

6676

2013-2014 Regular Sessions

I N A S S E M B L Y

April 12, 2013

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

AN ACT to amend the public health law, in relation to the approval of  
construction of hospitals or diagnostic treatment centers without  
regard to public need and financial resource requirements; and in  
relation to approval of the transfer of ownership or operator of a  
hospital

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

1 Section 1. Subdivisions 1, 2 and 3 of section 2802 of the public  
2 health law, subdivisions 1 and 2 as amended by section 58 of part A of  
3 chapter 58 of the laws of 2010, paragraph (e) of subdivision 3 as  
4 amended by chapter 731 of the laws of 1993, subdivision 3 as amended by  
5 chapter 609 of the laws of 1982, are amended to read as follows:  
6 1. An application for such construction shall be filed with the  
7 department, together with such other forms and information as shall be  
8 prescribed by, or acceptable to, the department. Thereafter the depart-  
9 ment shall forward a copy of the application and accompanying documents  
10 to the public health and health planning council, and the health systems  
11 agency, if any, having geographical jurisdiction of the area where the  
12 hospital is located.  
13 2. The commissioner shall not act upon an application for construction  
14 of a hospital until the public health and health planning council and  
15 the health systems agency have had a reasonable time to submit their  
16 recommendations, and unless (a) the applicant has obtained all approvals  
17 and consents required by law for its incorporation or establishment  
18 (including the approval of the public health and health planning council  
19 pursuant to the provisions of this article) provided, however, that the  
20 commissioner may act upon an application for construction by an appli-  
21 cant possessing a valid operating certificate when the application qual-  
22 ifies for review without the recommendation of the council pursuant to

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

LBD10262-01-3

1 regulations adopted by the council and approved by the commissioner; and  
2 (b) the commissioner is satisfied as to the public need for the  
3 construction, at the time and place and under the circumstances  
4 proposed, provided however that[, ] in the case of an application by: (I)  
5 a hospital established or operated by an organization defined in subdivi-  
6 sion one of section four hundred eighty-two-b of the social services  
7 law, the needs of the members of the religious denomination concerned,  
8 for care or treatment in accordance with their religious or ethical  
9 convictions, shall be deemed to be public need[.]; (II) A GENERAL HOSPI-  
10 TAL OR DIAGNOSTIC AND TREATMENT CENTER, ESTABLISHED UNDER THIS ARTICLE,  
11 TO CONSTRUCT A FACILITY TO PROVIDE PRIMARY CARE SERVICES, AS DEFINED IN  
12 REGULATION, THE CONSTRUCTION MAY BE APPROVED WITHOUT REGARD FOR PUBLIC  
13 NEED; OR (III) A GENERAL HOSPITAL OR A DIAGNOSTIC AND TREATMENT CENTER,  
14 ESTABLISHED UNDER THIS ARTICLE, TO UNDERTAKE CONSTRUCTION THAT DOES NOT  
15 INVOLVE: (A) A CHANGE IN CAPACITY, THE TYPES OF SERVICES PROVIDED,  
16 MAJOR MEDICAL EQUIPMENT; (B) FACILITY REPLACEMENT; OR (C) THE GEOGRAPHIC  
17 LOCATION OF SERVICES, THE CONSTRUCTION MAY BE APPROVED WITHOUT REGARD  
18 FOR PUBLIC NEED.

19 3. Subject to the provisions of paragraph (b) of subdivision two of  
20 this section, the commissioner in approving the construction of a hospi-  
21 tal shall take into consideration and be empowered to request informa-  
22 tion and advice as to (a) the availability of facilities or services  
23 such as preadmission, ambulatory or home care services which may serve  
24 as alternatives or substitutes for the whole or any part of the proposed  
25 hospital construction;

26 (b) the need for special equipment in view of existing utilization of  
27 comparable equipment at the time and place and under the circumstances  
28 proposed;

