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

7589--A

I N S E N A T E

April 23, 2010

Introduced by Sens. VALESKY, ADDABBO, DUANE, MORAHAN -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to approval of hospital construction

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

Section 1. The opening paragraph and subdivision 1 of section 2802 of the public health law, the opening paragraph as added by chapter 795 of the laws of 1965 and subdivision 1 as amended by chapter 470 of the laws of 1976, are amended to read as follows:

The APPROVAL OF construction of a hospital, whether public or private, incorporated or not incorporated, shall [require the prior approval of the commissioner] BE IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE COUNCIL AND APPROVED BY THE COMMISSIONER, SUBJECT TO THE FOLLOWING.

1. [An application for such construction shall be filed with the department, together with such other forms and information as shall be prescribed by, or acceptable to, the department. Thereafter the department shall forward a copy of the application and accompanying documents to the state hospital review and planning council and the health systems agency having geographical jurisdiction of the area where the hospital is located] THE FOLLOWING TYPES OF PROJECTS BY A HOSPITAL POSSESSING A VALID OPERATING CERTIFICATE SHALL NOT REQUIRE APPROVAL FOR:

(A) ANY PROPOSAL FOR REPAIR OR MAINTENANCE, INCLUDING ROUTINE PURCHASES AND THE ACQUISITION OF MINOR EQUIPMENT UNDERTAKEN IN THE COURSE OF A MEDICAL FACILITY'S INVENTORY CONTROL FUNCTIONS IF THE TOTAL PROJECT COST DOES NOT EXCEED, AT A MINIMUM, TEN MILLION DOLLARS AND FURTHER PROVIDED THAT SUCH PROPOSAL WILL NOT RESULT IN INCREASED COSTS OR EXPENSES OTHER THAN FOR LEASE COSTS, AMORTIZATION, DEPRECIATION, INTEREST, OR RETURN OF OR ON EQUITY;

(B) ONE FOR ONE EQUIPMENT REPLACEMENTS REGARDLESS OF COST, PROVIDED THAT A WRITTEN NOTICE HAS BEEN SUBMITTED TO THE DEPARTMENT ACCOMPANIED TOGETHER WITH, WHERE APPROPRIATE, A WRITTEN CERTIFICATION THAT THE PROJECT MEETS THE APPLICABLE STATUTES, CODES AND REGULATIONS SPECIFIED IN THE CERTIFICATION STATEMENT;

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

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(C) NON-CLINICAL INFRASTRUCTURE PROPOSALS REGARDLESS OF COST INCLUDING, BUT NOT LIMITED TO, REPLACEMENT OF HEATING, VENTILATING AND AIR CONDITIONING SYSTEMS, ROOFS, FIRE ALARM AND CALL BELL SYSTEMS, PARKING LOTS, AND ELEVATORS; AND CORRECTION OF CITED DEFICIENCIES, PROVIDED THAT A WRITTEN NOTICE HAS BEEN SUBMITTED TO THE DEPARTMENT TOGETHER WITH, WHERE APPROPRIATE, A WRITTEN CERTIFICATION THAT THE PROJECT MEETS THE APPLICABLE STATUTES, CODES AND REGULATIONS SPECIFIED IN THE CERTIFICATION STATEMENT;

(D) HEALTH INFORMATION TECHNOLOGY PROJECTS REGARDLESS OF COST; AND

(E) OTHER PROJECTS AS SPECIFIED IN REGULATIONS ADOPTED BY THE COUNCIL AND APPROVED BY THE COMMISSIONER.

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] WITHOUT THE RECOMMENDATION OF THE STATE HOSPITAL REVIEW AND PLANNING COUNCIL AND THE HEALTH SYSTEMS AGENCY UNLESS THE APPLICATION INVOLVES: THE ADDITION OF BEDS, OR THE CONVERSION OF BEDS TO A LEVEL OF CARE FOR WHICH A GENERAL HOSPITAL IS NOT ALREADY A CERTIFIED PROVIDER, REGARDLESS OF COST; ANY PROPOSAL FOR THE ADDITION, MODIFICATION OR CHANGE IN THE METHOD OF DELIVERY OF SPECIALIZED SERVICES OR FOR THE MODIFICATION OR CHANGE IN THE DELIVERY OF MATERNITY SERVICES, PURSUANT TO REGULATIONS ADOPTED BY THE COUNCIL AND APPROVED BY THE COMMISSIONER; OR A CLINICAL PROJECT WHERE TOTAL PROJECT COSTS EXCEED, AT A MINIMUM, TWENTY-FIVE MILLION DOLLARS. THE COMMISSIONER SHALL NOT ACT UPON AN APPLICATION FOR CONSTRUCTION OF A HOSPITAL 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 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 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]. AN APPLICATION FOR CONSTRUCTION SHALL BE FILED WITH THE DEPARTMENT, TOGETHER WITH SUCH OTHER FORMS AND INFORMATION AS SHALL BE PRESCRIBED BY, OR ACCEPTABLE TO, THE DEPARTMENT. THE DEPARTMENT SHALL MAKE A DETERMINATION IN WRITING WITHIN THIRTY DAYS OF RECEIPT OF AN APPLICATION AS TO WHETHER THE APPLICATION IS COMPLETE. IF AN APPLICATION IS DETERMINED TO BE INCOMPLETE, THE DEPARTMENT SHALL SPECIFY THE REASONS. ONCE THE APPLICANT SUBMITS ADDITIONAL INFORMATION, THE DEPARTMENT SHALL MAKE A DETERMINATION IN WRITING WITHIN SIXTY DAYS OF RECEIPT OF THAT INFORMATION AS TO WHETHER THE APPLICATION IS THEN COMPLETE. THE COMMISSIONER SHALL ACT UPON AN APPLICATION FOR CONSTRUCTION OF A HOSPITAL WITHIN NINETY DAYS OF RECEIPT BY THE DEPARTMENT OF A COMPLETE APPLICATION OR SUCH APPLICATION SHALL BE DEEMED APPROVED; PROVIDED HOWEVER, IF SUCH APPLICATION REQUIRES THE RECOMMENDATION OF THE COUNCIL, THE

