

3968

2009-2010 Regular Sessions

I N   S E N A T E

April 7, 2009

---

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

AN ACT to amend the public health law, in relation to the preservation  
of access to health care services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivision 3 of section 2801-a of the public health law,  
2     as amended by chapter 667 of the laws of 1997, is amended to read as  
3     follows:  
4     3. The public health council shall not approve a certificate of incor-  
5     poration, articles of organization or application for establishment  
6     unless it is satisfied, insofar as applicable, as to (a) the public  
7     need, DETERMINED IN ACCORDANCE WITH SECTION TWENTY-EIGHT HUNDRED ONE-G  
8     OF THIS ARTICLE, for the existence of the institution at the time and  
9     place and under the circumstances proposed, provided, however, that in  
10    the case of an institution proposed to be established or operated by an  
11    organization defined in subdivision one of section one hundred seventy-  
12    two-a of the executive law, the needs of the members of the religious  
13    denomination concerned, for care or treatment in accordance with their  
14    religious or ethical convictions, shall be deemed to be public need; (b)  
15    the character, competence, and standing in the community, of the  
16    proposed incorporators, directors, sponsors, stockholders, members or  
17    operators; with respect to any proposed incorporator, director, sponsor,  
18    stockholder, member or operator who is already or within the past ten  
19    years has been an incorporator, director, sponsor, member, principal  
20    stockholder, principal member, or operator of any hospital, private  
21    proprietary home for adults, residence for adults, or non-profit home  
22    for the aged or blind which has been issued an operating certificate by  
23    the [state] department [of social services], or a halfway house, hostel  
24    or other residential facility or institution for the care, custody or  
25    treatment of the mentally disabled which is subject to approval by the

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

LBD09263-01-9

1 department of mental hygiene, no approval shall be granted unless the  
2 public health council, having afforded an adequate opportunity to  
3 members of health systems agencies having geographical jurisdiction of  
4 the area where the institution is to be located to be heard, shall  
5 affirmatively find by substantial evidence as to each such incorporator,  
6 director, sponsor, principal stockholder or operator that a substantial-  
7 ly consistent high level of care is being or was being rendered in each  
8 such hospital, home, residence, halfway house, hostel, or other residen-  
9 tial facility or institution with which such person is or was affil-  
10 iated; for the purposes of this paragraph, the public health council  
11 shall adopt rules and regulations, subject to the approval of the  
12 commissioner, to establish the criteria to be used to determine whether  
13 a substantially consistent high level of care has been rendered,  
14 provided, however, that there shall not be a finding that a substantial-  
15 ly consistent high level of care has been rendered where there have been  
16 violations of the state hospital code, or other applicable rules and  
17 regulations, that (i) threatened to directly affect the health, safety  
18 or welfare of any patient or resident, and (ii) were recurrent or were  
19 not promptly corrected; (c) the financial resources of the proposed  
20 institution and its sources of future revenues; and (d) such other  
21 matters as it shall deem pertinent.

22 S 2. Subdivision 2 of section 2802 of the public health law, as  
23 amended by chapter 609 of the laws of 1982, is amended to read as  
24 follows:

25 2. The commissioner shall not act upon an application for construction  
26 of a hospital until the state hospital review and planning council and  
27 the health systems agency have had a reasonable time to submit their  
28 recommendations, and unless (a) the applicant has obtained all approvals  
29 and consents required by law for its incorporation or establishment  
30 (including the approval of the public health council pursuant to the  
31 provisions of this article) provided, however, that the commissioner may  
32 act upon an application for construction by an applicant possessing a  
33 valid operating certificate when the application qualifies for review  
34 without the recommendation of the council pursuant to regulations  
35 adopted by the council and approved by the commissioner; and (b) the  
36 commissioner is satisfied as to the public need, DETERMINED IN ACCORD-  
37 ANCE WITH SECTION TWENTY-EIGHT HUNDRED ONE-G OF THIS ARTICLE, for the  
38 construction, at the time and place and under the circumstances  
39 proposed, provided however that, in the case of an application by a  
40 hospital established or operated by an organization defined in subdivi-  
41 sion one of section [four hundred eighty-two-a of the social services]  
42 ONE HUNDRED SEVENTY-TWO-A OF THE EXECUTIVE law, the needs of the members  
43 of the religious denomination concerned, for care or treatment in  
44 accordance with their religious or ethical convictions, shall be deemed  
45 to be public need.