29 (c) the possible economies and improvements in service to be antic-  
30 ipated from the operation of joint central services including, but not  
31 limited to laboratory, research, radiology, pharmacy, laundry and  
32 purchasing;

33 (d) the adequacy of financial resources and sources of future revenue,  
34 PROVIDED THAT THE COMMISSIONER MAY, BUT IS NOT REQUIRED TO, CONSIDER THE  
35 ADEQUACY OF FINANCIAL RESOURCES AND SOURCES OF FUTURE REVENUE IN  
36 RELATION TO APPLICATIONS UNDER SUBPARAGRAPHS (II) AND (III) OF PARAGRAPH  
37 (B) OF SUBDIVISION TWO OF THIS SECTION; and

38 (e) whether the facility is currently in substantial compliance with  
39 all applicable codes, rules and regulations, provided, however, that the  
40 commissioner shall not disapprove an application solely on the basis  
41 that the facility is not currently in substantial compliance, if the  
42 application is specifically:

43 (i) to correct life safety code or patient care deficiencies;

44 (ii) to correct deficiencies which are necessary to protect the life,  
45 health, safety and welfare of facility patients, residents or staff;

46 (iii) for replacement of equipment that no longer meets the generally  
47 accepted operational standards existing for such equipment at the time  
48 it was acquired; and

49 (iv) for decertification of beds and services.

50 S 2. Subdivisions 1, 2 and 3 of section 2807-z of the public health  
51 law, as amended by chapter 400 of the laws of 2012, are amended to read  
52 as follows:

53 1. Notwithstanding any provision of this chapter or regulations or any  
54 other state law or regulation, for any eligible capital project as  
55 defined in subdivision six of this section, the department shall have  
56 thirty days of receipt of the certificate of need OR CONSTRUCTION appli-

1 cation, PURSUANT TO SECTION TWENTY-EIGHT HUNDRED TWO OF THIS ARTICLE,  
2 for a limited or administrative review to deem such application  
3 complete. If the department determines the application is incomplete or  
4 that more information is required, the department shall notify the  
5 applicant in writing within thirty days of the date of the application's  
6 submission, and the applicant shall have twenty business days to provide  
7 additional information or otherwise correct the deficiency in the appli-  
8 cation.

9 2. For an eligible capital project requiring a limited or administra-  
10 tive review, within ninety days of the department deeming the applica-  
11 tion complete, the department shall make a decision to approve or disap-  
12 prove the certificate of need OR CONSTRUCTION application for such  
13 project. If the department determines to disapprove the project, the  
14 basis for such disapproval shall be provided in writing; however, disap-  
15 proval shall not be based on the incompleteness of the application. If  
16 the department fails to take action to approve or disapprove the appli-  
17 cation within ninety days of the certificate of need application being  
18 deemed complete, the application will be deemed approved.

19 3. For an eligible capital project requiring full review by the coun-  
20 cil, the certificate of need OR CONSTRUCTION application shall be placed  
21 on the next council agenda following the department deeming the applica-  
22 tion complete.

23 S 3. Section 2801-a of the public health law is amended by adding a  
24 new subdivision 3-b to read as follows:

25 3-B. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CHAPTER TO THE  
26 CONTRARY, THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL MAY APPROVE THE  
27 ESTABLISHMENT OF DIAGNOSTIC OR TREATMENT CENTERS TO BE ISSUED OPERATING  
28 CERTIFICATES FOR THE PURPOSE OF PROVIDING PRIMARY CARE, AS DEFINED BY  
29 THE COMMISSIONER IN REGULATIONS, WITHOUT REGARD TO THE REQUIREMENTS OF  
30 PUBLIC NEED AND FINANCIAL RESOURCES AS SET FORTH IN SUBDIVISION THREE OF  
31 THIS SECTION.

