STATE OF NEW YORK

9562

IN ASSEMBLY

January 23, 2018

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

AN ACT to amend the social services law, in relation to establishing a certificate of need process for the assisted living program; and to establish a moratorium on the authorization of new assisted living programs in certain cases

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

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

3. Assisted living program approval. (a) An eligible applicant proposing to operate an assisted living program **or increase the number of beds within an existing program** shall submit an application to the [~~department. Upon receipt, the department shall transmit a copy of the application and accompanying documents to the~~] department of health. Such application shall be in a format and a quantity determined by the department **of health** and shall include, but not be limited to:

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

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

(iii) a copy of a proposed contract with a social services district or in a social services district with a population of one million or more, a copy of a proposed contract with the social services district or the department;

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

LBD11424-03-8

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

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

(b) [~~If the application for the proposed program includes an application for licensure as a home care service agency, the~~] **The** department of health shall forward the application for the proposed program and accompanying documents to the public health and health planning council for its written approval in accordance with **this subdivision and** the provisions of section thirty-six hundred five of the public health law.

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

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

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

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

(iv) the commissioner of health is satisfied that **the assisted living program and** the licensed home care agency has received the written approval of the public health and health planning council as required by paragraph (b) of this subdivision and the equipment, personnel, rules, standards of care, and home care services provided by the licensed home care agency and certified home health agency or long term home health care program are fit and adequate and will be provided in the manner required by article thirty-six of the public health law and the rules and regulations thereunder; and

(v) [~~the commissioner and~~] the commissioner of health **and the public health and health planning council** are satisfied as to the public need for the assisted living program **beds being proposed after giving consideration to the relative concentration of assisted living program beds and other long term care resources and capacity in existence in the area to be served**.

(d) The department **of health** shall not approve an application for an assisted living program **or an expansion of an existing program** for any eligible applicant who does not meet the requirements of this article, including but not limited to, an eligible applicant who is already or within the past ten years has been an incorporator, director, sponsor, principal stockholder, member or owner of any adult care facility which has been issued an operating certificate by the board or the department, or of a halfway house, hostel or other residential facility or institution for the care, custody or treatment of the mentally disabled which is subject to approval by an office of the department of mental hygiene, or of any residential health care facility or home care agency as defined in the public health law, unless [~~the department, in conjunction with the department of health,~~] **it** finds by substantial evidence as to each such applicant that a substantially consistent high level of care has been rendered in each such facility or institution under which such person is or was affiliated. For the purposes of this paragraph, there may be a finding that a substantially consistent high level of care has been rendered despite a record of violations of applicable rules and regulations, if such violations (i) did not threaten to directly affect

the health, safety or welfare of any patient or resident, and (ii) were promptly corrected and not recurrent.

(e) [~~The commissioner of health shall provide written notice of approval or disapproval of portions of the proposed application concerning a licensed home care agency, certified home health agency or long term home health care program, and, where applicable, of the approval or disapproval of the public health and health planning council to the commissioner.~~] If an application receives all the necessary approvals, the commissioner **of health** shall notify the applicant in writing. The commissioner's written approval shall constitute authorization to operate an assisted living program.

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

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

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

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

(b) The commissioner of health shall provide an annual written report to the chair of the senate standing committee on health and the chair of the assembly health committee no later than January first of each year. Such report shall include, but not be limited to, the number of assisted living program beds made available pursuant to this section by county, the total number of assisted living program beds by county, the number of vacant assisted living program beds by county, and any other information deemed necessary and appropriate.

(j) The commissioner of health is authorized to add up to four thousand five hundred assisted living program beds to the gross number of assisted living program beds having been determined to be available as of April first, two thousand twelve. Applicants eligible to submit an application under this paragraph shall be limited to adult homes established pursuant to section four hundred sixty-one-b of this [~~article~~] title with, as of September first, two thousand twelve, a certified capacity of eighty beds or more in which twenty-five percent or more of the resident population are persons with serious mental illness as defined in regulations promulgated by the commissioner of health. The commissioner of health shall not be required to review on a comparative basis applications submitted for assisted living program beds made available under this paragraph.

(k) Beginning July first, two thousand eighteen, the commissioner of health and the public health and health planning council are authorized to approve assisted living program beds for any eligible applicant that satisfactorily demonstrates the public need for such beds in the area to be served and meets all other applicable requirements of this section. Assisted living program availability determinations and limitations in place prior to July first, two thousand eighteen shall no longer be applicable, and assisted living program beds shall be generally available to meet demonstrated public need on a case by case basis whenever the commissioner and public health and health planning council are satisfied public need exists at the time and place and under circumstances proposed by the applicant; provided, however, the prior bed authorizations in paragraphs (h), (i) and (j) of this subdivision shall continue in full force and effect.

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

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

§ 3. This act shall take effect immediately.