STATE OF NEW YORK

8395

IN SENATE

May 4, 2018

Introduced by Sen. HANNON -- (at request of the Department of Health) -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to streamlining and adding criteria to the certificate of need process

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

Section 1. Subdivision 3 of section 2801-a of the public health law, as amended by section 57 of part A of chapter 58 of the laws of 2010, is amended to read as follows:

3. The public health and health planning council shall not approve a certificate of incorporation, articles of organization or application for establishment unless it is satisfied, insofar as applicable, as to (a) the public need for the existence of the institution at the time and place and under the circumstances proposed, provided, however, that in the case of an institution proposed to be established or operated by an organization defined in subdivision one of section one hundred seventy-two-a of the executive law, the needs of the members of the religious denomination concerned, for care or treatment in accordance with their religious or ethical convictions, shall be deemed to be public need; (b) the character, competence, and standing in the community[~~,~~] of the proposed incorporators, directors, sponsors, **members, principal members,** stockholders, [~~**members**~~] **principal stockholders,** or operators; with respect to any proposed incorporator, director, sponsor, **member, principal member,** stockholder, [~~**member**~~] **principal stockholder,** or operator who is already or within the past [~~**ten**~~] **seven** years has been an incorporator, director, sponsor, member, **principal member,** principal stockholder, [~~**principal member,**~~] or operator of any hospital, private proprietary home for adults, residence for adults, or non-profit home for the aged or blind which has been issued an operating certificate by the state department of social services, or a halfway house, hostel or other residential facility or institution for the care, custody or treatment of the mentally disabled which is subject to approval by the department of mental hygiene, no approval shall be granted unless the public health

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

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and health planning council, having afforded an adequate opportunity to members of health systems agencies, if any, having geographical jurisdiction of the area where the institution is to be located to be heard, shall affirmatively find by substantial evidence as to each such incorporator, director, sponsor, **member, principal member,** principal stockholder**,** or operator that a substantially consistent high level of care is being or was being rendered in each such hospital, home, residence, halfway house, hostel, or other residential facility or institution with which such person is or was affiliated; for the purposes of this paragraph, the public health and health planning council shall adopt rules and regulations, subject to the approval of the commissioner, to establish the criteria to be used to determine whether a substantially consistent high level of care has been rendered, provided, however, that there shall not be a finding that a substantially consistent high level of care has been rendered where there have been violations of the state hospital code, or other applicable rules and regulations, that (i) threatened to directly affect the health, safety or welfare of any patient or resident, and (ii) were recurrent or were not promptly corrected**, unless the proposed incorporator, director, sponsor, member, principal member, stockholder, principal stockholder, or operator demonstrates, and the public health and health planning council finds, that the violations cannot be attributed to the action or inaction of such proposed incorporator, director, sponsor, member, principal member, stockholder, principal stockholder, or operator due to the timing, extent or manner of such affiliation**; (c) the financial resources of the proposed institution and its sources of future revenues; and (d) such other matters as it shall deem pertinent.

§ 2. Section 2801-a of the public health law is amended by adding a new subdivision 3-b to read as follows:

3-b. Notwithstanding any other provisions of this chapter to the contrary, the public health and health planning council may approve the establishment of diagnostic or treatment centers to be issued operating certificates for the purpose of providing primary care, as defined by the commissioner in regulations, without regard to the requirements of public need and financial resources as set forth in subdivision three of this section.

§ 3. Section 2801-a of the public health law is amended by adding a new subdivision 3-c to read as follows:

3-c. Notwithstanding any other provisions of this chapter to the contrary, the commissioner is authorized to establish in regulation minimum thresholds for the level of experience that must be met as part of the public health and health planning council's consideration of the character, competence and standing in the community of the proposed incorporators, directors, sponsors, stockholders, members or operators of a residential health care facility pursuant to paragraph (b) of subdivision three of this section. Such thresholds may include but are not limited to: (a) defining the type of prior experience required; (b) establishing a minimum period of time during which such prior experience was obtained; and (c) establishing a minimum percentage of the ownership interest and/or voting rights of the applicant that must be held by an individual who meets such minimum experience requirements.

