

STATE OF NEW YORK

6767

2021-2022 Regular Sessions

IN SENATE

May 14, 2021

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

AN ACT to amend the public health law, in relation to nursing homes and residential health care facilities; and to amend a chapter of the laws of 2021 amending the public health law relating to requirements for residential health care facilities and nursing homes, as proposed in legislative bills numbers S. 4893-A and A. 5684-A, in relation to the effectiveness thereof

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

Section 1. Subdivisions 2-b and 3-b of section 2801-a of the public health law, as added by a chapter of the laws of 2021, amending the public health law relating to requirements for residential health care facilities and nursing homes, as proposed in legislative bills numbers S. 4893-A and A. 5684-A, are amended to read as follows:

2-b. (a) This subdivision applies with respect to an application under this section relating to the incorporation or establishment of any nursing home, in addition to subdivision two of this section.

(b) The ~~[council]~~ department shall provide notice, in writing or electronically, of ~~[the]~~ an application ~~[to the public on the department's website]~~ for establishment to the state office of long-term care ombudsman, within thirty days of ~~[receipt of it and provide it to the state office of the long-term care ombudsman and the regional office having geographical jurisdiction of the area where the nursing home is to be or is located. In the case of an application relating to an existing nursing home, the notice shall also be provided in writing or electronically to residents of the nursing home and their representatives, and the staff of the nursing home and their representatives]~~ acknowledgement of the application by the department. Thereafter, the state office of the long-term care ombudsman shall submit its recommendation to the department and to the public health and health planning council for consider-

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

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1 ation about such application. At the time members of such council are
2 notified that an application is scheduled for consideration by a commit-
3 tee designated by the public health and health planning council, the
4 department shall also notify the state office of the long-term care
5 ombudsman, in writing or electronically.

6 (c) ~~[The council shall provide a mechanism for submitting written~~
7 ~~comments electronically on the application to the council, and provide~~
8 ~~at least ninety days for the comment period. The terms of the written~~
9 ~~comment process shall be included in the notice under paragraph (a) of~~
10 ~~this subdivision]~~ In the case of an application for establishment relat-
11 ing to an existing nursing home, the established operator and applicant
12 shall provide notice of the application, in writing or electronically,
13 to residents of the nursing home and their representatives and the staff
14 of the nursing home, including their union representatives, within thir-
15 ty days of acknowledgment of the application by the department. The
16 established operator and applicant shall also immediately notify resi-
17 dents of the nursing home and their representatives and the staff of the
18 nursing home, including their union representatives, when the estab-
19 lished operator and applicant is notified that its application is sched-
20 uled for consideration by a committee designated by the public health
21 and health planning council.

22 ~~[(d) The council shall forward a copy of the application, and accompa-~~
23 ~~nying documents, to the state office of the long-term care ombudsman and~~
24 ~~the regional office having geographical jurisdiction of the area where~~
25 ~~the nursing home is or is to be located within thirty days of receipt of~~
26 ~~the application. The council shall not act upon such application until~~
27 ~~after the state office of the long-term care ombudsman, regional office~~
28 ~~and the parties entitled to notice have had a reasonable time, but not~~
29 ~~less than ninety days, to submit their recommendations. At the time~~
30 ~~members of the council are notified that an application is scheduled for~~
31 ~~consideration, the applicant, and the parties entitled to the notice~~
32 ~~under paragraph (a) of this subdivision shall be so notified in writing~~
33 ~~or electronically. The council shall afford the applicant an opportunity~~
34 ~~to present information in person concerning the application to a commit-~~
35 ~~tee designated by the council. The council shall not take any action~~
36 ~~contrary to the advice of the state office of the long-term care ombuds-~~
37 ~~man or the regional office until it affords the state or regional office~~
38 ~~an opportunity to request a public hearing and, if so requested, the~~
39 ~~public hearing is held. If the council proposes to disapprove the appli-~~
40 ~~cation it shall afford the applicant an opportunity to request and~~
41 ~~testify at a public hearing. The council may hold a public hearing on~~
42 ~~the application on its own motion or upon the written request of any~~
43 ~~person.~~

44 ~~(e) Where this subdivision is inconsistent with subdivision two of~~
45 ~~this section, this subdivision shall prevail.]~~

46 3-b. (a) This subdivision applies to an application under this section
47 relating to a nursing home, and applies in addition to subdivision three
48 of this section.

