

# STATE OF NEW YORK

4486

2019-2020 Regular Sessions

## IN SENATE

March 13, 2019

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the social services law and the public health law, in relation to granting residents of adult care facilities a cause of action to seek the appointment of temporary operators of such facilities

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

1 Section 1. Section 461-c of the social services law is amended by  
2 adding a new subdivision 10 to read as follows:

3 10. (a) As a means of protecting the health, safety and welfare of a  
4 resident or residents of an adult care facility, such resident or resi-  
5 dents may seek judicial relief. In addition to other forms of relief  
6 available under this article, a resident or residents may seek equitable  
7 relief from a court, including, but not limited to, the appointment of a  
8 temporary operator pursuant to section twenty-eight hundred six-a of the  
9 public health law. An action or proceeding under this subdivision shall  
10 be commenced in the supreme court of the county in which the facility is  
11 located.

12 (b) Upon the commencement of an action or proceeding pursuant to para-  
13 graph (a) of this subdivision, the commissioner of health shall be  
14 served and given the opportunity to join as a party to the action or  
15 proceeding. In addition to other methods of service authorized by law,  
16 service upon such commissioner may be effectuated at such commissioner's  
17 office in the city of New York or in the city of Albany. Failure of the  
18 commissioner of health to join the action or proceeding shall not be an  
19 impediment to the action or proceeding. On the return of such action or  
20 proceeding seeking the appointment of a temporary operator, it shall  
21 have precedence over every other business of the court unless the court  
22 shall find that some other pending proceeding, having similar statutory  
23 precedence, shall have priority. If the court shall find that condi-

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

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1 tions endangering the health, safety or welfare of a resident or resi-  
2 dents exist, the court may make an order granting such equitable relief  
3 as it deems necessary, including, but not limited to, directing the  
4 commissioner of health to appoint a temporary operator to assume sole  
5 control and sole responsibility for the operations of the facility.

6 (c) The court may award the resident or residents in an action or  
7 proceeding for the appointment of a temporary operator necessary and  
8 reasonable expenses incurred by or on behalf of the resident or resi-  
9 dents, including costs and attorneys' fees.

10 § 2. Paragraph (a) of subdivision 2 of section 2806-a of the public  
11 health law, as amended by section 8 of part K of chapter 57 of the laws  
12 of 2015, is amended to read as follows:

13 (a) In the event that: (i) (A) a facility seeks extraordinary finan-  
14 cial assistance and the commissioner finds that the facility is experi-  
15 encing serious financial instability that is jeopardizing existing or  
16 continued access to essential services within the community, or [~~(ii)~~]  
17 (B) the commissioner finds that there are conditions within the facility  
18 that seriously endanger the life, health or safety of residents or  
19 patients, the commissioner may appoint a temporary operator to assume  
20 sole control and sole responsibility for the operations of that facili-  
21 ty, or [~~(iii)~~] (C) the commissioner finds that there has been an improp-  
22 er delegation of management authority by the governing authority or  
23 operator of a general hospital, the commissioner shall appoint a tempo-  
24 rary operator to assume sole control and sole responsibility for the  
25 operations of that facility; or (ii) the appointment of a temporary  
26 operator is ordered by the court pursuant to subdivision ten of section  
27 four hundred sixty-one-c of the social services law, the commissioner  
28 shall appoint a temporary operator to assume sole control and sole  
29 responsibility for the operations of that facility. The appointment of  
30 the temporary operator shall be effectuated pursuant to this section and  
31 shall be in addition to any other remedies provided by law.

32 § 3. This act shall take effect on the sixtieth day after it shall  
33 have become a law, provided that the amendments to section 2806-a of the  
34 public health law, made by section two of this act shall not affect the  
35 expiration and repeal of such section and shall expire and be deemed  
36 repealed therewith.