STATE OF NEW YORK

171

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. GOTTFRIED, GUNTHER, ENGLEBRIGHT, L. ROSENTHAL, ABINANTI, SEAWRIGHT, GALEF, SOLAGES, SAYEGH -- Multi-Sponsored by -- M. of A. CARROLL, COLTON, DeSTEFANO, DINOWITZ, McDONOUGH, MONTESANO, PAULIN, PERRY, SIMON -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to requiring a registered nurse on staff at facilities certified for enhanced assisted living or special needs assisted living

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

Section 1. Section 4655 of the public health law, as added by chapter 2 of the laws of 2004, is amended to read as follows:

§ 4655. Certification procedures and requirements. 1. Notwithstanding any other provision of law, an assisted living operator may apply to the department to obtain an enhanced assisted living certificate pursuant to this section.

(a) Such application shall be on a form approved by the department.

(b) An assisted living operator may apply for such a certificate for the entire facility or any number of beds at the facility.

(c) To obtain an enhanced assisted living certificate, the applicant must submit a plan to the department setting forth how the additional needs of residents will be safely and appropriately met at such residence. Such plan shall include, but need not be limited to, a written description of services, staffing levels, staff education and training, work experience, and any environmental modifications that have been made or will be made to protect the health, safety and welfare of such persons in the residence. **The plan shall describe how the facility will meet the registered nurse staffing requirement.**

(d) In addition to any other requirements of assisted living, an operator of enhanced assisted living may hire care staff directly pursuant

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

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to standards developed by the department or contract with a home care services agency which has been approved to operate pursuant to article thirty-six of this chapter.

(e) No assisted living residence shall be certified as enhanced assisted living unless and until the applicant obtains the written approval of the department.

(f) (i) To obtain or renew an enhanced assisted living certificate, the applicant shall be required to have a registered nurse onsite to assess and monitor the condition of residents.

(ii) The registered nurse shall be at the facility a minimum of one shift per day, five days per week. The principal duties of the registered nurse shall be coordinating resident care, providing ongoing resident assessment and monitoring, and ensuring that all residents are receiving appropriate care.

(iii) Facilities with resident populations that do not necessitate the monitoring or oversight services of a registered nurse on a full time basis may also employ the registered nurse in an administrative or other capacity, as appropriate for the facility. Facilities choosing this option must demonstrate that residents are receiving adequate assessment and monitoring.

(iv) Existing enhanced assisted living residences shall be required to furnish proof of compliance with this paragraph no later than eighteen months after this paragraph shall have become a law.

2. No resident shall be permitted to continue to age in place under the terms of an enhanced assisted living certificate unless the operator, the resident's physician, **the facility's staff registered nurse,** and, if applicable, the resident's licensed or certified home care agency, agree that the additional needs of the resident can be safely and appropriately met at the residence. A resident eligible for enhanced assisted living or his or her representative shall submit to the residence a written report from a physician, which report shall state that:

(a) the physician has physically examined the resident within the last month; and

(b) the resident is not in need of twenty-four hour skilled nursing care or medical care which would require placement in a hospital or residential health care facility.

3. The residence must notify a resident that, while the residence will make reasonable efforts to facilitate the resident's ability to age in place pursuant to an individualized service plan, there may be a point reached where the needs of the resident cannot be safely or appropriately met at the residence, requiring the transfer of the resident to a more appropriate facility in accordance with the provisions of this article.

4. If a resident reaches the point where he or she is in need of twenty-four hour skilled nursing care or medical care required to be provided by facilities licensed pursuant to article twenty-eight of this chapter or article nineteen, thirty-one or thirty-two of the mental hygiene law, **as determined by the patient's physician or the facility's staff resident nurse,** then the resident must be discharged from the residence and the operator shall initiate proceedings for the termination of the residency agreement of such resident in accordance with the provisions of section four hundred sixty-one-h of the social services law. Provided, however, a resident may remain at the residence if each of the following conditions are met:

(a) a resident in need of twenty-four hour skilled nursing care or medical care hires appropriate nursing, medical or hospice staff to care for his or her increased needs;

(b) the resident's physician [~~and~~], home care services agency [~~both~~] **and the facility's staff registered nurse all** determine and document that, with the provision of such additional nursing, medical or hospice care, the resident can be safely cared for in the residence, and would not require placement in a hospital, nursing home or other facility licensed under article twenty-eight of this chapter or article nineteen, thirty-one or thirty-two of the mental hygiene law;

(c) the operator agrees to retain the resident and to coordinate the care provided by the operator and the additional nursing, medical or hospice staff; and

(d) the resident is otherwise eligible to reside at the residence.

5. In addition to the requirements otherwise required for licensure as assisted living, any residence that advertises or markets itself as serving individuals with special needs, including, but not limited to, individuals with dementia or cognitive impairments, must submit a special needs plan to the department setting forth how the special needs of such residents will be safely and appropriately met at such residence. Such plan shall include, but need not be limited to, a written description of specialized services, staffing levels, staff education and training, work experience, professional affiliations or special characteristics relevant to serving persons with special needs, and any environmental modifications that have been made or will be made to protect the health, safety and welfare of such persons in the residence. In approving an application for special needs certification, the department shall develop standards to ensure adequate staffing and training in order to safely meet the needs of the resident. The standards shall be based upon recommendations of the task force established by section five of [~~the~~] chapter **two** of the laws of two thousand four [~~which added this section~~]. **In addition to any other standards which the department may develop, applicants for special needs assisted living certificates shall be subject to the same registered nurse staffing requirements detailed in paragraphs (c) and (f) of subdivision one of this section.** No residence shall market [~~themselves~~] **itself** as providing specialized services unless and until the department has approved such applicant for a special needs assisted living certificate. **Existing special needs assisted living residences shall be required to furnish proof of compliance with the new staffing requirements no later than eighteen months after this sentence shall have become a law.**

6. An enhanced assisted living certificate shall not be required of an adult care facility, or part thereof, which has obtained approval by the department to operate an assisted living program pursuant to section four hundred sixty-one-l of the social services law. Provided, however, such exemption shall only apply to those beds at the facility which are subject to the assisted living program.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law; provided that any rules and regulations, and any other actions necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such date.