

# STATE OF NEW YORK

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6742--C

2017-2018 Regular Sessions

## IN SENATE

June 15, 2017

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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:

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

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

15 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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1 (a) "Commissioner" shall mean the commissioner of the office or his or  
2 her designee.

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

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

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

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

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

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

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

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

29 (iii) upon appointment as temporary operator, develops a plan deter-  
30 mined to be satisfactory by the commissioner to address the established  
31 operator's deficiencies. Such plan may require the use of a fence, secu-  
32 rity guard, or private security force.

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

39 2. (a) In the event that: (i) the commissioner finds that there are  
40 conditions within an established operator that is consistent with a  
41 serious health, safety or welfare deficiency, regarding foster care  
42 youth, the community or workforce of such facility, or (ii) an estab-  
43 lished operator seeks extraordinary financial assistance and the commis-  
44 sioner finds that the operator is experiencing serious financial insta-  
45 bility that is jeopardizing existing or continued access to essential  
46 services within the community, the commissioner may immediately appoint  
47 a temporary operator for a period of ten days to assume sole control and  
48 sole responsibility for the operators of such established operator  
49 during such ten day period.

50 During the initial ten day period of appointment, the office, acting  
51 by and through its employees, shall meet and consult with the estab-  
52 lished operator to identify and discuss the condition or conditions  
53 which are the grounds for the appointment of the temporary operator and  
54 the remedies for such condition or conditions.

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

1 and schedule for implementation is developed, and the office makes a  
2 determination that the established operator has agreed to and is able to  
3 remedy the conditions which were the grounds for the appointment of the  
4 temporary operator, the term of the temporary appointment shall termi-  
5 nate and the established operator shall resume control of and responsi-  
6 bility for the foster care agency. Such plan may require the use of a  
7 fence, security guard, or private security force. Provided, however,  
8 that in the event the office and the established operator fail to agree  
9 to a plan of correction which includes all necessary remedies or the  
10 established operator is unable or unwilling to implement such remedies,  
11 the term of the temporary operator shall be extended for an additional  
12 thirty days.

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

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

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

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

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

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

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

54 (g) The commissioner, at any time he or she deems necessary and to the  
55 extent practicable, shall consult and may involve the local social  
56 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

1 other person of any civil or criminal liability incurred, or any duty  
2 imposed by law, by reason of acts or omissions of the established opera-  
3 tor or any other person prior to the appointment of any temporary opera-  
4 tor of the building hereunder; nor shall anything contained in this  
5 section be construed to suspend during the term of the appointment of  
6 the temporary operator of the building any obligation of the established  
7 operator or any other person for the maintenance and repair of the  
8 building, provision of utility services, payment of taxes or other oper-  
9 ating and maintenance expenses of the building, nor of the established  
10 operator or any other person for the payment of mortgages or liens.

11 § 3. This act shall take effect immediately and shall expire March 31,  
12 2019 or one hundred eighty days after the appointment of a temporary  
13 operator who was appointed no later than March 31, 2019, whichever is  
14 later; provided, however, that the office of children and family  
15 services shall notify the legislative bill drafting commission upon the  
16 occurrence of the appointment of a temporary operator who was appointed  
17 prior to March 31, 2019 which would extend the provisions of this act  
18 beyond such date in order that the commission may maintain an accurate  
19 and timely effective data base of the official text of the laws of the  
20 state of New York in furtherance of effectuating the provisions of  
21 section 44 of the legislative law and section 70-b of the public offi-  
22 cers law.