

3963

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

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 accord-  
14 ance with their religious or ethical convictions, shall be deemed to be  
15 public need; (b) the character, competence, and standing in the communi-  
16 ty, of the proposed incorporators, directors, sponsors, stockholders,  
17 members or operators; with respect to any proposed incorporator, direc-  
18 tor, 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 certifi-  
23 cate 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.

LBD07635-01-3

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,

1 (B) APPROVING THE APPLICATION WILL RESULT IN THE REDUCTION OR ELIMI-  
2 NATION OF A HEALTH CARE SERVICE NECESSARY TO PROVIDE COMPREHENSIVE  
3 HEALTH CARE, INCLUDING THE RELOCATION OF A FACILITY OR SERVICE, BUT THE  
4 NEED FOR THE SERVICE WILL CONTINUE TO BE MET IN THE AFFECTED COMMUNITY;  
5 OR,

6 (C) APPROVING THE APPLICATION IS THE ONLY FEASIBLE WAY TO AVOID A MORE  
7 SUBSTANTIAL REDUCTION IN, OR ELIMINATION OF, HEALTH CARE SERVICE MORE  
8 ESSENTIAL TO THE PROVISION OF COMPREHENSIVE HEALTH CARE IN THE AFFECTED  
9 COMMUNITY; OR,

10 (D) THE REDUCTION OR ELIMINATION OF THE HEALTH CARE SERVICE NECESSARY  
11 TO PROVIDE COMPREHENSIVE HEALTH CARE IN THE AFFECTED AREA IS REASONABLY  
12 NECESSARY BECAUSE SUBSTANTIAL REDUCTIONS IN LEVELS OF USE OF THE SERVICE  
13 ARE INCONSISTENT WITH REASONABLY MAINTAINING RECOGNIZED STANDARDS OF  
14 CARE.

15 2. IN MAKING A FINDING UNDER SUBDIVISION ONE OF THIS SECTION, THE  
16 COMMISSIONER SHALL CONSIDER:

17 (A) CURRENT UTILIZATION PATTERNS FOR THE AFFECTED SERVICES;

18 (B) GEOGRAPHIC ACCESSIBILITY OF PROPOSED ALTERNATIVE SERVICE SITES;

19 (C) THE EXTENT TO WHICH THE APPLICANT WILL PROVIDE TIMELY REFERRALS TO  
20 ALTERNATE SERVICE SITES THAT ASSURE ACCESS APPROPRIATE TO THE PATIENT'S  
21 NEEDS FOR COMPREHENSIVE HEALTH CARE;

22 (D) THE FINANCIAL VIABILITY OF ANY ALTERNATIVE SERVICE SITE WITH  
23 RESPECT TO CONTINUED PROVISION OF THE AFFECTED SERVICE; AND

24 (E) THE EFFECT OF THE REDUCTION, ELIMINATION OR RELOCATION OF THE  
25 PROPOSED SERVICE OR FACILITY ON THE ABILITY OF LOW INCOME PERSONS,  
26 RACIAL AND ETHNIC MINORITIES, WOMEN, PERSONS WITH DISABILITIES AND OTHER  
27 UNDERSERVED GROUPS AND THE ELDERLY TO OBTAIN NEEDED HEALTH CARE.

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