STATE OF NEW YORK

6742--C

2017-2018 Regular Sessions

IN SENATE

June 15, 2017

Introduced by Sen. MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to provide for the appointment of a temporary operator to provide foster care on a temporary basis where a certain established operator is unable or unwilling to ensure the proper operation of the foster care program; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent. It is the intent of the legislature to ensure that children in foster care are provided with a safe and nurturing environment that meets their individual needs and enables them to cope with a history of trauma and disruptions, and to maintain a safe environment for the community and workforce of such facility. It is also the intent of the legislature to ensure a continuity of care in the delivery of those supports and services for these youth. To that end, this act is intended to provide the office of children and family services with the ability to assist foster care agencies that provide services to very high needs youth with the stabilization of their foster care programs through the appointment of a temporary operator.

§ 2. The office of children and family services (hereinafter referred to in this act as the "office") shall have the authority to appoint a temporary operator in accordance with this section:

1. For the purposes of this section:

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

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(a) "Commissioner" shall mean the commissioner of the office or his or her designee.

(b) "Data" shall mean written documentation or knowledge obtained in the course of an inspection, audits or other methods authorized by law.

(c) "Foster care agency" shall mean an authorized agency as defined in paragraph (a) of subdivision 10 of section 371 of the social services law that operates one or more foster care programs.

(d) "Foster care youth" shall mean a person under the age of 21 who is in the care and custody, or custody and guardianship of an authorized agency as such term is defined in subdivision 10 of section 371 of the social services law.

(e) "Established operator" shall mean a foster care agency located in the town of Mount Pleasant, in the county of Westchester, that serves hard to place youth.

(f) "Serious health, safety or welfare deficiency" shall mean a violation of a law, rule or regulation by the established operator resulting in conditions that are dangerous, hazardous or imminently detrimental to the life or health, or otherwise jeopardize the safety of the foster care youth served by such operator, the community or workforce of such facility.

(g) "Temporary operator" shall mean any foster care agency appointed by the commissioner that:

(i) agrees to provide foster care on a temporary basis in the best interests of the foster care youth served by the established operator, the community or workforce of such facility;

(ii) has a history of compliance with applicable laws, rules, and regulations and a record of providing foster care of good quality, as determined by the commissioner; and

(iii) upon appointment as temporary operator, develops a plan determined to be satisfactory by the commissioner to address the established operator's deficiencies. Such plan may require the use of a fence, security guard, or private security force.

(h) "Local social services district" shall include any local social services district with care and custody or custody and guardianship of a foster care youth placed with the established operator that may be subject to the appointment of a temporary operator pursuant to this section, as well as the local social services district where the established operator is located.

2. (a) In the event that: (i) the commissioner finds that there are conditions within an established operator that is consistent with a serious health, safety or welfare deficiency, regarding foster care youth, the community or workforce of such facility, or (ii) an established operator seeks extraordinary financial assistance and the commissioner finds that the operator is experiencing serious financial instability that is jeopardizing existing or continued access to essential services within the community, the commissioner may immediately appoint a temporary operator for a period of ten days to assume sole control and sole responsibility for the operators of such established operator during such ten day period.

During the initial ten day period of appointment, the office, acting by and through its employees, shall meet and consult with the established operator to identify and discuss the condition or conditions which are the grounds for the appointment of the temporary operator and the remedies for such condition or conditions.

(b) Upon the conclusion of the ten day period of the appointment of the temporary operator, if a mutually satisfactory plan of correction

and schedule for implementation is developed, and the office makes a determination that the established operator has agreed to and is able to remedy the conditions which were the grounds for the appointment of the temporary operator, the term of the temporary appointment shall terminate and the established operator shall resume control of and responsibility for the foster care agency. Such plan may require the use of a fence, security guard, or private security force. Provided, however, that in the event the office and the established operator fail to agree to a plan of correction which includes all necessary remedies or the established operator is unable or unwilling to implement such remedies, the term of the temporary operator shall be extended for an additional thirty days.

(c) During the extended thirty day period of the appointment of a temporary operator, there shall be an administrative hearing on the commissioner's determination to appoint a temporary operator to begin no later than thirty days from the date of the notice to the established operator. Any such hearing shall be strictly limited to the issue of whether the determination of the commissioner to appoint a temporary operator is supported by substantial evidence. A copy of the decision shall be sent to the established operator and the local social services district.