32 S 4. Subdivision 3 of section 2801-a of the public health law, as  
33 amended by section 57 of part A of chapter 58 of the laws of 2010, is  
34 amended to read as follows:

35 3. The public health and health planning council shall not approve a  
36 certificate of incorporation, articles of organization or application  
37 for establishment unless it is satisfied, insofar as applicable, as to  
38 (a) the public need for the existence of the institution at the time and  
39 place and under the circumstances proposed, provided, however, that in  
40 the case of an institution proposed to be established or operated by an  
41 organization defined in subdivision one of section one hundred seventy-  
42 two-a of the executive law, the needs of the members of the religious  
43 denomination concerned, for care or treatment in accordance with their  
44 religious or ethical convictions, shall be deemed to be public need; (b)  
45 the character, competence, and standing in the community, of the  
46 proposed incorporators, directors, sponsors, stockholders, members or  
47 operators; with respect to any proposed incorporator, director, sponsor,  
48 stockholder, member or operator who is already or within the past [ten]  
49 SEVEN years has been an incorporator, director, sponsor, member, princi-  
50 pal stockholder, principal member, or operator of any hospital, private  
51 proprietary home for adults, residence for adults, or non-profit home  
52 for the aged or blind which has been issued an operating certificate by  
53 the state department of social services, or a halfway house, hostel or  
54 other residential facility or institution for the care, custody or  
55 treatment of the mentally disabled which is subject to approval by the  
56 department of mental hygiene, no approval shall be granted unless the

1 public health and health planning council, having afforded an adequate  
2 opportunity to members of health systems agencies, if any, having  
3 geographical jurisdiction of the area where the institution is to be  
4 located to be heard, shall affirmatively find by substantial evidence as  
5 to each such incorporator, director, sponsor, MEMBER, principal stock-  
6 holder, PRINCIPAL MEMBER, or operator that a substantially consistent  
7 high level of care is being or was being rendered in each such hospital,  
8 home, residence, halfway house, hostel, or other residential facility or  
9 institution with which such person is or was affiliated; for the  
10 purposes of this paragraph, the public health and health planning coun-  
11 cil shall adopt rules and regulations, subject to the approval of the  
12 commissioner, to establish the criteria to be used to determine whether  
13 a substantially consistent high level of care has been rendered,  
14 provided, however, that there shall not be a finding that a substantial-  
15 ly consistent high level of care has been rendered where there have been  
16 violations of the state hospital code, or other applicable rules and  
17 regulations, that (i) threatened to directly affect the health, safety  
18 or welfare of any patient or resident, and (ii) were recurrent or were  
19 not promptly corrected, UNLESS THE PROPOSED INCORPORATOR, DIRECTOR,  
20 SPONSOR, STOCKHOLDER, MEMBER OR OPERATOR DEMONSTRATES, AND THE PUBLIC  
21 HEALTH AND HEALTH PLANNING COUNCIL FINDS, THAT THE VIOLATIONS CANNOT BE  
22 ATTRIBUTED TO THE ACTION OR INACTION OF SUCH PROPOSED INCORPORATOR,  
23 DIRECTOR, SPONSOR, STOCKHOLDER, MEMBER OR OPERATOR DUE TO THE TIMING,  
24 EXTENT OR MANNER OF THE AFFILIATION; (c) the financial resources of the  
25 proposed institution and its sources of future revenues; and (d) such  
26 other matters as it shall deem pertinent.

27 S 5. Subdivision 4 of section 2801-a of the public health law, as  
28 amended by section 57 of part A of chapter 58 of the laws of 2010, is  
29 amended to read as follows:

30 4. (a) Any change in the person who is the operator of a hospital  
31 shall be approved by the public health and health planning council in  
32 accordance with the provisions of subdivisions two and three of this  
33 section. Notwithstanding any inconsistent provision of this paragraph,  
34 any change by a natural person who is the operator of a hospital seeking  
35 to transfer part of his or her interest in such hospital to another  
36 person or persons so as to create a partnership shall be approved in  
37 accordance with the provisions of paragraph (b) of this subdivision.

