

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

3963--A

2013-2014 Regular Sessions

I N A S S E M B L Y

January 30, 2013

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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-I 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 with their religious or ethical convictions, shall be deemed to be
14 public need; (b) the character, competence, and standing in the community, of the proposed incorporators, directors, sponsors, stockholders,
15 members or operators; with respect to any proposed incorporator, director, sponsor, stockholder, member or operator who is already or within
16 the past ten years has been an incorporator, director, sponsor, member, principal stockholder, principal member, or operator of any hospital,
17 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

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

LBD07635-02-4

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

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

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

49 S 3. The public health law is amended by adding a new section 2801-i
50 to read as follows:

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

55 (A) APPROVING THE APPLICATION WILL NOT RESULT IN THE REDUCTION OR
56 ELIMINATION OF A HEALTH CARE SERVICE NECESSARY TO PROVIDE COMPREHENSIVE

1 HEALTH CARE, INCLUDING THE RELOCATION OF A FACILITY OR SERVICE, IN THE
2 AFFECTED COMMUNITY; OR,
3 (B) APPROVING THE APPLICATION WILL RESULT IN THE REDUCTION OR ELIMI-
4 NATION OF A HEALTH CARE SERVICE NECESSARY TO PROVIDE COMPREHENSIVE
5 HEALTH CARE, INCLUDING THE RELOCATION OF A FACILITY OR SERVICE, BUT THE
6 NEED FOR THE SERVICE WILL CONTINUE TO BE MET IN THE AFFECTED COMMUNITY;
7 OR,
8 (C) APPROVING THE APPLICATION IS THE ONLY FEASIBLE WAY TO AVOID A MORE
9 SUBSTANTIAL REDUCTION IN, OR ELIMINATION OF, HEALTH CARE SERVICE MORE
10 ESSENTIAL TO THE PROVISION OF COMPREHENSIVE HEALTH CARE IN THE AFFECTED
11 COMMUNITY; OR,
12 (D) THE REDUCTION OR ELIMINATION OF THE HEALTH CARE SERVICE NECESSARY
13 TO PROVIDE COMPREHENSIVE HEALTH CARE IN THE AFFECTED AREA IS REASONABLY
14 NECESSARY BECAUSE SUBSTANTIAL REDUCTIONS IN LEVELS OF USE OF THE SERVICE
15 ARE INCONSISTENT WITH REASONABLY MAINTAINING RECOGNIZED STANDARDS OF
16 CARE.

17 2. IN MAKING A FINDING UNDER SUBDIVISION ONE OF THIS SECTION, THE
18 COMMISSIONER SHALL CONSIDER:
19 (A) CURRENT UTILIZATION PATTERNS FOR THE AFFECTED SERVICES;
20 (B) GEOGRAPHIC ACCESSIBILITY OF PROPOSED ALTERNATIVE SERVICE SITES;
21 (C) THE EXTENT TO WHICH THE APPLICANT WILL PROVIDE TIMELY REFERRALS TO
22 ALTERNATE SERVICE SITES THAT ASSURE ACCESS APPROPRIATE TO THE PATIENT'S
23 NEEDS FOR COMPREHENSIVE HEALTH CARE;
24 (D) THE FINANCIAL VIABILITY OF ANY ALTERNATIVE SERVICE SITE WITH
25 RESPECT TO CONTINUED PROVISION OF THE AFFECTED SERVICE; AND
26 (E) THE EFFECT OF THE REDUCTION, ELIMINATION OR RELOCATION OF THE
27 PROPOSED SERVICE OR FACILITY ON THE ABILITY OF LOW INCOME PERSONS,
28 RACIAL AND ETHNIC MINORITIES, WOMEN, PERSONS WITH DISABILITIES AND OTHER
29 UNDERSERVED GROUPS AND THE ELDERLY TO OBTAIN NEEDED HEALTH CARE.

30 S 4. This act shall take effect immediately and shall apply to any
31 determination of public need under section 2801-a or 2802 of the public
32 health law made on or after the effective date of this act.