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

5739--B

2015-2016 Regular Sessions

I N S E N A T E

June 1, 2015

Introduced by Sen. KLEIN -- 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 -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to rates of payment to residential health care facilities based on the historical costs to the owner

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

Section 1. Paragraph (d) of subdivision 2-a of section 2808 of the public health law, as amended by section 52 of part B of chapter 57 of the laws of 2015, is amended to read as follows:

(d) For facilities granted operating certificates on or after March tenth, nineteen hundred seventy-five, recognition of real property costs in such regulations shall be based upon historical costs to the owner of the facility, provided that payment for real property costs shall not be in excess of the actual debt service, including principal and interest, and payment with respect to owner's equity, and further provided that, subject to federal financial participation, and subject to the approval of the commissioner, effective April first, two thousand fifteen, the commissioner may modify such payments for real property costs for purposes of effectuating a shared savings program, whereby facilities share a minimum of fifty percent of savings, for facilities that elect to refinance their mortgage loans. For purposes of this subdivision, owner's equity shall be calculated without regard to any surplus created by revaluation of assets and shall not include amounts resulting from mortgage amortization where the payment therefor has been provided by real property cost reimbursement; PROVIDED, HOWEVER, AS USED IN THIS SUBDIVISION THE TERMS "HISTORICAL COSTS" AND "OWNER'S EQUITY" SHALL

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

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INCLUDE THE FULL REVALUATION OF THE ASSETS OF A FACILITY PURCHASED AND TRANSFERRED IMMEDIATELY FOLLOWING THE OPERATION OF SUCH FACILITY UNDER A COURT-ORDERED RECEIVERSHIP, BUT ONLY IF:

(I) THE FACILITY HAS BEEN CONTINUOUSLY OPERATED AND OCCUPIED PRIMARILY WITH PERSONS WHO ARE IN RECEIPT OF MEDICAL ASSISTANCE BENEFITS FROM THE TIME THAT THE RECEIVERSHIP WAS ESTABLISHED UNTIL THE TIME OF PURCHASE OR TRANSFER;

(II) THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL HAS CONSIDERED THE APPLICATION FOR THE ESTABLISHMENT OF A NEW OPERATOR OF A RESIDENTIAL HEALTH CARE FACILITY AT THE SITE OF THE FACILITY;

(III) THE COMMISSIONER HAS REQUIRED SIGNIFICANT UPGRADE TO THE FACILITY'S PHYSICAL PLANT IN CONSIDERATION OF HIS OR HER APPROVAL OF THE CONSTRUCTION OF A RESIDENTIAL HEALTH CARE FACILITY AT THE SITE OF THE FACILITY; AND

(IV) THE COMMISSIONER HAS DETERMINED EACH OF THE FOLLOWING CONDITIONS IS TRUE:

(1) THERE IS A CONTINUING NEED FOR THE BEDS AT THEIR CURRENT LOCATION;

(2) THE ESTIMATED TOTAL PROJECT COST FOR NEW CONSTRUCTION OF A FACILITY OF THE SAME BED CAPACITY IN THE AREA WOULD SUBSTANTIALLY EXCEED THE COMBINED PURCHASE PRICE AND TOTAL PROJECT COST FOR APPROVED RENOVATION COSTS OF THE REVALUED FACILITY;

(3) THE PURCHASE PRICE IS REASONABLE; AND

(4) THE CONTINUED USE OF THE FACILITY AS A RESIDENTIAL HEALTH CARE FACILITY IS IN THE PUBLIC INTEREST.

S 2. Paragraph (d) of subdivision 2-a of section 2808 of the public health law, as added by chapter 483 of the laws of 1978, is amended to read as follows:

(d) For facilities granted operating certificates on or after March tenth, nineteen hundred seventy-five, recognition of real property costs in such regulations shall be based upon historical costs to the owner of the facility, provided that payment for real property costs shall not be in excess of the actual debt service, including principal and interest, and payment with respect to owner's equity. For purposes of this subdivision, owner's equity shall be calculated without regard to any surplus created by revaluation of assets and shall not include amounts resulting from mortgage amortization where the payment therefor has been provided by real property cost reimbursement; PROVIDED, HOWEVER, AS USED IN THIS SUBDIVISION THE TERMS "HISTORICAL COSTS" AND "OWNER'S EQUITY" SHALL INCLUDE THE FULL REVALUATION OF THE ASSETS OF A FACILITY PURCHASED AND TRANSFERRED IMMEDIATELY FOLLOWING THE OPERATION OF SUCH FACILITY UNDER A COURT-ORDERED RECEIVERSHIP, BUT ONLY IF:

(I) THE FACILITY HAS BEEN CONTINUOUSLY OPERATED AND OCCUPIED PRIMARILY WITH PERSONS WHO ARE IN RECEIPT OF MEDICAL ASSISTANCE BENEFITS FROM THE TIME THAT THE RECEIVERSHIP WAS ESTABLISHED UNTIL THE TIME OF PURCHASE OR TRANSFER;

(II) THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL HAS CONSIDERED THE APPLICATION FOR THE ESTABLISHMENT OF A NEW OPERATOR OF A RESIDENTIAL HEALTH CARE FACILITY AT THE SITE OF THE FACILITY;

(III) THE COMMISSIONER HAS REQUIRED SIGNIFICANT UPGRADE TO THE FACILITY'S PHYSICAL PLANT IN CONSIDERATION OF HIS OR HER APPROVAL OF THE CONSTRUCTION OF A RESIDENTIAL HEALTH CARE FACILITY AT THE SITE OF THE FACILITY; AND

(IV) THE COMMISSIONER HAS DETERMINED EACH OF THE FOLLOWING CONDITIONS IS TRUE:

(1) THERE IS A CONTINUING NEED FOR THE BEDS AT THEIR CURRENT LOCATION;

(2) THE ESTIMATED TOTAL PROJECT COST FOR NEW CONSTRUCTION OF A FACILITY OF THE SAME BED CAPACITY IN THE AREA WOULD SUBSTANTIALLY EXCEED THE COMBINED PURCHASE PRICE AND TOTAL PROJECT COST FOR APPROVED RENOVATION COSTS OF THE REVALUED FACILITY;

(3) THE PURCHASE PRICE IS REASONABLE; AND

(4) THE CONTINUED USE OF THE FACILITY AS A RESIDENTIAL HEALTH CARE FACILITY IS IN THE PUBLIC INTEREST.

S 3. This act shall take effect immediately; provided, however, that the amendments to paragraph (d) of subdivision 2-a of section 2808 of the public health law made by section one of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith, when upon such date section two of this act shall take effect.