§ 4. Paragraphs (b) and (c) of subdivision 4 of section 2801-a of the public health law, as amended by section 57 of part A of chapter 58 of the laws of 2010, are amended to read as follows:

(b) [~~(i)~~] Any transfer, assignment or other disposition of ten percent or more of [~~an~~] **direct or indirect** interest or voting rights in [~~a partnership~~

~~nership or limited liability company, which is the~~] an operator of a hospital to a new partner [~~or~~], member, or stockholder, or any transfer, assignment or other disposition of a direct or indirect interest or voting rights of such an operator which results in the ownership or control of more than ten percent of the interest or voting rights of such operator by any partner, member, or stockholder not previously approved by the public health and health planning council for that operator shall be approved by the public health and health planning council, in accordance with the provisions of subdivisions two and three of this section, except that: (A) any such change shall be subject to the approval by the public health and health planning council in accordance with paragraph (b) of subdivision three of this section only with respect to the new partner [~~or~~], member, or stockholder, and any remaining partners [~~or~~], members, or stockholders who have not been previously approved for that facility in accordance with such paragraph, and (B) such change shall not be subject to paragraph (a) of subdivision three of this section. In the absence of such approval, the operating certificate of such hospital shall be subject to revocation or suspension.

[~~(ii)~~] (c)(i) With respect to a transfer, assignment or disposition involving less than ten percent of [~~an~~] a direct or indirect interest or voting rights in [~~such partnership or limited liability company~~] an operator of a hospital to a new stockholder, partner or member, no prior approval of the public health and health planning council shall be required. However, no such transaction shall be effective unless at least ninety days prior to the intended effective date thereof, the [~~partnership or limited liability company~~] operator fully completes and files with the public health and health planning council notice on a form, to be developed by the public health and health planning council, which shall disclose such information as may reasonably be necessary for the public health and health planning council to determine whether it should bar the transaction for any of the reasons set forth in item (A), (B), (C) or (D) below. Within ninety days from the date of receipt of such notice, the public health and health planning council may bar any transaction under this subparagraph: (A) if the equity position of the [~~partnership or limited liability company~~] operator, determined in accordance with generally accepted accounting principles, would be reduced as a result of the transfer, assignment or disposition; (B) if the transaction would result in the ownership of a [~~partnership or membership~~] direct or indirect interest or voting rights by any persons who have been convicted of a felony described in subdivision five of section twenty-eight hundred six of this article; (C) if there are reasonable grounds to believe that the proposed transaction does not satisfy the character and competence criteria set forth in subdivision three of this section; or (D) upon the recommendation of the department, if the transaction, together with all transactions under this subparagraph for the [~~partnership~~] operator, or successor, during any five year period would, in the aggregate, involve twenty-five percent or more of the interest in the [~~partnership~~] operator. The public health and health planning council shall state specific reasons for barring any transaction under this subparagraph and shall so notify each party to the proposed transaction.

~~[(iii) With respect to a transfer, assignment or disposition of an interest or voting rights in such partnership or limited liability company to any remaining partner or member, which transaction involves the withdrawal of the transferor from the partnership or limited liability company, no prior approval of the public health and health planning~~

~~council shall be required. However, no such transaction shall be effective unless at least ninety days prior to the intended effective date thereof, the partnership or limited liability company fully completes and files with the public health and health planning council notice on a form, to be developed by the public health and health planning council, which shall disclose such information as may reasonably be necessary for the public health and health planning council to determine whether it should bar the transaction for the reason set forth below. Within ninety days from the date of receipt of such notice, the public health and health planning council may bar any transaction under this subparagraph if the equity position of the partnership or limited liability company, determined in accordance with generally accepted accounting principles, would be reduced as a result of the transfer, assignment or disposition. The public health and health planning council shall state specific reasons for barring any transaction under this subparagraph and shall so notify each party to the proposed transaction.~~

~~(c) Any transfer, assignment or other disposition of ten percent or more of the stock or voting rights thereunder of a corporation which is the operator of a hospital or which is a member of a limited liability company which is the operator of a hospital to a new stockholder, or any transfer, assignment or other disposition of the stock or voting rights thereunder of such a corporation which results in the ownership or control of more than ten percent of the stock or voting rights thereunder of such corporation by any person not previously approved by the public health and health planning council, or its predecessor, for that corporation shall be subject to approval by the public health and health planning council, in accordance with the provisions of subdivisions two and three of this section and rules and regulations pursuant thereto; except that: any such transaction shall be subject to the approval by the public health and health planning council in accordance with paragraph (b) of subdivision three of this section only with respect to a new stockholder or a new principal stockholder; and shall not be subject to paragraph (a) of subdivision three of this section. In the absence of such approval, the operating certificate of such hospital shall be subject to revocation or suspension.~~]