38 (b) [(i)] Any transfer, assignment or other disposition of ten percent  
39 or more of [an] DIRECT OR INDIRECT interest or voting rights in [a part-  
40 nership or limited liability company, which is the] AN operator of a  
41 hospital to a new STOCKHOLDER, partner or member, OR ANY TRANSFER,  
42 ASSIGNMENT OR OTHER DISPOSITION OF A DIRECT OR INDIRECT INTEREST OR  
43 VOTING RIGHTS OF SUCH AN OPERATOR WHICH RESULTS IN THE OWNERSHIP OR  
44 CONTROL OF MORE THAN TEN PERCENT OF THE INTEREST OR VOTING RIGHTS OF  
45 SUCH OPERATOR BY ANY PERSON NOT PREVIOUSLY APPROVED BY THE PUBLIC HEALTH  
46 AND HEALTH PLANNING COUNCIL, OR ITS PREDECESSOR, FOR THAT OPERATOR shall  
47 be approved by the public health and health planning council, in accord-  
48 ance with the provisions of subdivisions two and three of this section,  
49 except that: (A) any such change shall be subject to the approval by the  
50 public health and health planning council in accordance with paragraph  
51 (b) of subdivision three of this section only with respect to the new  
52 STOCKHOLDER, partner or member, and any remaining STOCKHOLDERS, partners  
53 or members who have not been previously approved for that facility in  
54 accordance with such paragraph, and (B) such change shall not be subject  
55 to paragraph (a) of subdivision three of this section. IN THE ABSENCE OF

1 SUCH APPROVAL, THE OPERATING CERTIFICATE OF SUCH HOSPITAL SHALL BE  
2 SUBJECT TO REVOCATION OR SUSPENSION.

3 [(ii)] (C) (I) With respect to a transfer, assignment or disposition  
4 involving less than ten percent of [an] A DIRECT OR INDIRECT interest or  
5 voting rights in [such partnership or limited liability company] AN  
6 OPERATOR OF A HOSPITAL to a new STOCKHOLDER, partner or member, no prior  
7 approval of the public health and health planning council shall be  
8 required. However, no such transaction shall be effective unless at  
9 least ninety days prior to the intended effective date thereof, the  
10 [partnership or limited liability company] OPERATOR fully completes and  
11 files with the public health and health planning council notice on a  
12 form, to be developed by the public health and health planning council,  
13 which shall disclose such information as may reasonably be necessary for  
14 the public health and health planning council to determine whether it  
15 should bar the transaction for any of the reasons set forth in item (A),  
16 (B), (C) or (D) below. Within ninety days from the date of receipt of  
17 such notice, the public health and health planning council may bar any  
18 transaction under this subparagraph: (A) if the equity position of the  
19 [partnership or limited liability company,] OPERATOR, determined in  
20 accordance with generally accepted accounting principles, would be  
21 reduced as a result of the transfer, assignment or disposition; (B) if  
22 the transaction would result in the ownership of a [partnership or  
23 membership] DIRECT OR INDIRECT interest OR VOTING RIGHTS by any persons  
24 who have been convicted of a felony described in subdivision five of  
25 section twenty-eight hundred six of this article; (C) if there are  
26 reasonable grounds to believe that the proposed transaction does not  
27 satisfy the character and competence criteria set forth in subdivision  
28 three of this section; or (D) UPON THE RECOMMENDATION OF THE DEPARTMENT,  
29 if the transaction, together with all transactions under this subpara-  
30 graph for the [partnership] OPERATOR, or successor, during any five year  
31 period would, in the aggregate, involve twenty-five percent or more of  
32 the interest in the [partnership] OPERATOR. The public health and health  
33 planning council shall state specific reasons for barring any trans-  
34 action under this subparagraph and shall so notify each party to the  
35 proposed transaction.

