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

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I N A S S E M B L Y

January 15, 2010

Introduced by M. of A. GOTTFRIED, DINOWITZ -- read once and referred to the Committee on Health -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the social services law, in relation to the appointment of a temporary operator or voluntary receiver of adult care facilities

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

Section 1. Paragraph (c) of subdivision 4 of section 460-d of the social services law, as added by chapter 733 of the laws of 1994 and subparagraph (i) as amended by section 50 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

(c) Any order or determination to suspend any operating certificate will specify the conditions of the suspension. These conditions may include but need not be limited to the following:

(i) if required for the protection of the health, safety or welfare of the residents, the immediate transfer of some or all residents to other appropriate facilities or to the custody of their legal guardians, if any;

(ii) the appointment of a temporary operator to operate the facility during the term of the suspension. THE POWERS AND PROTECTIONS OF A TEMPORARY OPERATOR UNDER THIS SUBDIVISION SHALL INCLUDE THE POWERS AND PROTECTIONS OF A RECEIVER AS SET FORTH IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED SIXTY-ONE-F OF THIS ARTICLE, TO THE EXTENT NECESSARY TO CONTINUE TO OPERATE THE FACILITY AND PROTECT THE HEALTH, SAFETY AND WELFARE OF THE RESIDENTS DURING THE TERM OF THE SUSPENSION; PROVIDED, HOWEVER, THAT THE TEMPORARY OPERATOR SHALL NOT HAVE THE POWER TO (A) SELL OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY OUTSIDE OF THE ORDINARY COURSE OF BUSINESS, (B) TAKE ANY OTHER ACTION WHICH A RECEIVER WOULD NEED COURT APPROVAL TO TAKE, OR (C) TRANSFER OR REMOVE RESIDENTS FROM THE FACILITY UNLESS IT IS REQUIRED FOR THE PROTECTION OF THEIR, OR ANOTHER PATIENT'S, HEALTH, SAFETY OR WELFARE, OR THE TRANSFER IS REQUESTED BY THE PATIENT;

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

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(iii) the immediate transfer of all records concerning the operation of the facility, including resident records, facility business records and any other records related to the operation of the facility to the department immediately. The department shall control the records for the term of the suspension;

(iv) the operator or operators of the facility shall be barred from access to the facility during the term of the suspension; or

(v) the requirement that the operator, if replaced by a temporary operator, provide the temporary operator with any funds received by the operator for the operation of the facility.

S 2. Subdivision 1 of section 461-f of the social services law, as amended by section 44 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

1. As a means of protecting the health, safety and welfare of the residents of an adult care facility subject to inspection and supervision by the department, it may become necessary under certain circumstances to authorize the continuing operation of such facility for a temporary period by a court appointed receiver, at the discretion of the commissioner, as provided in this section or with respect to an adult home, enriched housing program or residence for adults, a receiver approved by the department of health pursuant to written agreement between the department, THE RECEIVER and the operator or operators of such facility[, provided that such agreement shall not exceed a period of sixty days but may be extended for an additional sixty day period upon agreement by the parties]. SUCH RECEIVERSHIP SHALL TERMINATE AT SUCH TIME AND IN SUCH MANNER AS IS AGREED UPON BY THE PARTIES.

S 3. Subdivision 2 of section 461-f of the social services law, as added by section 45 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

2. The operator or operators of any adult home, enriched housing program or residence for adults may at any time request the department of health to appoint a receiver to take over the operation of such facility. Upon receiving such a request, the department of health may, if it deems such action desirable, enter into an agreement with any such operator or operators AND THE RECEIVER for the appointment of a receiver to take charge of the facility under whatever conditions as shall be found acceptable by the parties[, provided that such agreement shall not exceed a period of sixty days but may be extended for an additional sixty day period upon agreement by the parties]. SUCH RECEIVERSHIP SHALL TERMINATE AT SUCH TIME AND IN SUCH MANNER AS IS AGREED UPON BY THE PARTIES.

S 4. This act shall take effect immediately.