S T A T E O F N E W Y O R K

528

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DESTITO, SCHROEDER -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, GALEF, JOHN, PHEFFER -- read once and referred to the Committee on Mental Health, Mental Retardation and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to review of a provider's previous financial practices

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

Section 1. Paragraph 2 of subdivision (c) of section 16.05 of the mental hygiene law, as added by chapter 786 of the laws of 1983, is amended to read as follows:

(2) The character, competence [and], standing in the community, AND FISCAL MANAGEMENT PRACTICES RELATED TO THE OPERATION OF A MENTAL HYGIENE FACILITY OR PROGRAM AND OTHER PROGRAMS OR FACILITIES UNDER THE JURISDICTION OF AN AGENCY OTHER THAN THE DEPARTMENT AS DESCRIBED IN PARAGRAPH FIVE OF THIS SUBDIVISION of the person or entity INCLUDING MEMBERS OF THE BOARD OF DIRECTORS responsible for operating the facility;

S 2. Paragraph 3 of subdivision (d) of section 16.05 of the mental hygiene law, as added by chapter 618 of the laws of 1990, is amended to read as follows:

(3) the ability of the operator to provide the services required by the operating certificate as demonstrated by the operator's FISCAL MANAGEMENT PRACTICES RELATED TO THE OPERATION OF SUCH FACILITY OR PROGRAM AND compliance with applicable laws and regulations within the previous ten years;

S 3. Paragraph 2 of subdivision (b) of section 16.07 of the mental hygiene law, as added by chapter 786 of the laws of 1983, is amended to read as follows:

(2) the character and competence of the proposed incorporators, directors, sponsors, or stockholders, AND FISCAL MANAGEMENT PRACTICES OF SUCH

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

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INDIVIDUALS PERTAINING TO THE OPERATION OF A MENTAL HYGIENE FACILITY OR PROGRAM AND OTHER PROGRAMS OR FACILITIES AS DESCRIBED IN PARAGRAPH FIVE OF SUBDIVISION (C) OF SECTION 16.05 OF THIS ARTICLE WHICH ARE UNDER THE JURISDICTION OF AN AGENCY OTHER THAN THE DEPARTMENT;

S 4. Subdivision (b) of section 31.22 of the mental hygiene law, as amended by chapter 75 of the laws of 2006, is amended to read as follows:

(b) An application for approval of the proposed certificate of incorporation or articles of organization shall be filed with the commissioner together with such other forms and information as shall be prescribed by, or acceptable to, the commissioner.

The commissioner shall not approve a certificate of incorporation or articles of organization or grant an operating certificate unless he is satisfied, insofar as applicable, as to (1) the public need for the services or the facility which the proposed corporation or proposed provider of services is empowered to perform or maintain at the time and place and under the circumstances proposed; (2) the character, competence [and], standing in the community, AND FISCAL MANAGEMENT PRACTICES RELATED TO THE OPERATION OF A MENTAL HYGIENE FACILITY OR PROGRAM AND OTHER PROGRAMS OR FACILITIES AS DESCRIBED BY THIS SUBDIVISION WHICH ARE UNDER THE JURISDICTION OF AN AGENCY OTHER THAN THE DEPARTMENT of the proposed incorporators, directors, sponsors, stockholders, members, managers, partners, or operators, provided that in making such determination the commissioner is authorized to consider whether or not, within ten years of the date of the application, any such persons have been denied renewal for cause of an operating certificate, or have had an operating certificate revoked or suspended for cause, and such denial, revocation or suspension was not reversed after an administrative hearing or other appeal, for a program or facility licensed or operated by a health, mental hygiene, social services or education agency or department of this or any state or have failed to operate a program serving the mentally disabled, other disabled persons as defined in subdivision twenty-one of section two hundred ninety-two of the executive law, the aged, children or other persons receiving health, mental hygiene, residential, social or educational services in continuous compliance with applicable laws or regulations within the previous ten years in any state; (3) the financial resources of the proposed corporation or proposed provider of services and its sources of future revenues; (4) the availability of facilities or services which may serve as alternates or substitutes for the facility or services which the proposed corporation or proposed provider of services is empowered to maintain or render; (5) such other matters as he shall deem pertinent in the public interest. The commissioner in approving the proposed certificate of incorporation or articles of organization or issuing the proposed operating certificate may request and consider information and advice from all available sources including local and regional mental health and health planning agencies and groups as to the matters set forth herein. If the commissioner proposes to disapprove the application he shall afford the applicant an opportunity to request a public hearing. The commissioner shall not take any action contrary to the advice of the health systems agency for facilities other than community residences or residential care centers for adults until he affords an opportunity to the agency to request a public hearing and, if so requested, a public hearing shall be held. The commissioner, on his own motion, may hold a public hearing on the application. Any public hearings held pursuant to

this subdivision may be conducted by the commissioner or by an individual designated by the commissioner.

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.