36 [(iii)] With respect to a transfer, assignment or disposition of an  
37 interest or voting rights in such partnership or limited liability  
38 company to any remaining partner or member, which transaction involves  
39 the withdrawal of the transferor from the partnership or limited liabil-  
40 ity company, no prior approval of the public health and health planning  
41 council shall be required. However, no such transaction shall be effec-  
42 tive unless at least ninety days prior to the intended effective date  
43 thereof, the partnership or limited liability company fully completes  
44 and files with the public health and health planning council notice on a  
45 form, to be developed by the public health and health planning council,  
46 which shall disclose such information as may reasonably be necessary for  
47 the public health and health planning council to determine whether it  
48 should bar the transaction for the reason set forth below. Within ninety  
49 days from the date of receipt of such notice, the public health and  
50 health planning council may bar any transaction under this subparagraph  
51 if the equity position of the partnership or limited liability company,  
52 determined in accordance with generally accepted accounting principles,  
53 would be reduced as a result of the transfer, assignment or disposition.  
54 The public health and health planning council shall state specific  
55 reasons for barring any transaction under this subparagraph and shall so  
56 notify each party to the proposed transaction.

1 (c) Any transfer, assignment or other disposition of ten percent or  
2 more of the stock or voting rights thereunder of a corporation which is  
3 the operator of a hospital or which is a member of a limited liability  
4 company which is the operator of a hospital to a new stockholder, or any  
5 transfer, assignment or other disposition of the stock or voting rights  
6 thereunder of such a corporation which results in the ownership or  
7 control of more than ten percent of the stock or voting rights there-  
8 under of such corporation by any person not previously approved by the  
9 public health and health planning council, or its predecessor, for that  
10 corporation shall be subject to approval by the public health and health  
11 planning council, in accordance with the provisions of subdivisions two  
12 and three of this section and rules and regulations pursuant thereto;  
13 except that: any such transaction shall be subject to the approval by  
14 the public health and health planning council in accordance with para-  
15 graph (b) of subdivision three of this section only with respect to a  
16 new stockholder or a new principal stockholder; and shall not be subject  
17 to paragraph (a) of subdivision three of this section. In the absence of  
18 such approval, the operating certificate of such hospital shall be  
19 subject to revocation or suspension.] (II) No prior approval of the  
20 public health and health planning council shall be required with respect  
21 to a transfer, assignment or disposition of ten percent or more of [the  
22 stock] A DIRECT OR INDIRECT INTEREST or voting rights [thereunder of a  
23 corporation which is the] IN AN operator of a hospital [or which is a  
24 member of a limited liability company which is the owner of a hospital]  
25 to any person previously approved by the public health and health plan-  
26 ning council, or its predecessor, for that [corporation] OPERATOR.  
27 However, no such transaction shall be effective unless at least ninety  
28 days prior to the intended effective date thereof, the [stockholder]  
29 OPERATOR FULLY completes and files with the public health and health  
30 planning council notice on forms to be developed by the public health  
31 and health planning council, which shall disclose such information as  
32 may reasonably be necessary for the public health and health planning  
33 council to determine whether it should bar the transaction. Such trans-  
34 action will be final as of the intended effective date unless, prior  
35 thereto, the public health and health planning council shall state  
36 specific reasons for barring such transactions under this paragraph and  
37 shall notify each party to the proposed transaction. Nothing in this  
38 paragraph shall be construed as permitting a person not previously  
39 approved by the public health and health planning council for that  
40 [corporation] OPERATOR to become the owner of ten percent or more of the  
41 [stock of a corporation which is] INTEREST OR VOTING RIGHTS, DIRECTLY OR  
42 INDIRECTLY, IN the operator of a hospital [or which is a member of a  
43 limited liability company which is the owner of a hospital] without  
44 first obtaining the approval of the public health and health planning  
45 council.

46 (d) No hospital shall be approved for establishment which would be  
47 operated by a limited partnership, or by a partnership any of the  
48 members of which are not natural persons.

49 (e) No hospital shall be approved for establishment which would be  
50 operated by a corporation any of the stock of which is owned by another  
51 corporation or a limited liability company if any of its corporate  
52 members' stock is owned by another corporation.