(d) If the decision to appoint a temporary operator is upheld, the term shall be extended an additional one hundred eighty days. After one hundred eighty days, if the commissioner determines that termination of the temporary operator would cause significant deterioration of the quality of the foster care program run by the established operator, or an increased risk to the community or workforce of such facility or that reappointment is necessary to correct the deficiencies that required the appointment of the temporary operator, the commissioner may authorize an additional one hundred eighty day term. However, such authorization shall include the commissioner's requirements for conclusion of the temporary operatorship to be satisfied within the additional term. In addition, when an additional one hundred eighty day term is authorized, the commissioner shall work with the local social services district to identify alternative appropriate placement for the foster care youth placed with the established operator, that provide specialized services needed by such youth, should the temporary operator not be able to meet the objectives identified in the agreed upon plan.

(e) Within fourteen days prior to the termination of a one hundred eighty day appointment of a temporary operator, the temporary operator shall submit to the commissioner, to the local social services district, and to the established operator a report describing:

(i) the actions taken during the appointment to address the identified deficiencies, the resumption of operation by the established operator, or the revocation of authority to operate a foster care program;

(ii) objectives for the continuation of the temporary operatorship if necessary and a schedule for satisfaction of such objectives; and

(iii) if applicable, the recommended actions for the ongoing provision of foster care subsequent to the temporary operatorship.

(f) The term of the initial appointment and of any subsequent reappointment may be terminated prior to the expiration of the designated term, if the established operator and the commissioner agree on a plan of correction and the implementation of such plan.

(g) The commissioner, at any time he or she deems necessary and to the extent practicable, shall consult and may involve the local social services district.

(h) The appointment of the temporary operator shall be effectuated pursuant to this section and shall be in addition to any other remedies provided by law. During the term of appointment, the temporary operator shall have the authority to direct the staff of the established operator as necessary to appropriately provide care for foster care youth in accordance with the plan approved by the commissioner. The temporary operator shall, during this period, provide programs and services for foster youth in such a manner as to promote the health, safety, and welfare of the youth, the community, and workforce of such facility until either the established operator can resume operations or until the office revokes the authority of the established operator to operate a foster care program.

(i) The established operator shall grant the temporary operator access to the established operator's accounts and records in order to address any serious health, safety or welfare deficiencies of such foster care youth, community, or workforce of such facility. The temporary operator shall approve any decision related to an established provider's day to day operations or the established provider's ability to provide programs and services for foster youth.

3. The temporary operator shall not be required to file any bond. No security interest in any real or personal property comprising the established operator, contained within the established operator, or in any fixture of the building or buildings owned by the established operator, shall be impaired or diminished in priority by the temporary operator. Neither the temporary operator nor the office shall engage in any activity that constitutes a confiscation of property.

4. The temporary operator shall be entitled to a reasonable fee, as determined by the commissioner and subject to the approval of the director of the budget, and necessary expenses incurred while serving as a temporary operator to be paid by the established operator. Such temporary operator shall only be liable, in its capacity as temporary operator, for injury to person or property by reason of its operation of the agency of the established operator. No liability shall be incurred in the temporary operator's personal capacity, except for gross negligence and intentional acts.

5. (a) The commissioner shall, upon making a determination to appoint a temporary operator pursuant to paragraph (a) of subdivision two of this section, cause the established operator and the local social services district to be notified of the appointment by registered or certified mail addressed to the principal office of the established operator and the local social services district. Such notification shall include a detailed description of the findings underlying the appointment of a temporary operator, and the date and time of a required meeting within ten days.

(b) The commissioner shall, upon making a determination to appoint a temporary operator pursuant to paragraph (a) of subdivision two of this section, cause the temporary president of the senate, and the speaker of the assembly to receive appropriate and timely notification of the appointment of a temporary operator. Such notification shall include a description of the findings underlying the appointment of a temporary operator and the identification of the temporary operator. Such notification shall be made as soon as practicable under the circumstances.

6. Notwithstanding the appointment of a temporary operator, the established operator shall remain obligated for the continued provision of care and services for the foster care youth. No provision contained in this section shall be deemed to relieve the established operator or any

other person of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the established operator or any other person prior to the appointment of any temporary operator of the building hereunder; nor shall anything contained in this section be construed to suspend during the term of the appointment of the temporary operator of the building any obligation of the established operator or any other person for the maintenance and repair of the building, provision of utility services, payment of taxes or other operating and maintenance expenses of the building, nor of the established operator or any other person for the payment of mortgages or liens.

§ 3. This act shall take effect immediately and shall expire March 31, 2019 or one hundred eighty days after the appointment of a temporary operator who was appointed no later than March 31, 2019, whichever is later; provided, however, that the office of children and family services shall notify the legislative bill drafting commission upon the occurrence of the appointment of a temporary operator who was appointed prior to March 31, 2019 which would extend the provisions of this act beyond such date in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.