

5540

2015-2016 Regular Sessions

I N S E N A T E

May 14, 2015

Introduced by Sen. MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the social services law, in relation to licensed operators of adult care facilities and their affiliates; and to amend the public health law, in relation to licensed operators of assisted living facilities and their affiliates

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

1 Section 1. Paragraph (b) of subdivision 2 of section 461-b of the
2 social services law, as amended by chapter 414 of the laws of 2013, is
3 amended as follows:
4 (b) For existing licensed operators in good standing AND THEIR AFFIL-
5 IATES, the department shall develop a streamlined application review and
6 approval process, in collaboration with representatives of associations
7 of operators, to be available for use [on or before January first, two
8 thousand fourteen] in relation to approval of an additional facility of
9 the same type. Notwithstanding any provision of law or regulation to
10 the contrary, the streamlined application review and approval process
11 shall include, but not be limited to, the following:
12 (i) a certification process and form for the operator OR ITS AFFILIATE
13 to verify that it will have sufficient financial resources, revenue and
14 financing to meet facility expenses and resident needs, which shall
15 satisfy the statutory and regulatory financial component of the applica-
16 tion review and approval process;
17 (ii) a certification process and form for the operator OR ITS AFFIL-
18 IATE to verify that its legal, corporate and organizational documents
19 comply in substance with department requirements, which shall satisfy
20 the statutory and regulatory legal component of the application review
21 and approval process;
22 (iii) a certification process and form for the operator OR ITS AFFIL-
23 IATE to verify that it is in substantial compliance with all applicable

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

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1 codes, rules and regulations in any other state in which it operates,
2 and to disclose any enforcement or administrative action taken against
3 it in any other state;

4 (iv) issuance by the department of a conditional approval to operate
5 the facility for a specified period of time upon substantial completion
6 of the character and competence, legal, financial and architectural
7 components of the application, so long as the operator agrees in writing
8 to satisfy all pending conditions prior to the expiration of the condi-
9 tional approval period or a time frame established by the department;

10 (v) issuance by the department of a conditional approval to construct
11 a facility, at the operator's own risk, upon substantial completion of
12 the architectural component of the application;

13 (vi) elimination of duplicative submission and review of any applica-
14 tion information which has been previously reviewed and approved by the
15 department or any of its regional offices within the past two years
16 through a certification process and form whereby the operator OR ITS
17 AFFILIATE will verify that such application information is duplicative;

18 (vii) with respect to any programmatic application information to be
19 reviewed by the regional office, such review shall be conducted on-site
20 by the regional office during the pre-opening inspection or first full
21 annual inspection, if the department has previously approved the opera-
22 tor OR ITS AFFILIATE to operate the same type of program at another
23 facility within the past two years;

24 (viii) electronic submission of applications; and

25 (ix) a combined application for licensure as an adult care facility,
26 assisted living residence and/or assisted living program, to the extent
27 the department determines such a combined application is feasible.

28 FOR PURPOSES OF THIS PARAGRAPH, "AFFILIATE" SHALL MEAN ANY ENTITY THAT
29 IS UNDER COMMON OWNERSHIP AND/OR CONTROL AS AN EXISTING LICENSED OPERA-
30 TOR IN GOOD STANDING; PROVIDED, HOWEVER, THE AFFILIATE ENTITY MAY HAVE:
31 (A) DIFFERENT PERCENTAGES OF OWNERSHIP AND/OR CONTROL AMONG THE INDIVID-
32 UALS APPROVED FOR THE LICENSED OPERATOR IN GOOD STANDING; AND/OR (B)
33 FEWER INDIVIDUALS WITH OWNERSHIP AND/OR CONTROL THAN APPROVED FOR THE
34 LICENSED OPERATOR IN GOOD STANDING.

35 For purposes of this paragraph, "good standing" shall mean the opera-
36 tor has not (A) received any official written notice from the department
37 of a proposed revocation, suspension, denial or limitation on the oper-
38 ating certificate of the facility or residence; (B) within the previous
39 three years, been assessed a civil penalty after a hearing conducted
40 pursuant to subparagraph one of paragraph (b) of subdivision seven of
41 section four hundred sixty-d of this article for a violation that has
42 not been rectified; (C) within the previous year, received any official
43 written notice from the department of a proposed assessment of a civil
44 penalty for a violation described in subparagraph two of paragraph (b)
45 of subdivision seven of section four hundred sixty-d of this article;
46 (D) within the previous three years, been issued an order pursuant to
47 subdivision two, five, six or eight of section four hundred sixty-d of
48 this article; (E) within the previous three years, been placed on, and
49 if placed on, removed from the department's "do not refer list" pursuant
50 to subdivision fifteen of section four hundred sixty-d of this article.
51 Provided, however, that in the case of an operator that is not in good
52 standing as provided in this paragraph, the department may permit the
53 operator to use the streamlined application process, in its discretion,
54 if it determines that the disqualifying violation was an isolated occur-
55 rence that was promptly corrected by the operator[;].