53 (f) No corporation shall be a member of a limited liability company  
54 authorized to operate a hospital unless its proposed incorporators,  
55 directors, stockholders or principal stockholders shall have been  
56 approved in accordance with the provisions of subdivision three of this

1 section applicable to the approval of the proposed incorporators, direc-  
2 tors or stockholders of any other corporation requiring approval for  
3 establishment.

4 (g) A natural person appointed as trustee of an express testamentary  
5 trust, created by a deceased sole proprietor, partner or shareholder in  
6 the operation of a hospital for the benefit of a person of less than  
7 twenty-five years of age, may, as the trustee, apply pursuant to subdivi-  
8 sion two of this section for approval to operate or participate in the  
9 operation of a facility or interest therein which is included in the  
10 corpus of such trust until such time as all beneficiaries attain the age  
11 of twenty-five, unless the trust instrument provides for earlier termi-  
12 nation, or such beneficiaries receive establishment approval in their  
13 own right, or until a transfer of the trust corpus is approved by the  
14 public health and health planning council, in accordance with this  
15 subdivision and subdivisions two and three of this section, whichever  
16 first occurs. The public health and health planning council shall not  
17 approve any such application unless it is satisfied as to:

18 (i) the character, competence and standing in the community of each  
19 proposed trustee operator pursuant to the provisions of paragraph (b) of  
20 subdivision three of this section; and

21 (ii) the ability of the trustee under the terms of the trust instru-  
22 ment to operate or participate in the operation of the hospital in a  
23 manner consistent with this chapter and regulations promulgated pursuant  
24 thereto.

25 (h) A natural person appointed conservator pursuant to article eight-  
26 y-one of the mental hygiene law, or a natural person appointed committee  
27 of the property of an incompetent pursuant to article eighty-one of the  
28 mental hygiene law or a sole proprietor, partner or shareholder of a  
29 hospital, may apply pursuant to subdivision two of this section for  
30 approval to operate a hospital owned by the conservatee or incompetent  
31 for a period not exceeding two years or until a transfer of the hospital  
32 is approved by the public health and health planning council in accord-  
33 ance with subdivisions two and three of this section, whichever occurs  
34 first. The public health and health planning council shall not approve  
35 any such application unless it is satisfied as to:

36 (i) the character, competence and standing in the community of the  
37 proposed conservator operator or committee operator pursuant to the  
38 provisions of paragraph (b) of subdivision three of this section; and

39 (ii) the ability of the conservator or committee under the terms of  
40 the court order to operate the hospital in a manner consistent with this  
41 chapter and regulations promulgated pursuant thereto.

42 S 6. Section 3611-a of the public health law, as amended by section 92  
43 of part C of chapter 58 of the laws of 2009, subdivisions 1 and 2 as  
44 amended by section 67 of part A of chapter 58 of the laws of 2010, is  
45 amended to read as follows:

46 S 3611-a. Change in the operator or owner. 1. Any change in the  
47 person who, or any transfer, assignment, or other disposition of an  
48 interest or voting rights of ten percent or more, or any transfer,  
49 assignment or other disposition which results in the ownership or  
50 control of an interest or voting rights of ten percent or more, in a  
51 limited liability company or a partnership which is the operator of a  
52 licensed home care services agency or a certified home health agency  
53 shall be approved by the public health and health planning council, in  
54 accordance with the provisions of subdivision four of section thirty-six  
55 hundred five of this article relative to licensure or subdivision two of

1 section thirty-six hundred six of this article relative to certificate  
2 of approval, except that:

3 (a) Public health and health planning council approval shall be  
4 required only with respect to the person, or the member or partner that  
5 is acquiring the interest or voting rights; and

6 (b) With respect to certified home health agencies, such change shall  
7 not be subject to the public need assessment described in paragraph (a)  
8 of subdivision two of section thirty-six hundred six of this article.

