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

2368--A

2013-2014 Regular Sessions

I N A S S E M B L Y

January 14, 2013

Introduced by M. of A. WEINSTEIN, ORTIZ, PERRY, O'DONNELL, GOTTFRIED, KAVANAGH -- Multi-Sponsored by -- M. of A. JACOBS, NOLAN, ROBERTS, WRIGHT -- 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 social services law and the public health law, in relation to granting residents of adult care facilities a cause of action to seek the appointment of temporary operators of such facilities

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

Section 1. Section 461-c of the social services law is amended by adding a new subdivision 10 to read as follows:

10. (A) AS A MEANS OF PROTECTING THE HEALTH, SAFETY AND WELFARE OF A RESIDENT OR RESIDENTS OF AN ADULT CARE FACILITY, SUCH RESIDENT OR RESIDENTS MAY SEEK JUDICIAL RELIEF. IN ADDITION TO OTHER FORMS OF RELIEF AVAILABLE UNDER THIS ARTICLE, A RESIDENT OR RESIDENTS MAY SEEK EQUITABLE RELIEF FROM A COURT, INCLUDING, BUT NOT LIMITED TO, THE APPOINTMENT OF A TEMPORARY OPERATOR PURSUANT TO SECTION TWENTY-EIGHT HUNDRED SIX-A OF THE PUBLIC HEALTH LAW. AN ACTION OR PROCEEDING UNDER THIS SUBDIVISION SHALL BE COMMENCED IN THE SUPREME COURT OF THE COUNTY IN WHICH THE FACILITY IS LOCATED.

(B) UPON THE COMMENCEMENT OF AN ACTION OR PROCEEDING PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, THE COMMISSIONER OF HEALTH SHALL BE SERVED AND GIVEN THE OPPORTUNITY TO JOIN AS A PARTY TO THE ACTION OR PROCEEDING. IN ADDITION TO OTHER METHODS OF SERVICE AUTHORIZED BY LAW, SERVICE UPON SUCH COMMISSIONER MAY BE EFFECTUATED AT SUCH COMMISSIONER'S OFFICE IN THE CITY OF NEW YORK OR IN THE CITY OF ALBANY. FAILURE OF THE COMMISSIONER OF HEALTH TO JOIN THE ACTION OR PROCEEDING SHALL NOT BE AN IMPEDIMENT TO THE ACTION OR PROCEEDING. ON THE RETURN OF SUCH ACTION OR

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

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PROCEEDING SEEKING THE APPOINTMENT OF A TEMPORARY OPERATOR, IT SHALL HAVE PRECEDENCE OVER EVERY OTHER BUSINESS OF THE COURT UNLESS THE COURT SHALL FIND THAT SOME OTHER PENDING PROCEEDING, HAVING SIMILAR STATUTORY PRECEDENCE, SHALL HAVE PRIORITY. IF THE COURT SHALL FIND THAT CONDITIONS ENDANGERING THE HEALTH, SAFETY OR WELFARE OF A RESIDENT OR RESIDENTS EXIST, THE COURT MAY MAKE AN ORDER GRANTING SUCH EQUITABLE RELIEF AS IT DEEMS NECESSARY, INCLUDING, BUT NOT LIMITED TO, DIRECTING THE COMMISSIONER OF HEALTH TO APPOINT A TEMPORARY OPERATOR TO ASSUME SOLE CONTROL AND SOLE RESPONSIBILITY FOR THE OPERATIONS OF THE FACILITY.

(C) THE COURT MAY AWARD THE RESIDENT OR RESIDENTS IN AN ACTION OR PROCEEDING FOR THE APPOINTMENT OF A TEMPORARY OPERATOR NECESSARY AND REASONABLE EXPENSES INCURRED BY OR ON BEHALF OF THE RESIDENT OR RESIDENTS, INCLUDING COSTS AND ATTORNEYS' FEES.

S 2. Paragraph (a) of subdivision 2 of section 2806-a of the public health law, as added by section 50 of part E of chapter 56 of the laws of 2013, is amended to read as follows:

(a) In the event that: (i) (A) a facility seeks extraordinary financial assistance and the commissioner finds that the facility is experiencing serious financial instability that is jeopardizing existing or continued access to essential services within the community, or [(ii)] (B) the commissioner finds that there are conditions within the facility that seriously endanger the life, health or safety of residents or patients, the commissioner may appoint a temporary operator to assume sole control and sole responsibility for the operations of that facility ; OR (II) THE APPOINTMENT OF A TEMPORARY OPERATOR IS ORDERED BY THE COURT PURSUANT TO SUBDIVISION TEN OF SECTION FOUR HUNDRED SIXTY-ONE-C OF THE SOCIAL SERVICES LAW, THE COMMISSIONER SHALL APPOINT A TEMPORARY OPERATOR TO ASSUME SOLE CONTROL AND SOLE RESPONSIBILITY FOR THE OPERATIONS OF THAT FACILITY. The appointment of the temporary operator shall be effectuated pursuant to this section and shall be in addition to any other remedies provided by law.

S 3. This act shall take effect on the sixtieth day after it shall have become a law, provided that the amendments to section 2806-a of the public health law, made by section two of this act shall not affect the expiration and repeal of such section and shall expire and be deemed repealed therewith.