assisted living program or an expansion of an existing program for any  
42 eligible applicant who does not meet the requirements of this article,  
43 including but not limited to, an eligible applicant who is already or  
44 within the past ten years has been an incorporator, director, sponsor,  
45 principal stockholder, member or owner of any adult care facility which  
46 has been issued an operating certificate by the board or the department,  
47 or of a halfway house, hostel or other residential facility or institu-  
48 tion for the care, custody or treatment of the mentally disabled which  
49 is subject to approval by an office of the department of mental hygiene,  
50 or of any residential health care facility or home care agency as  
51 defined in the public health law, unless [~~the department, in conjunction~~  
52 ~~with the department of health,~~] it finds by substantial evidence as to  
53 each such applicant that a substantially consistent high level of care  
54 has been rendered in each such facility or institution under which such  
55 person is or was affiliated. For the purposes of this paragraph, there  
56 may be a finding that a substantially consistent high level of care has

1 been rendered despite a record of violations of applicable rules and  
2 regulations, if such violations (i) did not threaten to directly affect  
3 the health, safety or welfare of any patient or resident, and (ii) were  
4 promptly corrected and not recurrent.

5 ~~(e) [The commissioner of health shall provide written notice of~~  
6 ~~approval or disapproval of portions of the proposed application concern-~~  
7 ~~ing a licensed home care agency, certified home health agency or long~~  
8 ~~term home health care program, and, where applicable, of the approval or~~  
9 ~~disapproval of the public health and health planning council to the~~  
10 ~~commissioner.]~~ If an application receives all the necessary approvals,  
11 the commissioner of health shall notify the applicant of the approval in  
12 writing. The commissioner's written approval shall constitute authori-  
13 zation to operate an assisted living program.

14 (f) No assisted living program may be operated without the written  
15 approval of ~~[the department,]~~ the department of health and~~[-where~~  
16 ~~applicable,]~~ the public health and health planning council.

17 (g) Notwithstanding any other provision of law to the contrary, any  
18 assisted living program having less than seventy-five authorized bed  
19 slots, located in a county with a population of more than one hundred  
20 ten thousand and less than one hundred fifty thousand persons based upon  
21 the decennial federal census for the year two thousand, and which at any  
22 point in time is unable to accommodate individuals awaiting placement  
23 into the assisted living program, shall be authorized to increase the  
24 number of assisted living beds available for a specified period of time  
25 as part of a demonstration program by up to thirty percent of its  
26 approved bed level; provided, however, that such program shall otherwise  
27 satisfy all other assisted living program requirements as set forth in  
28 this section. In addition, any program which receives such authorization  
29 and which at any point on or after July first, two thousand five is  
30 unable to accommodate individuals awaiting placement into the assisted  
31 program, shall be authorized to further increase the number of assisted  
32 living beds available as part of this demonstration program by up to  
33 twenty-five percent of its bed level as of July first, two thousand  
34 five; provided, however, that such program shall otherwise satisfy all  
35 other assisted living program requirements as set forth in this section.

36 (h) The commissioner is authorized to add one thousand five hundred  
37 assisted living program beds to the gross number of assisted living  
38 program beds having been determined to be available as of April first,  
39 two thousand seven.

40 (i) (a) The commissioner of health is authorized to add up to six  
41 thousand assisted living program beds to the gross number of assisted  
42 living program beds having been determined to be available as of April  
43 first, two thousand nine. Nothing herein shall be interpreted as prohib-  
44 iting any eligible applicant from submitting an application for any  
45 assisted living program bed so added. The commissioner of health shall  
46 not be required to review on a comparative basis applications submitted  
47 for assisted living program beds made available under this paragraph.  
48 The commissioner of health shall only authorize the addition of six  
49 thousand beds pursuant to a seven year plan ending prior to January  
50 first, two thousand seventeen.

51 (b) The commissioner of health shall provide an annual written report  
52 to the chair of the senate standing committee on health and the chair of  
53 the assembly health committee no later than January first of each year.  
54 Such report shall include, but not be limited to, the number of assisted  
55 living program beds made available pursuant to this section by county,  
56 the total number of assisted living program beds by county, the number

1 of vacant assisted living program beds by county, and any other informa-  
2 tion deemed necessary and appropriate.

3 (j) The commissioner of health is authorized to add up to four thou-  
4 sand five hundred assisted living program beds to the gross number of  
5 assisted living program beds having been determined to be available as  
6 of April first, two thousand twelve. Applicants eligible to submit an  
7 application under this paragraph shall be limited to adult homes estab-  
8 lished pursuant to section four hundred sixty-one-b of this article  
9 with, as of September first, two thousand twelve, a certified capacity  
10 of eighty beds or more in which twenty-five percent or more of the resi-  
11 dent population are persons with serious mental illness as defined in  
12 regulations promulgated by the commissioner of health. The commissioner  
13 of health shall not be required to review on a comparative basis appli-  
14 cations submitted for assisted living program beds made available under  
15 this paragraph.

16 (k) Beginning July first two thousand seventeen, the commissioner of  
17 health and the public health and health planning council are authorized  
18 to approve assisted living program beds for any eligible applicant that  
19 satisfactorily demonstrates the public need for such beds in the area to  
20 be served and meets all other applicable requirements of this section.  
21 Assisted living program availability determinations and limitations in  
22 place prior to July first, two thousand seventeen shall no longer be  
23 applicable, and assisted living program beds shall be generally avail-  
24 able to meet demonstrated public need on a case by case basis whenever  
25 the commissioner and public health and health planning council are  
26 satisfied public need exists at the time and place and under circum-  
27 stances proposed by the applicant; provided, however, the prior bed  
28 authorizations in paragraphs (h), (i) and (j) of this subdivision shall  
29 continue in full force and effect.

30 (l) Notwithstanding any other provision of law to the contrary, the  
31 department of health shall develop an expedited review and approval  
32 process for applications for up to nine additional beds to an existing  
33 assisted living program qualified as being in good standing under  
34 section four hundred sixty-one-b of this article.

35 § 2. Notwithstanding any provision of law to the contrary, there shall  
36 be a moratorium on the authorization of new assisted living program beds  
37 whenever the director of the division of the budget determines that the  
38 addition of new assisted living program beds would have a net negative  
39 fiscal impact on the Medicaid program. In determining the net fiscal  
40 impact on the Medicaid program, the director of the division of the  
41 budget shall include estimates of savings that may accrue from the  
42 utilization of assisted living program beds in lieu of nursing home beds  
43 or other levels of care; whether the average case mix of nursing homes  
44 increases or decreases due to the increase in assisted living program  
45 beds; whether managed care savings are accrued by the addition of  
46 assisted living program beds and overall Medicaid expenditures for the  
47 assisted living program and nursing homes from the effective date of  
48 this section.

49 § 3. This act shall take effect immediately.