9 (c) IN THE ABSENCE OF SUCH APPROVAL, THE LICENSE OR CERTIFICATE OF  
10 APPROVAL SHALL BE SUBJECT TO REVOCATION OR SUSPENSION.

11 (D) (I) No prior approval of the public health and health planning  
12 council shall be required with respect to a transfer, assignment or  
13 disposition of:

14 [(i)] (A) an interest or voting rights to any person previously  
15 approved by the public health and health planning council, or its prede-  
16 cessor, for that operator; or

17 [(ii)] (B) an interest or voting rights of less than ten percent in  
18 the operator. [However, no]

19 (II) NO such transaction UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH  
20 shall be effective unless at least ninety days prior to the intended  
21 effective date thereof, the [partner or member] OPERATOR completes and  
22 files with the public health and health planning council notice on forms  
23 to be developed by the public health council, which shall disclose such  
24 information as may reasonably be necessary for the public health and  
25 health planning council to determine whether it should bar the trans-  
26 action. Such transaction will be final as of the intended effective date  
27 unless, prior thereto, the public health and health planning council  
28 shall state specific reasons for barring such transactions under this  
29 paragraph and shall notify each party to the proposed transaction.

30 2. Any transfer, assignment or other disposition of ten percent or  
31 more of the stock or voting rights thereunder of a corporation which is  
32 the operator of a licensed home care services agency or a certified home  
33 health agency, or any transfer, assignment or other disposition of the  
34 stock or voting rights thereunder of such a corporation which results in  
35 the ownership or control of more than ten percent of the stock or voting  
36 rights thereunder of such corporation by any person shall be subject to  
37 approval by the public health and health planning council in accordance  
38 with the provisions of subdivision four of section thirty-six hundred  
39 five of this article relative to licensure or subdivision two of section  
40 thirty-six hundred six of this article relative to certificate of  
41 approval, except that:

42 (a) Public health and health planning council approval shall be  
43 required only with respect to the person or entity acquiring such stock  
44 or voting rights; and

45 (b) With respect to certified home health agencies, such change shall  
46 not be subject to the public need assessment described in paragraph (a)  
47 of subdivision two of section thirty-six hundred six of this article. In  
48 the absence of such approval, the license or certificate of approval  
49 shall be subject to revocation or suspension.

50 (c) No prior approval of the public health and health planning council  
51 shall be required with respect to a transfer, assignment or disposition  
52 of an interest or voting rights to any person previously approved by the  
53 public health and health planning council, or its predecessor, for that  
54 operator. However, no such transaction shall be effective unless at  
55 least one hundred twenty days prior to the intended effective date ther-  
56 eof, the partner or member completes and files with the public health

1 and health planning council notice on forms to be developed by the  
2 public health and health planning council, which shall disclose such  
3 information as may reasonably be necessary for the public health and  
4 health planning council to determine whether it should bar the trans-  
5 action. Such transaction will be final as of the intended effective date  
6 unless, prior thereto, the public health and health planning council  
7 shall state specific reasons for barring such transactions under this  
8 paragraph and shall notify each party to the proposed transaction.

9 3. (a) The commissioner shall charge to applicants for a change in  
10 operator or owner of a licensed home care services agency or a certified  
11 home health agency an application fee in the amount of two thousand  
12 dollars.

13 (b) The fees paid by certified home health agencies pursuant to this  
14 subdivision for any application approved in accordance with this section  
15 shall be deemed allowable costs in the determination of reimbursement  
16 rates established pursuant to this article. All fees pursuant to this  
17 section shall be payable to the department of health for deposit into  
18 the special revenue funds - other, miscellaneous special revenue fund -  
19 339, certificate of need account.

20 S 7. This act shall take effect on the one hundred eightieth day after  
21 it shall have become a law, provided that effective immediately, the  
22 commissioner of health is authorized to make any rules or regulations  
23 necessary to implement the provisions of this act on its effective date.