49 (b) The application shall provide information as to the character,
50 competence and standing in the community of every ~~[present or proposed]~~
51 individual and entity of the applicant and specify the identity of every
52 nursing home in which each of those individuals and entities is, or in
53 the preceding seven years has held a controlling interest or has been a
54 controlling person, principal stockholder or principal member ~~[of the~~
55 ~~applicant, the identity of every nursing home in which each of those~~
56 ~~individuals or entities is, or in the preceding five years has been, a~~

~~controlling person, principal stockholder or principal member~~; and the nature of that interest. As used in this subdivision, "individual and entity of the applicant" shall include but not be limited to an individual or entity that is a controlling person, principal stockholder, or principal member of the applicant. The council shall not approve the application unless it finds that each ~~[of those individuals and entities]~~ individual and entity, in relation to ~~[each such]~~ ownership of a nursing home located in the United States, for at least the previous ~~[three]~~ seven years, demonstrated satisfactory character, competence and standing in the community and the nursing home provided a consistently high level of care. The council shall adopt rules and regulations, subject to the approval of the commissioner, to establish the criteria to be used to determine whether a consistently high level of care has or has not been rendered by an applicant ~~[where one or more controlling persons, principal stockholders or principal members of the applicant is a controlling person, principal stockholder or principal member of a]~~ at such nursing home ~~[located in the United States]~~. The council shall ~~[not]~~ consider ~~[that]~~, at a minimum, the following occurrences to determine whether a consistently high level of care has been delivered at a facility ~~[in the United States that]~~, and shall require the applicant to disclose and provide an explanation for any of the following occurrences: (i) a facility that has earned a two-star rating or less by the federal ~~[center]~~ centers for Medicare and Medicaid ~~[Services-]~~ Services (CMS) (or a comparable rating under a successor CMS rating system) ~~[or]; (ii)~~ where there have been violations of the state or federal nursing home code, or other applicable rules and regulations, that threatened to directly affect the health, safety or welfare of any patient or resident, including but not limited to a finding of immediate jeopardy, or actual harm, and were recurrent or were not promptly corrected, including but not limited to repeat deficiencies for the same or similar violations over a three year period or during the entire duration of ownership if less than three years, or any facility which has been in receivership; (iii) where a facility has closed as a result of a settlement agreement from a decertification action or licensure revocation; or (iv) has been involuntarily terminated from the Medicare or Medicaid program in the prior five years, provided however, that where an applicant has taken over a facility and promptly corrected such deficiencies, the council may consider the application.

~~[(c) Where this subdivision is inconsistent with subdivision three of this section, this subdivision shall prevail.]~~

§ 2. Section 2803-x of the public health law, as amended by a chapter of the laws of 2021, amending the public health law relating to requirements for residential health care facilities and nursing homes, as proposed in legislative bills numbers S. 4893-A and A. 5684-A, is amended to read as follows:

§ 2803-x. Requirements related to nursing homes and related assets and operations. 1. The operator of a nursing home shall notify the commissioner of any common or familial ownership of any corporation, other entity or individual providing services to the operator or the facility. Such information shall also be included in the residency agreement for prospective residents and as addendums for residents currently residing in the residential health care facility nursing home. The operator shall notify the department at least ninety days prior to entering into any new common or familial ownership of any corporation, or other entity or individual providing services to the operator of the facility. The operator shall also provide notification to all residents and their repre-

1 sentatives, staff and their representatives, and the state office of the
2 long-term care ombudsman.

3 2. The operator of a nursing home shall, on an annual basis, attest to
4 the department, in a form determined by the department, to the accuracy
5 of the information provided to the department under this section.

6 3. The operator of a nursing home may not enter into any arrangement
7 to guarantee the debt or other obligation of a party which has not
8 received establishment approval.

9 4. The operator of a nursing home shall notify the department and the
10 state office of the long-term care ombudsman at least ninety days prior
11 to executing a letter of intent or other contractual agreement related
12 to:

13 a. the sale, mortgaging, encumbrance, or other disposition of the real
14 property of the facility; and

15 b. the [~~management~~] consulting, operations, staffing agency or other
16 entity to be involved in the operations of the facility.

17 5. [~~The department, shall, within ten days after receipt of a notifi-~~
18 ~~cation required under subdivision four of this section, notify the state~~
19 ~~office of the long-term care ombudsman of an operator of nursing home's~~
20 ~~intent to execute a binding letter of intent or other contractual agree-~~
21 ~~ment related to:~~

22 ~~a. the sale, mortgaging, encumbrance, or other disposition of the real~~
23 ~~property of the facility; and~~

24 ~~b. the management, operations, staffing agency or other entity to be~~
25 ~~involved in the operations of the facility.~~

26 6.] The operator of a nursing home shall notify all residents and
27 their representatives, staff and their representatives, and the state
28 office of the long-term care ombudsman within five days of executing a
29 binding letter of intent or other contractual agreement as described in
30 paragraphs a and b of subdivision four of this section.

