

5540--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 to read 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;

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

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1 (iii) a certification process and form for the operator OR ITS AFFIL-
2 IATE to verify that it is in substantial compliance with all applicable
3 codes, rules and regulations in any other state in which it operates,
4 and to disclose any enforcement or administrative action taken against
5 it in any other state;

6 (iv) issuance by the department of a conditional approval to operate
7 the facility for a specified period of time upon substantial completion
8 of the character and competence, legal, financial and architectural
9 components of the application, so long as the operator OR ITS AFFILIATE
10 agrees in writing to satisfy all pending conditions prior to the expira-
11 tion of the conditional approval period or a time frame established by
12 the department;

13 (v) issuance by the department of a conditional approval to construct
14 a facility, at the operator's OR ITS AFFILIATE'S own risk, upon substan-
15 tial completion of the architectural component of the application;

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

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

27 (viii) electronic submission of applications; and

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

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

38 For purposes of this paragraph, "good standing" shall mean the opera-
39 tor [has] AND ITS AFFILIATES HAVE not (A) received any official written
40 notice from the department of a proposed revocation, suspension, denial
41 or limitation on the operating certificate of the facility or residence;
42 (B) within the previous three years, been assessed a civil penalty after
43 a hearing conducted pursuant to subparagraph one of paragraph (b) of
44 subdivision seven of section four hundred sixty-d of this article for a
45 violation that has not been rectified; (C) within the previous year,
46 received any official written notice from the department of a proposed
47 assessment of a civil penalty for a violation described in subparagraph
48 two of paragraph (b) of subdivision seven of section four hundred
49 sixty-d of this article; (D) within the previous three years, been
50 issued an order pursuant to subdivision two, five, six or eight of
51 section four hundred sixty-d of this article; (E) within the previous
52 three years, been placed on, and if placed on, removed from the depart-
53 ment's "do not refer list" pursuant to subdivision fifteen of section
54 four hundred sixty-d of this article. Provided, however, that in the
55 case of an operator OR AFFILIATE that is not in good standing as
56 provided in this paragraph, the department may permit the operator OR

AFFILIATE to use the streamlined application process, in its discretion, if it determines that the disqualifying violation was an isolated occurrence that was promptly corrected by the operator[;]OR AFFILIATE.

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

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

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

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

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

(d) issuance by the department of a conditional approval to operate the facility for a specified period of time upon substantial completion of the character and competence, legal, financial and architectural components of the application, so long as the operator OR ITS AFFILIATE agrees in writing to satisfy all pending conditions prior to the expiration of the conditional approval period or a time frame established by the department;

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

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

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

(h) electronic submission of applications; and

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

FOR PURPOSES OF THIS SUBDIVISION, "AFFILIATE" SHALL MEAN ANY ENTITY THAT IS UNDER COMMON OWNERSHIP AND/OR CONTROL, DIRECTLY OR INDIRECTLY, AS AN EXISTING LICENSED OPERATOR IN GOOD STANDING; PROVIDED, HOWEVER,

1 THE AFFILIATE ENTITY MAY HAVE: (A) DIFFERENT PERCENTAGES OF OWNERSHIP
2 AND/OR CONTROL AMONG THE INDIVIDUALS APPROVED FOR THE LICENSED OPERATOR
3 IN GOOD STANDING (PROVIDED THAT ALL OF THE INDIVIDUALS HAVE AN OWNERSHIP
4 INTEREST AND/OR CONTROL AS THE OPERATOR IN GOOD STANDING); AND/OR (B)
5 FEWER INDIVIDUALS WITH OWNERSHIP AND/OR CONTROL THAN APPROVED FOR THE
6 LICENSED OPERATOR IN GOOD STANDING.

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

30 S 3. This act shall take effect immediately.