STATE OF NEW YORK

9356

IN SENATE

May 13, 2024

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Aging

AN ACT to amend the elder law, in relation to social model adult day services programs

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

Section 1. Section 215 of the elder law, paragraph (b) of subdivision 1 as amended by chapter 296 of the laws of 2021 and paragraph (c) of subdivision 2 as amended by chapter 63 of the laws of 2022, is amended to read as follows:

§ 215. Social model adult day services programs. 1. Definitions. As used in this section:

(a) "Advisory committee for the aging" shall mean the advisory committee for the aging established pursuant to section two hundred ten of this title.

(b) "Social adult day services" shall mean a program providing a variety of long term care services to functionally impaired individuals, whether due to physical or cognitive impairments, in a congregate, community, or home setting and pursuant to a person-centered service plan.

(c) "Designated agency" shall mean any agency which is either a unit of county government, the city of New York, or the governing body or council of an Indian tribal reservation, or a private not-for-profit agency organized or existing pursuant to the not-for-profit corporation law, which has been designated as an area agency on aging by the state office for the aging pursuant to the federal older Americans act of 1965, as amended.

(d) "Functionally impaired" shall mean a person who needs the assistance of another person in at least one of the following activities of daily living: toileting, mobility, transferring, or eating; or who needs supervision due to cognitive and/or psycho-social impairment.

(e) "Social adult day care" shall mean a program providing a variety of comprehensive services to functionally impaired elderly persons as defined in regulations established by the director.

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

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2. Duties of the director. (a) The director is authorized and directed to promulgate rules and regulations, establishing standards and requirements with regard to the operation of all social adult day care programs [~~receiving funding pursuant to this article~~] regardless of whether the program receives funding pursuant to this article, other public funding, or private funding. For a program subject to oversight by both the office pursuant to this section and another state agency, the rules and regulations of the other state agency shall take precedence if there is duplication to the rules and regulations promulgated by the director. The director shall establish a method for a program to notify the office of such duplication. Such standards and requirements shall include, but not be limited to:

(1) services to be provided;

(2) admission criteria;

(3) participant cost-sharing;

(4) assessment and enrollment;

(5) staffing;

(6) monitoring and evaluation of programs; and

(7) any other standards or requirements which the director determines to be appropriate.

(b) Rules and regulations promulgated by the director pursuant to this subdivision shall also direct how social adult day care will be included in the planning currently required of designated agencies.

(c) The director shall develop materials for employees and volunteers of programs providing social adult day services or social adult day care on the signs and symptoms of elder abuse, which shall include identity theft. Such materials shall include, but not be limited to, ways to discuss suspected elder abuse with seniors where abuse is suspected and resources to which seniors may be referred for counseling, shelter, or other assistance.

(d) The director shall inspect each social adult day care program prior to operating and no less than once every five years. Such inspection shall ensure that the program has met the standards and requirements established by the director, including but not limited to a determination that the program has the necessary physical capacity to provide services for the number of people enrolled in such program. Upon successful completion of such inspection, the program shall be issued a certificate of inspection by the director. If a program is inspected and does not meet the standards and requirements established by the director, such program shall be given ninety days to correct any deficiencies as determined by the director.

(e) By January first, two thousand thirty, and annually thereafter, the director shall collect and maintain for inspection by designated agencies the self-certification submitted by each program pursuant to subdivision five of this section.

3. Funding for social adult day care programs.

(a) Beginning with amounts appropriated in the two thousand five fiscal year, the director shall, within amounts appropriated therefor, make grants available on a competitive basis to not-for-profit or local government operated social adult day care programs for functionally impaired elderly persons, with consideration of regional needs and a broad array of models. Such grants shall equal seventy-five percent of allowable expenditures for approved services pursuant to this section; provided however that the director may accept certain in-kind equivalents to comprise the required twenty-five percent match; and provided further, in the case of providers which can demonstrate financial need,

the director may make grants of up to one hundred percent of allowable expenditures pursuant to this section.

(b) Beginning with the first year that the annual increase in amounts appropriated for the purposes of this section shall equal at least five million dollars, for that increase and all increases thereafter, the director shall distribute such increases to designated agencies for the provision of social adult day care programs for functionally impaired elderly persons based on a formula developed by the office which shall consider at least the following: the number of elderly persons in the area; and the number of functionally impaired elderly persons in the area as determined by the office. Base funding established under paragraph (a) of this subdivision shall continue to be distributed as provided in paragraph (a) of this subdivision. Within the amounts appropriated therefor, designated agencies authorized to provide social adult day care under this section shall be eligible for reimbursement from the state for seventy-five percent of allowable expenditures for approved social adult day care services pursuant to this section up to a level authorized by the director; provided however, that certain in-kind equivalents may comprise the twenty-five percent match.

(c) The office may use up to three percent of the total of any funding appropriated pursuant to this section for administration.

(d) The designated agency may use up to three percent of the total of any funds provided to the designated agency pursuant to this section for administration.

4. Funding eligibility. **(a)** Funding pursuant to this section shall not be available to social adult day care programs for services provided to elderly persons who are eligible for or receiving comparable services to those defined in this section pursuant to title eighteen, nineteen or twenty of the federal social security act, or any other government program. In addition, funding pursuant to this section shall not supplant any existing public or private funding for social adult day care programs.

(b) No social adult day care program shall be eligible to receive funding pursuant to this section or any other public funding for social adult day care programs until they have received a certification of inspection, as defined in paragraph (d) of subdivision two of this section, by the director.

(c) Notwithstanding paragraph (b) of this subdivision, any existing social adult day care program receiving funding pursuant to this section or any other public funding prior to December thirty-first, two thousand twenty-four shall be inspected pursuant to paragraph (d) of subdivision two of this section on or before December thirty-first, two thousand twenty-nine. Until an initial inspection is conducted, an existing social adult day care program receiving funding pursuant to this section or any other public funding shall not require a certificate of inspection to be eligible to receive such funding.

(d) A social adult day care program that does not correct deficiencies as required by paragraph (d) of subdivision two of this section may no longer be eligible for funding as determined by the director.

5. **Self-Certification. Beginning January first, two thousand thirty, each social adult day care program shall conduct an annual self-certification of its administrative, fiscal, and programmatic operations, including feedback from participants and caregivers and submit such self-certification to the director. Failure to submit such self-certification shall result in the program being ineligible to receive public funding.**

6. Program identification and marketing. No person or entity shall identify or market themselves as providing a social adult day care program unless they meet the requirements of this section.

7. Report of director. The director, after consultation with [~~his or her~~] **such director's** advisory committee, affected state agencies, any affected municipal agencies and persons involved in providing social adult day care services, shall make a report, on or before December thirty-first, two thousand five, to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the senate standing committee on aging and the chair of the assembly standing committee on aging on the projected costs and benefits of establishing uniform standards and requirements with regard to operation of social adult day care services in the state. The report shall include the director's findings, recommendations and estimate of the fiscal implications of regulating social adult day care services in the state.

§ 2. This act shall take effect immediately.