(ii) No prior approval of the public health and health planning council shall be required with respect to a transfer, assignment or disposition of ten percent or more of [~~the stock~~] **a direct or indirect interest** or voting rights [~~thereunder of a corporation which is the~~] **in an** operator of a hospital [~~or which is a member of a limited liability company which is the owner of a hospital~~] to any person previously approved by the public health and health planning council, or its predecessor, for that [~~corporation~~] **operator**. However, no such transaction shall be effective unless at least ninety days prior to the intended effective date thereof, the [~~stockholder~~] **operator fully** completes and files with the public health and health planning council notice on forms to be developed by the public health and health planning council, which shall disclose such information as may reasonably be necessary for the public health and health planning council to determine whether it should bar the transaction. Such transaction will be final as of the intended effective date unless, prior thereto, the public health and health planning council shall state specific reasons for barring such transactions under this paragraph and shall notify each party to the proposed transaction. Nothing in this paragraph shall be construed as permitting a person not previously approved by the public health and health planning council for that [~~corporation~~] **operator** to become the owner of ten

percent or more of the [~~stock of a corporation which is~~] interest or voting rights, directly or indirectly, in the operator of a hospital [~~or which is a member of a limited liability company which is the owner of a hospital~~] without first obtaining the approval of the public health and health planning council.

(iii) In the absence of approval by the public health or planning council or the provision of notice to such council as required under this paragraph, the operating certificate of such hospital shall be subject to revocation or suspension.

§ 5. Subdivisions 2 and 3 of section 2802 of the public health law, subdivision 2 as amended by section 6 of part R of chapter 59 of the laws of 2016, subdivision 3 as amended by chapter 609 of the laws of 1982 and paragraph (e) of subdivision 3 as amended by chapter 731 of the laws of 1993, are amended to read as follows:

2. The commissioner shall not act upon an application for construction of a hospital until the public health and health planning council and the health systems agency have had a reasonable time to submit their recommendations, and unless (a) the applicant has obtained all approvals and consents required by law for its incorporation or establishment (including the approval of the public health and health planning council pursuant to the provisions of this article) provided, however, that the commissioner may act upon an application for construction by an applicant possessing a valid operating certificate when the application qualifies for review without the recommendation of the council pursuant to regulations adopted by the council and approved by the commissioner, or as otherwise authorized by this section; and (b) the commissioner is satisfied as to the public need for the construction, at the time and place and under the circumstances proposed, provided however that, in the case of an application by a hospital established or operated by an organization defined in subdivision one of section four hundred eighty-two-b of the social services law, the needs of the members of the religious denomination concerned, for care or treatment in accordance with their religious or ethical convictions, shall be deemed to be public need; and further provided that: (i) an application by a general hospital or diagnostic and treatment center, established under this article, to construct a facility to provide primary care services, as defined in regulation, may be approved without regard for public need; or (ii) an application by a general hospital or a diagnostic and treatment center, established under this article, to undertake construction that does not involve a change in capacity, the types of services provided, major medical equipment, facility replacement, or the geographic location of services, may be approved without regard for public need.

3. Subject to the provisions of paragraph (b) of subdivision two of this section, the commissioner in approving the construction of a hospital shall take into consideration and be empowered to request information and advice as to (a) the availability of facilities or services such as preadmission, ambulatory or home care services which may serve as alternatives or substitutes for the whole or any part of the proposed hospital construction;

(b) the need for special equipment in view of existing utilization of comparable equipment at the time and place and under the circumstances proposed;

(c) the possible economies and improvements in service to be anticipated from the operation of joint central services including, but not limited to laboratory, research, radiology, pharmacy, laundry and purchasing;

(d) the adequacy of financial resources and sources of future revenue, provided that the commissioner may, but is not required to, consider the adequacy of financial resources and sources of future revenue in relation to completed applications under subparagraphs (i) and (ii) of paragraph (b) of subdivision two of this section; and

(e) whether the facility is currently in substantial compliance with all applicable codes, rules and regulations, provided, however, that the commissioner shall not disapprove an application solely on the basis that the facility is not currently in substantial compliance, if the application is specifically:

(i) to correct life safety code or patient care deficiencies;

(ii) to correct deficiencies which are necessary to protect the life, health, safety and welfare of facility patients, residents or staff;

(iii) for replacement of equipment that no longer meets the generally accepted operational standards existing for such equipment at the time it was acquired; and

(iv) for decertification of beds and services.

