

STATE OF NEW YORK

10142

IN ASSEMBLY

March 12, 2020

Introduced by M. of A. HUNTER -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to requirements for approval for merger and consolidation of certain health care providers by the public health and health planning council

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

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

4 3. The public health and health planning council shall not approve a
5 certificate of incorporation, articles of organization or application
6 for establishment unless it is satisfied, insofar as applicable, as to
7 (a) the public need for the existence of the institution at the time and
8 place and under the circumstances proposed, provided, however, that in
9 the case of an institution proposed to be established or operated by an
10 organization defined in subdivision one of section one hundred seventy-
11 two-a of the executive law, the needs of the members of the religious
12 denomination concerned, for care or treatment in accordance with their
13 religious or ethical convictions, shall be deemed to be public need; (b)
14 the character, competence, and standing in the community, of the
15 proposed incorporators, directors, sponsors, stockholders, members or
16 operators; with respect to any proposed incorporator, director, sponsor,
17 stockholder, member or operator who is already or within the past ten
18 years has been an incorporator, director, sponsor, member, principal
19 stockholder, principal member, or operator of any hospital, private
20 proprietary home for adults, residence for adults, or non-profit home
21 for the aged or blind which has been issued an operating certificate by
22 the state department of social services, or a halfway house, hostel or
23 other residential facility or institution for the care, custody or
24 treatment of the mentally disabled which is subject to approval by the
25 department of mental hygiene, no approval shall be granted unless the
26 public health and health planning council, having afforded an adequate
27 opportunity to members of health systems agencies, if any, having

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

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1 geographical jurisdiction of the area where the institution is to be
2 located to be heard, shall affirmatively find by substantial evidence as
3 to each such incorporator, director, sponsor, principal stockholder or
4 operator that a substantially consistent high level of care is being or
5 was being rendered in each such hospital, home, residence, halfway
6 house, hostel, or other residential facility or institution with which
7 such person is or was affiliated; for the purposes of this paragraph,
8 the public health and health planning council shall adopt rules and
9 regulations, subject to the approval of the commissioner, to establish
10 the criteria to be used to determine whether a substantially consistent
11 high level of care has been rendered, provided, however, that there
12 shall not be a finding that a substantially consistent high level of
13 care has been rendered where there have been violations of the state
14 hospital code, or other applicable rules and regulations, that (i)
15 threatened to directly affect the health, safety or welfare of any
16 patient or resident, and (ii) were recurrent or were not promptly
17 corrected; (c) the financial resources of the proposed institution and
18 its sources of future revenues; ~~and~~ (d) an applicant that proposes to
19 merge, consolidate, partner, acquire through the establishment of
20 control, or proposes any other transaction or affiliation with other
21 health care providers governed under this article, that such merger,
22 consolidation, acquisition, or other transaction or affiliation with
23 other health care providers governed under this article, shall improve
24 access to medically underserved individuals, lower the costs to consum-
25 ers, advance the public health goals of the state, and the applicant
26 shall not increase charges for services that exceed the consumer price
27 index for medical care for the five years immediately following any
28 approval of such merger, consolidation, acquisition, or other trans-
29 action or affiliation; and pursuant to this section. Such approved
30 applicant shall submit an annual report to the department by December
31 thirty-first of each year for the five years following such approval
32 demonstrating how the approval of a certificate of incorporation, arti-
33 cles of organization or application for establishment, benefited the
34 public, including but not limited to, lowering costs to consumers,
35 providing efficiencies, and otherwise benefiting the service area of the
36 applicant; and (e) such other matters as it shall deem pertinent.

37 § 2. This act shall take effect immediately.