STATE OF NEW YORK

9892--A

IN ASSEMBLY

February 20, 2018

Introduced by M. of A. LUPARDO -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to authorizing assisted living program beds for any applicant that satisfactorily demonstrates the public need for such beds

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~~] **To the extent applicable, 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,

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

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

(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 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 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 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 [~~are~~] **is** satisfied as to the public need for the assisted living program **beds being proposed after giving consideration to the specific population being served and relative concentration of assisted living program beds in existence in the area to be served. In approving applications for assisted living program beds, the commissioner of health shall give priority to applicants which:**

(A) are an existing assisted living provider who is seeking approval for less than ten beds under the department's expedited review process and whose average occupancy over the prior twelve month period is greater than ninety percent;

(B) are in counties where there are two or fewer operational assisted living program providers and where existing providers in such counties have occupancy over the prior twelve month period in excess of eighty-five percent; or

(C) are in counties where existing assisted living program beds which provide services predominantly to individuals over the age of sixty-five have an average occupancy in excess of eighty-five percent over the prior twelve month period.

(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) (i) For periods on and after April first, two thousand eighteen, the commissioner of health is authorized to issue up to one thousand assisted living program beds. Applicants under this subparagraph shall submit such applications for beds by September first, two thousand eighteen.

(ii) For periods on and after April first, two thousand twenty, the commissioner of health is authorized to issue up to an additional one thousand assisted living program beds. Applicants under this subparagraph shall submit such applications for beds by September first, two thousand twenty.

(iii) For periods on and after April first, two thousand twenty-two, the commissioner of health is authorized to issue 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. Demonstrated public need shall be determined on a case by case basis whenever the commissioner is satisfied public need exists at the time and place and under circumstances proposed by the applicant; provided, however, the prior bed authorizations in this paragraph and 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. In no event shall the review by the department of health of an application under the expedited approval process exceed ninety days.

§ 2. This act shall take effect immediately.