

2330

2011-2012 Regular Sessions

I N A S S E M B L Y

January 18, 2011

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:

1 Section 1. Subdivision 3 of section 2801-a of the public health law,
2 as amended by section 57 of part A of chapter 58 of the laws of 2010, is
3 amended to read as follows:
4 3. The public health and health planning council shall not approve a
5 certificate of incorporation, articles of organization or application
6 for establishment unless it is satisfied, insofar as applicable, as to
7 (a) the public need, DETERMINED IN ACCORDANCE WITH SECTION TWENTY-EIGHT
8 HUNDRED ONE-H OF THIS ARTICLE, for the existence of the institution at
9 the time and place and under the circumstances proposed, provided,
10 however, that in the case of an institution proposed to be established
11 or operated by an organization defined in subdivision one of section one
12 hundred seventy-two-a of the executive law, the needs of the members of
13 the religious denomination concerned, for care or treatment in accordance
14 with their religious or ethical convictions, shall be deemed to be
15 public need; (b) the character, competence, and standing in the community,
16 of the proposed incorporators, directors, sponsors, stockholders,
17 members or operators; with respect to any proposed incorporator, director,
18 sponsor, stockholder, member or operator who is already or within
19 the past ten years has been an incorporator, director, sponsor, member,
20 principal stockholder, principal member, or operator of any hospital,
21 private proprietary home for adults, residence for adults, or non-profit
22 home for the aged or blind which has been issued an operating certificate
23 by the [state] department [of social services], or a halfway
24 house, hostel or other residential facility or institution for the care,
25 custody or treatment of the mentally disabled which is subject to

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

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1 approval by the department of mental hygiene, no approval shall be
2 granted unless the public health and health planning council, having
3 afforded an adequate opportunity to members of health systems agencies,
4 if any, having geographical jurisdiction of the area where the institu-
5 tion is to be located to be heard, shall affirmatively find by substan-
6 tial evidence as to each such incorporator, director, sponsor, principal
7 stockholder or operator that a substantially consistent high level of
8 care is being or was being rendered in each such hospital, home, resi-
9 dence, halfway house, hostel, or other residential facility or institu-
10 tion with which such person is or was affiliated; for the purposes of
11 this paragraph, the public health and health planning council shall
12 adopt rules and regulations, subject to the approval of the commission-
13 er, to establish the criteria to be used to determine whether a substan-
14 tially consistent high level of care has been rendered, provided, howev-
15 er, that there shall not be a finding that a substantially consistent
16 high level of care has been rendered where there have been violations of
17 the state hospital code, or other applicable rules and regulations, that
18 (i) threatened to directly affect the health, safety or welfare of any
19 patient or resident, and (ii) were recurrent or were not promptly
20 corrected; (c) the financial resources of the proposed institution and
21 its sources of future revenues; and (d) such other matters as it shall
22 deem pertinent.

23 S 2. Subdivision 2 of section 2802 of the public health law, as
24 amended by section 58 of part A of chapter 58 of the laws of 2010, is
25 amended to read as follows:

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

47 S 3. The public health law is amended by adding a new section 2801-h
48 to read as follows:

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

53 (A) APPROVING THE APPLICATION WILL NOT RESULT IN THE REDUCTION OR
54 ELIMINATION OF A HEALTH CARE SERVICE NECESSARY TO PROVIDE COMPREHENSIVE
55 HEALTH CARE, INCLUDING THE RELOCATION OF A FACILITY OR SERVICE, IN THE
56 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 4. 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.