46 S 3. Subdivision (e) of section 2904 of the public health law, as  
47 amended by chapter 795 of the laws of 1992, is amended to read as  
48 follows:

49 (e) The council, in cooperation with the various health systems agen-  
50 cies shall consider and advise in accordance with the provisions of this  
51 chapter relative to applications for the incorporation or establishment  
52 of a new institution and the provisions of this chapter relative to  
53 applications for the construction of a hospital as defined in article  
54 twenty-eight of this chapter. The state council shall consult with or  
55 otherwise obtain the advice of the health systems agency of the area in  
56 which the institution is located or the health systems agency of areas

1 that might be substantially affected by the application. At the time  
2 members of the council are notified that an application is scheduled for  
3 consideration, the applicant and the health systems agency shall be so  
4 notified in writing. Before taking any action contrary to the advice of  
5 the health systems agency involved, the state council shall afford them  
6 an opportunity to request a public hearing in which each such agency and  
7 the applicant shall have the right to participate; provided, however,  
8 that the council may take action without the advice of the health  
9 systems agency whenever such agency has not submitted such advice within  
10 the time period applicable to the review of such application. RECOMMEN-  
11 DATIONS OF THE COUNCIL FOR THE APPROVAL OR DISAPPROVAL OF AN APPLICATION  
12 FOR INCORPORATION OR ESTABLISHMENT OR AN APPLICATION FOR CONSTRUCTION  
13 WHICH INVOLVE A DETERMINATION OF PUBLIC NEED SHALL BE MADE IN ACCORDANCE  
14 WITH SECTION TWENTY-EIGHT HUNDRED ONE-G OF THIS CHAPTER.

15 S 4. The public health law is amended by adding a new section 2801-g  
16 to read as follows:

17 S 2801-G. PRESERVATION OF ACCESS TO HEALTH CARE SERVICES. 1. AN APPLI-  
18 CATION FOR ESTABLISHMENT, INCORPORATION OR CONSTRUCTION UNDER SECTION  
19 TWENTY-EIGHT HUNDRED ONE-A OR TWENTY-EIGHT HUNDRED TWO OF THIS ARTICLE  
20 SHALL NOT BE APPROVED UNLESS THE COMMISSIONER AFFIRMATIVELY FINDS THAT:

21 (A) IT WILL NOT RESULT IN THE REDUCTION OR ELIMINATION OF A HEALTH  
22 CARE SERVICE, INCLUDING THE RELOCATION OF A FACILITY OR SERVICE, IN THE  
23 AFFECTED COMMUNITY; OR

24 (B) IT WILL RESULT IN THE REDUCTION OR ELIMINATION OF A HEALTH CARE  
25 SERVICE NECESSARY TO PROVIDE COMPREHENSIVE HEALTH CARE, INCLUDING THE  
26 RELOCATION OF A FACILITY OR SERVICE, BUT THE NEED FOR THE SERVICE WILL  
27 CONTINUE TO BE MET IN THE AFFECTED COMMUNITY.

28 2. IN MAKING A FINDING UNDER SUBDIVISION ONE OF THIS SECTION, THE  
29 COMMISSIONER SHALL CONSIDER:

30 (A) CURRENT UTILIZATION PATTERNS FOR THE AFFECTED SERVICES;

31 (B) GEOGRAPHIC ACCESSIBILITY OF PROPOSED ALTERNATIVE SERVICE SITES;

32 (C) THE EXTENT TO WHICH THE APPLICANT WILL PROVIDE TIMELY REFERRALS TO  
33 ALTERNATE SERVICE SITES THAT ASSURE ACCESS APPROPRIATE TO THE PATIENT'S  
34 NEEDS FOR COMPREHENSIVE HEALTH CARE;

35 (D) THE FINANCIAL VIABILITY OF ANY ALTERNATIVE SERVICE SITE WITH  
36 RESPECT TO CONTINUED PROVISION OF THE AFFECTED SERVICE; AND

37 (E) THE EFFECT OF THE REDUCTION, ELIMINATION OR RELOCATION OF THE  
38 PROPOSED SERVICE OR FACILITY ON THE ABILITY OF LOW INCOME PERSONS,  
39 RACIAL AND ETHNIC MINORITIES, WOMEN, PERSONS WITH DISABILITIES AND OTHER  
40 UNDERSERVED GROUPS AND THE ELDERLY TO OBTAIN NEEDED HEALTH CARE.

41 S 5. This act shall take effect immediately and shall apply to any  
42 determination of public need under section 2801-a or 2802 of the public  
43 health law made on or after the effective date of this act.