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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GOTTFRIED, DINOWITZ -- read once and referred to the Committee on Health

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:

1 Section 1. Paragraph (c) of subdivision 4 of section 460-d of the
2 social services law, as added by chapter 733 of the laws of 1994 and
3 subparagraph (i) as amended by section 50 of part B of chapter 58 of the
4 laws of 2004, is amended to read as follows:
5 (c) Any order or determination to suspend any operating certificate
6 will specify the conditions of the suspension. These conditions may
7 include but need not be limited to the following:
8 (i) if required for the protection of the health, safety or welfare of
9 the residents, the immediate transfer of some or all residents to other
10 appropriate facilities or to the custody of their legal guardians, if
11 any;
12 (ii) the appointment of a temporary operator to operate the facility
13 during the term of the suspension. THE POWERS AND PROTECTIONS OF A
14 TEMPORARY OPERATOR UNDER THIS SUBDIVISION SHALL INCLUDE THE POWERS AND
15 PROTECTIONS OF A RECEIVER AS SET FORTH IN SUBDIVISION FOUR OF SECTION
16 FOUR HUNDRED SIXTY-ONE-F OF THIS ARTICLE, TO THE EXTENT NECESSARY TO
17 CONTINUE TO OPERATE THE FACILITY AND PROTECT THE HEALTH, SAFETY AND
18 WELFARE OF THE RESIDENTS DURING THE TERM OF THE SUSPENSION; PROVIDED,
19 HOWEVER, THAT THE TEMPORARY OPERATOR SHALL NOT HAVE THE POWER TO (A)
20 SELL OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY OUTSIDE OF
21 THE ORDINARY COURSE OF BUSINESS, (B) TAKE ANY OTHER ACTION WHICH A
22 RECEIVER WOULD NEED COURT APPROVAL TO TAKE, OR (C) TRANSFER OR REMOVE
23 RESIDENTS FROM THE FACILITY UNLESS IT IS REQUIRED FOR THE PROTECTION OF

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

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1 THEIR, OR ANOTHER PATIENT'S, HEALTH, SAFETY OR WELFARE, OR THE TRANSFER
2 IS REQUESTED BY THE PATIENT;

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

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

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

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

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

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

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

44 S 4. This act shall take effect immediately.