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

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 20, 2009

Introduced by M. of A. PRETLOW -- read once and referred 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:

Section 1. Subdivision 3 of section 2801-a of the public health law, as amended by chapter 667 of the laws of 1997, is amended to read as follows:

3. The public health council shall not approve a certificate of incorporation, articles of organization or application for establishment unless it is satisfied, insofar as applicable, as to (a) the public need, DETERMINED IN ACCORDANCE WITH SECTION TWENTY-EIGHT HUNDRED ONE-G OF THIS ARTICLE, for the existence of the institution at the time and place and under the circumstances proposed, provided, however, that in the case of an institution proposed to be established or operated by an organization defined in subdivision one of section one hundred seventy-two-a of the executive law, the needs of the members of the religious denomination concerned, for care or treatment in accordance with their religious or ethical convictions, shall be deemed to be public need; (b) the character, competence, and standing in the community, of the proposed incorporators, directors, sponsors, stockholders, members or operators; with respect to any proposed incorporator, director, sponsor, stockholder, member or operator who is already or within the past ten years has been an incorporator, director, sponsor, member, principal stockholder, principal member, or operator of any hospital, private proprietary home for adults, residence for adults, or non-profit home for the aged or blind which has been issued an operating certificate by the [state] department [of social services], or a halfway house, hostel or other residential facility or institution for the care, custody or 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.

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

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

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

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

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

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

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

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

(A) APPROVING THE APPLICATION WILL NOT RESULT IN THE REDUCTION OR ELIMINATION OF A HEALTH CARE SERVICE NECESSARY TO PROVIDE COMPREHENSIVE HEALTH CARE, INCLUDING THE RELOCATION OF A FACILITY OR SERVICE, IN THE AFFECTED COMMUNITY; OR,

(B) APPROVING THE APPLICATION WILL RESULT IN THE REDUCTION OR ELIMINATION OF A HEALTH CARE SERVICE NECESSARY TO PROVIDE COMPREHENSIVE HEALTH CARE, INCLUDING THE RELOCATION OF A FACILITY OR SERVICE, BUT THE NEED FOR THE SERVICE WILL CONTINUE TO BE MET IN THE AFFECTED COMMUNITY; OR,

(C) APPROVING THE APPLICATION IS THE ONLY FEASIBLE WAY TO AVOID A MORE SUBSTANTIAL REDUCTION IN, OR ELIMINATION OF, HEALTH CARE SERVICE MORE ESSENTIAL TO THE PROVISION OF COMPREHENSIVE HEALTH CARE IN THE AFFECTED COMMUNITY; OR,

(D) THE REDUCTION OR ELIMINATION OF THE HEALTH CARE SERVICE NECESSARY TO PROVIDE COMPREHENSIVE HEALTH CARE IN THE AFFECTED AREA IS REASONABLY NECESSARY BECAUSE SUBSTANTIAL REDUCTIONS IN LEVELS OF USE OF THE SERVICE ARE INCONSISTENT WITH REASONABLY MAINTAINING RECOGNIZED STANDARDS OF CARE.

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

(A) CURRENT UTILIZATION PATTERNS FOR THE AFFECTED SERVICES;

(B) GEOGRAPHIC ACCESSIBILITY OF PROPOSED ALTERNATIVE SERVICE SITES;

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

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

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

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