APPLICATION SHALL BE ACTED ON WITHIN ONE HUNDRED FIFTY DAYS OF RECEIPT BY THE DEPARTMENT OF A COMPLETE APPLICATION OR SUCH APPLICATION SHALL BE DEEMED APPROVED. THE DEPARTMENT MAY EXTEND THE REVIEW PERIOD UP TO AN ADDITIONAL THIRTY DAYS FOR GOOD CAUSE AS DEFINED IN REGULATIONS ADOPTED BY THE COUNCIL AND APPROVED BY THE COMMISSIONER. A REVIEW SCHEDULE MAY BE EXTENDED BEYOND THESE TIME FRAMES ONLY WITH THE CONSENT OF THE APPLICANT AND THE DEPARTMENT. AN APPLICATION SHALL NOT BE APPROVED UNLESS THE COMMISSIONER IS SATISFIED AS TO THE PUBLIC NEED 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 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. A COMPLETE APPLICATION MAY BE DENIED ONLY ON THE BASIS OF THE CRITERIA SET FORTH IN THIS SUBDIVISION AND REGULATIONS THERETO. IF AN APPLICATION IS DENIED, THE APPLICANT SHALL BE NOTIFIED IN WRITING AND ADVISED OF THE BASIS FOR THE ACTION.

S 3. Subdivision 2-b of section 2802 of the public health law, as added by chapter 731 of the laws of 1993, is amended and a new subdivision 2-c is added to read as follows:

2-b. [Beginning on January first, nineteen hundred ninety-four, and each year thereafter, a complete application received between January first and June thirtieth of each year shall be reviewed by the appropriate health systems agency and the department and presented to the state hospital review and planning council for its consideration prior to June thirtieth of the following year and a complete application received between July first and December thirty-first of each year shall be reviewed by the appropriate health systems agency and the department and presented to the state hospital review and planning council for consideration prior to December thirty-first of the following year] REGULATIONS ADOPTED BY THE COUNCIL AND APPROVED BY THE COMMISSIONER IN ACCORDANCE WITH THIS SUBDIVISION MAY PROVIDE FOR HIGHER MINIMUM DOLLAR THRESHOLDS THAN PROVIDED FOR IN PARAGRAPH (A) OF SUBDIVISION ONE AND SUBDIVISION TWO OF THIS SECTION AND SHALL, WITH REGARD TO ONE FOR ONE EQUIPMENT REPLACEMENTS PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION, SPECIFY THAT SUCH REPLACEMENTS INCLUDE REPLACEMENT OF A PIECE OF EQUIPMENT WITH ANOTHER PIECE OF EQUIPMENT USED FOR SUBSTANTIALLY SIMILAR PURPOSES BUT EMPLOYING ADVANCED TECHNOLOGY.

2-C. THE COMMISSIONER SHALL NOT REQUIRE PRE-OPENING CERTIFICATIONS AND/OR SURVEYS FOR CONSTRUCTION PROJECTS APPROVED IN ACCORDANCE WITH THIS SUBDIVISION AS LONG AS APPROPRIATE CERTIFICATION STATEMENTS OF COMPLIANCE ARE SUBMITTED TO THE DEPARTMENT. THE DEPARTMENT SHALL ASSESS COMPLIANCE DURING THE DEPARTMENT'S NEXT SURVEY OF THE HOSPITAL. IF AT THAT TIME A PROJECT IS FOUND TO BE NON-COMPLIANT, THE HOSPITAL SHALL HAVE A REASONABLE AMOUNT OF TIME TO BRING THE PROJECT INTO COMPLIANCE AND THE HOSPITAL SHALL NOT BE PENALIZED FOR SUCH NON-COMPLIANCE IF THE HOSPITAL'S CERTIFICATION STATEMENT WAS MADE IN GOOD FAITH.

S 4. Subdivision 4 of section 2802 of the public health law, as added by chapter 795 of the laws of 1965, is amended to read as follows:

4. No government agency shall construct any hospital without [securing the written approval of the commissioner in accordance with the] MEETING THE applicable requirements and procedures of the preceding subdivisions.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law.