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

6390--A

Cal. No. 21

I N S E N A T E

January 8, 2016

Introduced by Sen. MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

Section 1. Paragraph (b) of subdivision 2 of section 461-b of the social services law, as amended by a chapter of the laws of 2015 amending the social services law and the public health law relating to licensed operators of certain facilities and their affiliates as proposed in legislative bills numbers S.5540-A and A.7681-A, is amended and a new paragraph (b-1) is added to read as follows:

(b) 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 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:

(i) a certification process and form for the operator or its affiliate to [verify] ATTEST 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;

(ii) a certification process and form for the operator or its affiliate to [verify] ATTEST 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;

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

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(iii) a certification process and form for the operator or its affiliate to [verify] ATTEST 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;

(iv) 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;

(v) 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;

(vi) 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] ATTEST that such application information is duplicative;

(vii) 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;

(viii) electronic submission of applications; and

(ix) 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 paragraph, "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, the affiliate entity may have: (A) different percentages of ownership and/or control among the individuals approved for the licensed operator in good standing; and/or (B) fewer individuals with ownership and/or control than approved for the licensed operator in good standing.]

(B-1) FOR PURPOSES OF PARAGRAPH (B) OF THIS SUBDIVISION, "AFFILIATE" SHALL MEAN AN ENTITY, FOR WHICH A MAJORITY OF THE OWNERSHIP OR CONTROLLING INTEREST IS THE SAME AS THE OWNERSHIP OR CONTROLLING INTEREST IN AN EXISTING LICENSED OPERATOR UNDER THIS SECTION (PROVIDED THAT AN AFFILIATE MAY HAVE DIFFERENT PERCENTAGES OF OWNERSHIP OR CONTROL OR FEWER NATURAL PERSONS WITH OWNERSHIP OR CONTROL THAN AN EXISTING OPERATOR) AND, FURTHER:

(I) FOR ANY ENTITY OWNED, DIRECTLY OR INDIRECTLY, BY NATURAL PERSONS:

(A) AT ALL TIMES, MORE THAN HALF OF THE OWNERSHIP INTEREST OF THE ENTITY SHALL BE OWNED, DIRECTLY OR INDIRECTLY, BY NATURAL PERSONS WHO HAVE PREVIOUSLY BEEN DETERMINED TO HAVE UNDERGONE A SATISFACTORY DETERMINATION OF CHARACTER, COMPETENCE AND STANDING IN THE COMMUNITY;

(B) AT ALL TIMES, ANY OWNER WITH A DIRECT OR INDIRECT OWNERSHIP INTEREST WHO HAS NOT UNDERGONE A SATISFACTORY DETERMINATION OF CHARACTER, COMPETENCE AND STANDING IN THE COMMUNITY REVIEW MUST POSSESS A LESS THAN TEN PERCENT DIRECT OR INDIRECT INTEREST IN THE ENTITY, UNTIL A SATISFACTORY DETERMINATION HAS BEEN MADE; AND

(C) FOR ANY NATURAL PERSON PROPOSED TO BE AN OWNER, DIRECTLY OR INDIRECTLY, OF THE ENTITY WHO IS A CONTROLLING PERSON, MEMBER, DIRECTOR, OR OFFICER OF AN EXISTING LICENSED OPERATOR UNDER THIS SECTION, SUCH EXISTING LICENSED OPERATOR MUST BE IN GOOD STANDING WITH THE DEPARTMENT; AND

(II) FOR ANY NOT-FOR-PROFIT CORPORATION OR OTHER ENTITY NOT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH:

(A) MORE THAN HALF OF THE ENTITY'S TOTAL BOARD MEMBERS, DIRECTORS, OFFICERS AND CONTROLLING PERSONS SHALL HAVE PREVIOUSLY UNDERGONE A SATISFACTORY DETERMINATION OF CHARACTER, COMPETENCE AND STANDING IN THE COMMUNITY; AND

(B) IF ANY NATURAL PERSON PROPOSED TO BE A BOARD MEMBER, DIRECTOR, OR OFFICER OF THE ENTITY HAS AN OWNERSHIP INTEREST, DIRECTLY OR INDIRECTLY, OR IS A BOARD MEMBER, DIRECTOR, OFFICER, OR CONTROLLING PERSON, IN AN EXISTING LICENSED OPERATOR UNDER THIS SECTION, SUCH EXISTING LICENSED OPERATOR MUST ALSO BE IN GOOD STANDING WITH THE DEPARTMENT.

(B-2) For purposes of [this] paragraph (B) OF THIS SUBDIVISION, "good standing" shall mean the operator and its affiliates have not (A) received any official written notice from the department of a proposed revocation, suspension, denial or limitation on the operating certificate of the facility or residence; (B) within the previous three years, been assessed a civil penalty after a hearing conducted pursuant to subparagraph one of paragraph (b) of subdivision seven of section four hundred sixty-d of this article for a violation that has not been rectified; (C) within the previous year, received any official written notice from the department of a proposed assessment of a civil penalty for a violation described in subparagraph two of paragraph (b) of subdivision seven of section four hundred sixty-d of this article; (D) within the previous three years, been issued an order pursuant to subdivision two, five, six or eight of section four hundred sixty-d of this article; (E) within the previous three years, been placed on, and if placed on, removed from the department's "do not refer list" pursuant to subdivision fifteen of section four hundred sixty-d of this article. Provided, however, that in the case of an operator or affiliate that is not in good standing as 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 amended by a chapter of the laws of 2015 amending the social services law and the public health law relating to licensed operators of certain facilities and their affiliates, as proposed in legislative bills numbers S. 5540-A and A.7681-A, is amended and a new subdivision 2-a is added 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 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] ATTEST 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] ATTEST 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] ATTEST 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] ATTEST 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, the affiliate entity may have: (A) different percentages of ownership and/or control among the individuals approved for the licensed operator in good standing (provided that all of the individuals have an ownership interest and/or control as the operator in good standing); and/or (B) fewer individuals with ownership and/or control than approved for the licensed operator in good standing.]

