

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:

1 Section 1. Section 4655 of the public health law, as added by chapter
2 2 of the laws of 2004, is amended to read as follows:
3 § 4655. Certification procedures and requirements. 1. Notwithstanding
4 any other provision of law, an assisted living operator may apply to the
5 department to obtain an enhanced assisted living certificate pursuant to
6 this section.
7 (a) Such application shall be on a form approved by the department.
8 (b) An assisted living operator may apply for such a certificate for
9 the entire facility or any number of beds at the facility.
10 (c) To obtain an enhanced assisted living certificate, the applicant
11 must submit a plan to the department setting forth how the additional
12 needs of residents will be safely and appropriately met at such resi-
13 dence. Such plan shall include, but need not be limited to, a written
14 description of services, staffing levels, staff education and training,
15 work experience, and any environmental modifications that have been made
16 or will be made to protect the health, safety and welfare of such
17 persons in the residence. The plan shall describe how the facility will
18 meet the registered nurse staffing requirement.
19 (d) In addition to any other requirements of assisted living, an oper-
20 ator 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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1 to standards developed by the department or contract with a home care
2 services agency which has been approved to operate pursuant to article
3 thirty-six of this chapter.

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

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

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

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

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

24 2. No resident shall be permitted to continue to age in place under
25 the terms of an enhanced assisted living certificate unless the opera-
26 tor, the resident's physician, the facility's staff registered nurse,
27 and, if applicable, the resident's licensed or certified home care agen-
28 cy, agree that the additional needs of the resident can be safely and
29 appropriately met at the residence. A resident eligible for enhanced
30 assisted living or his or her representative shall submit to the resi-
31 dence a written report from a physician, which report shall state that:

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

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

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

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

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

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

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

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

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

42 6. An enhanced assisted living certificate shall not be required of an
43 adult care facility, or part thereof, which has obtained approval by the
44 department to operate an assisted living program pursuant to section
45 four hundred sixty-one-1 of the social services law. Provided, however,
46 such exemption shall only apply to those beds at the facility which are
47 subject to the assisted living program.

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