

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2015**

No. 9

Introduced by Council Members Chin, Vallone, Johnson, Arroyo, Vacca, Dickens, Koo, Levine, Rose, Wills, Rodriguez, Mendez, Koslowitz, Rosenthal, Deutsch, Cohen, Dromm, Barron, Constantinides, Crowley, Lancman, Lander, Treyger, Kallos, Levin, Menchaca, Miller, Ferreras, Maisel, Gentile, Cabrera, Cornegy, Gibson, Greenfield, Mealy, Reynoso, Torres, Weprin, Cumbo, Van Bramer, Espinal, Richards, Garodnick, King, Palma, Williams, Eugene and Ulrich.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to regulating social adult day care.

Be it enacted by the Council as follows:

Section 1. Section 21-201 of chapter 2 of title 21 of the administrative code of the city of New York is amended by adding a new subdivision f to read as follows:

f. “Social adult day care” has the same meaning as set forth in section two hundred fifteen of the elder law and any regulations promulgated by the director of the office for the aging pursuant to such section.

§ 2. Chapter 2 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-204 to read as follows:

§ 21-204 Social adult day care. a. 1. All social adult day cares that do not receive funding pursuant to section two hundred fifteen of the elder law shall meet the standards and requirements of any rules or regulations promulgated by the director of the office for the aging pursuant to such section related to program standards and participant rights, notwithstanding the fact that such social adult day cares do not receive such funding. For the purposes of this section, any reference

to an “area agency on aging” in such rules and regulations means the department and any reference to a “participant” in such rules and regulations means an adult individual who is functionally impaired as defined in such rules and regulations and is eligible for and is receiving services from a social adult day care. Any references to “functionally impaired” and “social adult day care program” in such rules and regulations shall have the same meanings set forth therein.

2. All social adult day cares shall carry out the provisions of this section in accordance with all applicable provisions of the Americans with disabilities act of nineteen ninety.

b. Registration. 1. An individual, partnership, corporation, limited liability company, joint venture, association, or other business entity shall not operate as a social adult day care without having registered with the department. Registration shall include registrant’s name, address, corporate structure and ownership, and other information as the department may require and shall be filed on forms to be prescribed by the department. The department may require social adult day cares to register electronically.

2. Changes to information required under this subdivision must be submitted to the department no later than the effective date of such change in writing or electronically in a form and manner designated by the department.

c. Civil penalties. 1. The department shall adopt rules establishing civil penalties of not less than two hundred fifty dollars per day and not more than five hundred dollars per day to be assessed against social adult day cares for violations of subdivision a and any regulations promulgated thereunder. Such rules establishing civil penalties shall specify the violations subject to penalty.

2. Any individual, partnership, corporation, limited liability company, joint venture, association, or other business entity that operates as a social adult day care without registering shall be subject to a civil penalty of not less than two hundred fifty dollars per day and not more than one thousand dollars per day such social adult day care operates without registering.

3. The department and officers and employees of city agencies designated by the mayor shall have the authority to issue notices of violation, returnable at the environmental control board, any administrative tribunal within such designated agency, or any tribunal established within the office of administrative trials and hearings as designated by the commissioner, for violations of this section or any rules promulgated by the department pursuant to such section.

d. Social adult day care ombudsperson. 1. The department shall designate an ombudsperson whose duties shall include, but not be limited to:

(i) establishing a system to receive comments and complaints with respect to any social adult day care;

(ii) requesting a list from the state department of health at least once annually of providers operating social adult day cares within the city of New York and the street address of each such social adult day care; and

(iii) investigating complaints received pursuant to subparagraph (i) of this paragraph or based on any information known to the department related to a social adult day care that may be in violation of the provisions of subdivision a of this section and whether a social adult day care has violated subdivision a of this section and upon finding there has been such a violation:

(A) promptly informing in writing such social adult day care and any managed long term care organization known to be reimbursing such social adult day care of such finding, and that such finding is appealable by writing to the commissioner in accordance with the rules of the department, and requesting any informed managed long term care organization to respond to the ombudsperson in writing as to whether and how such violations will be addressed,

(B) at the ombudsperson's discretion, forwarding the results of such investigation and any such response from a managed long term care organization to the department of investigation, the state department of health or any office, agency, or entity responsible for the prevention, detection, and investigation of fraud and abuse in the medical assistance program described in title eleven of the social services law or for the recovery of any improperly expended medical assistance funds, and

(C) taking other appropriate actions as determined by the commissioner.

2. A social adult day care shall post in a conspicuous location on its premises a sign indicating how to contact the ombudsperson and a statement indicating that any person may contact such ombudsperson if such person has a comment or complaint regarding such social adult day care.

3. The department shall make available on its website the contact information of the ombudsperson as well as a statement indicating that any person may contact such ombudsperson with a comment or complaint regarding any social adult day care.

4. *Not later than January 1, 2016 and annually thereafter, the ombudsperson shall provide a written report to the council regarding social adult day cares. Each such report shall include, but not be limited to:*

(i) the total number of social adult day cares and the name and street address of each such social adult day care;

(ii) the total number of complaints received by the ombudsperson;

(iii) a general description of the reason for each such complaint;

(iv) the total number of investigations conducted by the ombudsperson, a general description of the reason for each such investigation, any findings that a social adult day care has violated of subdivision a of this section, and the outcome of each such investigation;

(v) the total number of notices of violation issued pursuant to subdivisions a and c of this section, disaggregated by the specific violation for which such notice was issued;

(vi) the total number of social adult day cares that failed to register pursuant to subdivision b as of the date of such report; and

(vii) any recommendations regarding the operation of social adult day cares.

5. *Except as otherwise required by law, the department shall not share information that identifies any individual who made a complaint to the ombudsperson.*

§ 3. The mayor shall designate one or more city agencies to issue notices of violation pursuant to subdivision c of section 21-204 of the administrative code of the city of New York, as added by section two of this local law and provide written notice to the council of such designation

within 30 days of the enactment of this local law. If no such notice is provided within 30 days of the enactment of this local law, the department of consumer affairs shall be deemed to be such designated agency.

§ 4. This local law shall take effect 180 days after its enactment into law, provided, however: (i) that paragraph 1 of subdivision c of section 21-204 of the administrative code of the city of New York, as added by section two of this local law, shall take effect 12 months after its enactment into law; except that if any state law, rule, or regulation establishing civil penalties or fines for violations of any law, rule, or regulation concerning program standards or participant rights of social adult day cares as defined in section 1 of this local law is enacted prior to such 12 months, such paragraph one shall be deemed repealed; (ii) that section three of this local law shall take effect immediately; and (iii) that the department shall take all necessary action, including the promulgation of rules, prior to such effective date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on December 17, 2014 and returned unsigned by the Mayor on January 16, 2015.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 9 of 2015, Council Int No. 358-A of 2014) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.