2-A. FOR PURPOSES OF SUBDIVISION TWO OF THIS SECTION, "AFFILIATE" SHALL MEAN AN ENTITY, FOR WHICH A MAJORITY OF THE OWNERSHIP OR CONTROLLING INTEREST IS THE SAME AS THE OWNERSHIP OR CONTROLLING INTEREST IN AN EXISTING LICENSED OPERATOR UNDER THIS SECTION (PROVIDED THAT AN AFFILIATE MAY HAVE DIFFERENT PERCENTAGES OF OWNERSHIP OR CONTROL OR FEWER NATURAL PERSONS WITH OWNERSHIP OR CONTROL THAN AN EXISTING LICENSED OPERATOR) AND, FURTHER:

(A) FOR ANY ENTITY OWNED, DIRECTLY OR INDIRECTLY, BY NATURAL PERSONS:

(I) AT ALL TIMES, MORE THAN HALF OF THE OWNERSHIP INTEREST OF THE ENTITY SHALL BE OWNED, DIRECTLY OR INDIRECTLY, BY NATURAL PERSONS WHO HAVE PREVIOUSLY BEEN DETERMINED TO HAVE UNDERGONE A SATISFACTORY DETERMINATION OF CHARACTER, COMPETENCE AND STANDING IN THE COMMUNITY;

(II) AT ALL TIMES, ANY OWNER WITH A DIRECT OR INDIRECT OWNERSHIP INTEREST WHO HAS NOT UNDERGONE A SATISFACTORY DETERMINATION OF CHARACTER, COMPETENCE AND STANDING IN THE COMMUNITY REVIEW MUST POSSESS A LESS THAN TEN PERCENT DIRECT OR INDIRECT INTEREST IN THE ENTITY, UNTIL A SATISFACTORY DETERMINATION HAS BEEN MADE; AND

(III) FOR ANY NATURAL PERSON PROPOSED TO BE AN OWNER, DIRECTLY OR INDIRECTLY, OF THE ENTITY WHO IS A CONTROLLING PERSON, AS DEFINED IN SECTION FOUR HUNDRED SIXTY-ONE-B OF THE SOCIAL SERVICES LAW, OR IS A MEMBER, DIRECTOR, OR OFFICER OF AN EXISTING LICENSED OPERATOR UNDER THIS SECTION, SUCH EXISTING LICENSED OPERATOR MUST BE IN GOOD STANDING WITH THE DEPARTMENT; AND

(B) FOR ANY NOT-FOR-PROFIT CORPORATION OR OTHER ENTITY NOT UNDER PARAGRAPH (A) OF THIS SUBDIVISION:

(I) MORE THAN HALF OF THE ENTITY'S TOTAL BOARD MEMBERS, DIRECTORS, OFFICERS AND CONTROLLING PERSONS, AS DEFINED IN SECTION FOUR HUNDRED SIXTY-ONE-B OF THE SOCIAL SERVICES LAW, SHALL HAVE PREVIOUSLY UNDERGONE A SATISFACTORY DETERMINATION OF CHARACTER, COMPETENCE AND STANDING IN THE COMMUNITY; AND

(II) IF ANY NATURAL PERSON PROPOSED TO BE A BOARD MEMBER, DIRECTOR, OR OFFICER OF THE ENTITY HAS AN OWNERSHIP INTEREST, DIRECTLY OR INDIRECTLY, OR IS A BOARD MEMBER, DIRECTOR, OFFICER, OR CONTROLLING PERSON, AS DEFINED IN SECTION FOUR HUNDRED SIXTY-ONE-B OF THE SOCIAL SERVICES LAW, IN AN EXISTING LICENSED OPERATOR UNDER THIS SECTION, SUCH EXISTING LICENSED OPERATOR MUST ALSO BE IN GOOD STANDING WITH THE DEPARTMENT.

2-B. For purposes of [this] subdivision TWO OF THIS SECTION, "good standing" shall mean the operator and its affiliate have not (i) received any official written notice from the department of a proposed revocation, suspension, denial or limitation on the operating certificate of the facility or residence; (ii) within the previous three years, been assessed a civil penalty after a hearing conducted pursuant to subparagraph one of paragraph (b) of subdivision seven of section four hundred sixty-d of the social services law for a violation that has not been rectified; (iii) within the previous year, received any official written notice from the department of a proposed assessment of a civil penalty for a violation described in subparagraph two of paragraph (b) of subdivision seven of section four hundred sixty-d of the social services law; (iv) within the previous three years, been issued an order pursuant to subdivision two, five, six, or eight of section four hundred sixty-d of the social services law; (v) within the previous three years, been placed on, and if placed on, removed from the department's "do not refer list" pursuant to subdivision fifteen of section four hundred sixty-d of the social services law. Provided, however, that in the case of an operator or affiliate that is not in good standing as 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 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2015 amending the social services law and the public health law relating to licensed operators of certain facilities and their affiliates, as proposed in Legislative bills numbers S.5540-A and A.7681-A, takes effect.