1 S 2. Subdivision 2 of section 4653 of the public health law, as added
2 by chapter 414 of the laws of 2013, is amended to read as follows:

3 2. For existing licensed operators in good standing AND THEIR AFFIL-
4 IATES, the department shall develop a streamlined application review and
5 approval process, in collaboration with representatives of associations
6 of operators, to be available for use [on or before January first, two
7 thousand fourteen] in relation to approval of an additional facility of
8 the same type. Notwithstanding any provision of law or regulation to
9 the contrary, the streamlined application review and approval process
10 shall include, but not be limited to, the following:

11 (a) a certification process and form for the operator OR ITS AFFILIATE
12 to verify that it will have sufficient financial resources, revenue and
13 financing to meet facility expenses and resident needs, which shall
14 satisfy the statutory and regulatory financial component of the applica-
15 tion review and approval process;

16 (b) a certification process and form for the operator OR ITS AFFILIATE
17 to verify that its legal, corporate and organizational documents comply
18 in substance with department requirements, which shall satisfy the stat-
19 utory and regulatory legal component of the application review and
20 approval process;

21 (c) a certification process and form for the operator OR ITS AFFILIATE
22 to verify that it is in substantial compliance with all applicable
23 codes, rules and regulations in any other state in which it operates,
24 and to disclose any enforcement or administrative action taken against
25 it in any other state;

26 (d) issuance by the department of a conditional approval to operate
27 the facility for a specified period of time upon substantial completion
28 of the character and competence, legal, financial and architectural
29 components of the application, so long as the operator agrees in writing
30 to satisfy all pending conditions prior to the expiration of the condi-
31 tional approval period or a time frame established by the department;

32 (e) issuance by the department of a conditional approval to construct
33 a facility, at the operator's own risk, upon substantial completion of
34 the architectural component of the application;

35 (f) elimination of duplicative submission and review of any applica-
36 tion information which has been previously reviewed and approved by the
37 department or any of its regional offices within the past two years
38 through a certification process and form whereby the operator OR ITS
39 AFFILIATE will verify that such application information is duplicative;

40 (g) with respect to any programmatic application information to be
41 reviewed by the regional office, such review shall be conducted on-site
42 by the regional office during the pre-opening inspection or first full
43 annual inspection, if the department has previously approved the opera-
44 tor OR ITS AFFILIATE to operate the same type of program at another
45 facility within the past two years;

46 (h) electronic submission of applications; and

47 (i) a combined application for licensure as an adult care facility,
48 assisted living residence and/or assisted living program, to the extent
49 the department determines such a combined application is feasible.

50 FOR PURPOSES OF THIS SUBDIVISION, "AFFILIATE" SHALL MEAN ANY ENTITY
51 THAT IS UNDER COMMON OWNERSHIP AND/OR CONTROL AS AN EXISTING LICENSED
52 OPERATOR IN GOOD STANDING; PROVIDED, HOWEVER, THE AFFILIATE ENTITY MAY
53 HAVE: (A) DIFFERENT PERCENTAGES OF OWNERSHIP AND/OR CONTROL AMONG THE
54 INDIVIDUALS APPROVED FOR THE LICENSED OPERATOR IN GOOD STANDING; AND/OR
55 (B) FEWER INDIVIDUALS WITH OWNERSHIP AND/OR CONTROL THAN APPROVED FOR
56 THE LICENSED OPERATOR IN GOOD STANDING.

1 For purposes of this subdivision, "good standing" shall mean the oper-
2 ator has not (i) received any official written notice from the depart-
3 ment of a proposed revocation, suspension, denial or limitation on the
4 operating certificate of the facility or residence; (ii) within the
5 previous three years, been assessed a civil penalty after a hearing
6 conducted pursuant to subparagraph one of paragraph (b) of subdivision
7 seven of section four hundred sixty-d of the social services law for a
8 violation that has not been rectified; (iii) within the previous year,
9 received any official written notice from the department of a proposed
10 assessment of a civil penalty for a violation described in subparagraph
11 two of paragraph (b) of subdivision seven of section four hundred
12 sixty-d of the social services law; (iv) within the previous three
13 years, been issued an order pursuant to subdivision two, five, six, or
14 eight of section four hundred sixty-d of the social services law; (v)
15 within the previous three years, been placed on, and if placed on,
16 removed from the department's "do not refer list" pursuant to subdivi-
17 sion fifteen of section four hundred sixty-d of the social services law.
18 Provided, however, that in the case of an operator that is not in good
19 standing as provided in this paragraph, the department may permit the
20 operator to use the streamlined application process, in its discretion,
21 if it determines that the disqualifying violation was an isolated occur-
22 rence that was promptly corrected by the operator.

23 S 3. This act shall take effect immediately.