31 [7.] 6. Where the operator of a nursing home provides or purports to
32 provide, by any contract, agreement or arrangement, for any party to
33 carry out or be delegated any activity or responsibility relating to the
34 nursing home, that shall not diminish any responsibility or liability
35 that the operator would otherwise have for any such activity or respon-
36 sibility or for the operation of the nursing home.

37 [8.] 7. Any new owner[7] or operator [~~or management company~~] of a
38 nursing home shall retain all employees of the nursing home for at least
39 a sixty-day transition period, except for cause, and except for the
40 nursing home administrator [~~and~~], the director of nursing and any other
41 supervisors, or any controlling person, principal stockholder or princi-
42 pal member, and shall not reduce the wages or benefits, or modify any
43 other terms and conditions of employment, economic or otherwise during
44 the transition period[~~, and except for cause~~]. Nothing herein shall
45 require any owner or operator to discontinue any pending disciplinary
46 actions, including but not limited to termination, that were initiated
47 before the sale of the nursing home. Nothing herein shall prevent an
48 owner or operator from determining the overall size of the workforce at
49 the facility, except as provided otherwise in this section or other
50 applicable law.

51 [9.] 8. In any instance where a nursing home is sold or otherwise
52 transferred and used for a purpose which is not a health care purpose,
53 the operator shall remit to the department an amount equivalent to the
54 undepreciated value of capital assets for which the provider has been
55 funded or reimbursed through Medicaid rate adjustments or otherwise

1 funded or reimbursed with resources provided by the state for the
2 purpose of improvement or transformation.

3 § 3. Section 3 of a chapter of the laws of 2021, amending the public
4 health law relating to requirements for residential health care facili-
5 ties and nursing homes, as proposed in legislative bills numbers S.
6 4893-A and A. 5684-A, is amended to read as follows:

7 § 3. This act shall take effect [~~immediately~~] on the one hundred
8 eightieth day after it shall have become a law.

9 § 4. The opening paragraph of subdivision 11 of section 2801-a of the
10 public health law, as amended by section 57 of part A of chapter 58 of
11 the laws of 2010, is amended and a new paragraph (e) is added to read as
12 follows:

13 Any person filing a proposed certificate of incorporation, articles of
14 organization or an application for establishment of a residential health
15 care facility for approval of the public health and health planning
16 council shall file with the commissioner such information [~~on the owner-~~
17 ~~ship of the property interests in such facility~~] as [~~shall~~] may be
18 prescribed by regulation, including, but not limited to, the following:

19 (e) Information pertaining to staffing, the source of staffing, and
20 staff skill mix.

21 § 5. The public health law is amended by adding a new section 2829 to
22 read as follows:

23 § 2829. Nursing homes; disclosure requirements. 1. A nursing home
24 shall post maximum rates to be charged for residency and services on a
25 publicly accessible website. Such posting shall be updated on an annual
26 basis no later than April first of each year. Such posting shall detail
27 rates for each non-governmental payer source.

28 2. A nursing home shall:

29 (a) publicly list all owners on a website maintained by the facility
30 and shall submit such list to the department for posting on its website
31 and update such information within thirty days of any change or trans-
32 action affecting ownership;

33 (b) publicly disclose on such facility's website and regularly update
34 the name and business address of any landlord of such facility's prem-
35 ises; and

36 (c) publicly provide a summary of all contracts for provision of goods
37 or services for which such facility pays with any portion of Medicaid or
38 Medicare funds or other agreements entered into by the nursing home on
39 its website within thirty days of execution of such agreement or
40 contract.

41 3. The commissioner may make regulations necessary or appropriate to
42 implement this section.

43 § 6. Severability. If any provision of this act, or any application of
44 any provision of this act, is held to be invalid, or to violate or be
45 inconsistent with any federal law or regulation, that shall not affect
46 the validity or effectiveness of any other provision of this act or any
47 other application of any provision of this act.

48 § 7. This act shall take effect immediately, provided, however, that
49 sections one, two, four, five and six of this act shall take effect on
50 the same date and in the same manner as a chapter of the laws of 2021,
51 amending the public health law relating to the requirements for residen-
52 tial health care facilities and nursing homes, as proposed in legisla-
53 tive bills numbers S. 4893-A and A. 5684-A, takes effect.