§ 6. Subdivision 4 of section 3605 of the public health law, as amended by section 62 of part A of chapter 58 of the laws of 2010, is amended to read as follows:

4. The public health and health planning council shall not approve an application for licensure unless it is satisfied as to the character, competence and standing in the community of the applicant's incorporators, directors, sponsors, stockholders or operators. The commissioner is authorized to establish in regulation minimum thresholds for the level of experience that must be met as part of the public health and health planning council's consideration of character, competence and standing for purposes of this subdivision, and subdivision two of section thirty-six hundred six, and subdivision two of section thirty-six hundred eleven of this article. Such thresholds may include but are not limited to: (a) defining the type of prior experience required; (b) establishing a minimum period of time during which such prior experience was obtained; and (c) establishing a minimum percentage of the ownership interest and/or voting rights of the applicant that must be held by an individual who meets such minimum experience requirements.

§ 7. Subdivisions 1 and 2 of section 3611-a of the public health law, as amended by section 67 of part A of chapter 58 of the laws of 2010, are amended to read as follows:

1. Any change in the person who, or any transfer, assignment, or other disposition of an interest or voting rights of ten percent or more, or any transfer, assignment or other disposition which results in the ownership or control of an interest or voting rights of ten percent or more, in a limited liability company [~~or~~], a partnership, or a corporation which is the operator of a licensed home care services agency or a certified home health agency, or any transfer, assignment or other disposition of a direct or indirect interest or voting rights of such an operator which results in the ownership or control of more than ten percent of the interest or voting rights of such operator by any partner, member, or stockholder shall be approved by the public health and health planning council, in accordance with the provisions of subdivision four of section thirty-six hundred five of this article relative to licensure or subdivision two of section thirty-six hundred six of this article relative to certificate of approval, except that:

(a) Public health and health planning council approval shall be required only with respect to the person, or the member or partner that is acquiring the interest or voting rights; and

(b) With respect to certified home health agencies, such change shall not be subject to the public need assessment described in paragraph (a) of subdivision two of section thirty-six hundred six of this article.

(c) **(i)** No prior approval of the public health and health planning council shall be required with respect to a transfer, assignment or disposition of:

[~~(i)~~] **(A)** an interest or voting rights to any person previously approved by the public health and health planning council, or its predecessor, for that operator; or

[~~(ii)~~] **(B)** an interest or voting rights of less than ten percent in the operator. [~~However, no~~]

(ii) No such transaction **under subparagraph (i) of this paragraph** shall be effective unless at least ninety days prior to the intended effective date thereof, the [~~partner or member~~] **operator** completes and files with the public health and health planning council notice on forms to be developed by the public health council, which shall disclose such information as may reasonably be necessary for the public health and health planning council to determine whether it should bar the transaction. Such transaction will be final as of the intended effective date unless, prior thereto, the public health and health planning council shall state specific reasons for barring such transactions under this paragraph and shall notify each party to the proposed transaction.

2. [~~Any transfer, assignment or other disposition of ten percent or more of the stock or voting rights thereunder of a corporation which is the operator of a licensed home care services agency or a certified home health agency, or any transfer, assignment or other disposition of the stock or voting rights thereunder of such a corporation which results in the ownership or control of more than ten percent of the stock or voting rights thereunder of such corporation by any person shall be subject to approval by the public health and health planning council in accordance with the provisions of subdivision four of section thirty-six hundred five of this article relative to licensure or subdivision two of section thirty-six hundred six of this article relative to certificate of approval, except that:~~

~~(a) Public health and health planning council approval shall be required only with respect to the person or entity acquiring such stock or voting rights; and~~

~~(b) With respect to certified home health agencies, such change shall not be subject to the public need assessment described in paragraph (a) of subdivision two of section thirty-six hundred six of this article. In the absence of such approval, the license or certificate of approval shall be subject to revocation or suspension.~~

~~(c) No prior approval of the public health and health planning council shall be required with respect to a transfer, assignment or disposition of an interest or voting rights to any person previously approved by the public health and health planning council, or its predecessor, for that operator. However, no such transaction shall be effective unless at least one hundred twenty days prior to the intended effective date thereof, the partner or member completes and files with the public health and health planning council notice on forms to be developed by the public health and health planning council, which shall disclose such information as may reasonably be necessary for the public health and health planning council to determine whether it should bar the transaction. Such transaction will be final as of the intended effective date unless, prior thereto, the public health and health planning council shall state specific reasons for barring such transactions under this~~

~~paragraph and shall notify each party to the proposed transaction.~~] In the absence of approval by the public health or planning council or the provision of notice to such council as required under this section, the license or certificate of approval shall be subject to revocation or suspension.

§ 8. This act shall take effect immediately.