

# STATE OF NEW YORK

9025

## IN SENATE

October 5, 2020

Introduced by Sens. RIVERA, MAY, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public health law, in relation to requirements for residential health care facilities

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

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

4 2. With respect to the incorporation or establishment of any hospital,  
5 as defined in this article, the public health and health planning coun-  
6 cil shall give written approval after all of the following requirements  
7 have been met. An application for approval of the proposed certificate  
8 of incorporation, articles of organization or establishment shall be  
9 filed with the public health and health planning council together with  
10 such other forms and information as shall be prescribed by, or accepta-  
11 ble to, the public health and health planning council. Thereafter, the  
12 public health and health planning council shall (a) provide notice to  
13 the public, nursing homes residents and their representatives, staff and  
14 their representatives, and the state office of the long-term care  
15 ombudsman and the regional office having geographical jurisdiction of  
16 the area where the proposed institution is to be located of the proposed  
17 certificate or application on the department's website within thirty  
18 days of receipt; provide a mechanism to submit written comments elec-  
19 tronically on the proposed certificate or application to the public  
20 health and health planning council; and provide at least ninety days for  
21 such comment period, and (b) forward a copy of the proposed certificate  
22 or application for establishment, and accompanying documents, to the  
23 health systems agency, if any, having geographical jurisdiction of the  
24 area where the proposed institution is to be located and to the state  
25 office of the long-term care ombudsman and the regional office having  
26 geographical jurisdiction of the area where the proposed institution is  
27 to be located within thirty days of receipt. The public health and  
28 health planning council shall act upon such application after the health

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

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1 systems agency [~~has~~], office of the state long-term care ombudsman,  
2 regional office and the public have had a reasonable time, but not less  
3 than ninety days, to submit their recommendations. At the time members  
4 of the public health and health planning council are notified that an  
5 application is scheduled for consideration, the applicant, the public,  
6 the state office of the long-term care ombudsman, the regional offices,  
7 and the health systems agency shall be so notified in writing which may  
8 be through electronic means. The public health and health planning coun-  
9 cil shall afford the applicant an opportunity to present information in  
10 person concerning the application to a committee designated by the coun-  
11 cil. The public health and health planning council shall not take any  
12 action contrary to the advice of the health systems agency, the public,  
13 the state office of the long-term care ombudsman or the regional office  
14 until it affords [~~to the health systems agency~~] them an opportunity to  
15 request a public hearing and, if so requested, a public hearing shall be  
16 held. If the public health and health planning council proposes to  
17 disapprove the application it shall afford the applicant an opportunity  
18 to request a public hearing. The public health and health planning coun-  
19 cil may hold a public hearing on the application on its own motion. Any  
20 public hearing held pursuant to this subdivision may be conducted by the  
21 public health and health planning council, or by any individual desig-  
22 nated by the public health and health planning council. Beginning on  
23 January first, nineteen hundred ninety-four, and each year thereafter, a  
24 complete application received between January first and June thirtieth  
25 of each year shall be reviewed by the appropriate health systems agency  
26 and the department and presented to the public health and health plan-  
27 ning council for its consideration prior to June thirtieth of the  
28 following year and a complete application received between July first  
29 and December thirty-first of each year shall be reviewed by the appro-  
30 priate health systems agency and the department presented to the public  
31 health and health planning council for consideration prior to December  
32 thirty-first of the following year.

33 3. The public health and health planning council shall not approve a  
34 certificate of incorporation, articles of organization or application  
35 for establishment unless it is satisfied, insofar as applicable, as to  
36 (a) the public need for the existence of the institution at the time and  
37 place and under the circumstances proposed, provided, however, that in  
38 the case of an institution proposed to be established or operated by an  
39 organization defined in subdivision one of section one hundred seventy-  
40 two-a of the executive law, the needs of the members of the religious  
41 denomination concerned, for care or treatment in accordance with their  
42 religious or ethical convictions, shall be deemed to be public need; (b)  
43 the character, competence, and standing in the community, of the  
44 proposed incorporators, directors, sponsors, stockholders, members or  
45 operators; with respect to any proposed incorporator, director, sponsor,  
46 stockholder, member or operator who is already or within the past ten  
47 years has been an incorporator, director, sponsor, member, principal  
48 stockholder, principal member, or operator of any hospital, private  
49 proprietary home for adults, residence for adults, or non-profit home  
50 for the aged or blind which has been issued an operating certificate by  
51 the state department of social services, or a halfway house, hostel or  
52 other residential facility or institution for the care, custody or  
53 treatment of the mentally disabled which is subject to approval by the  
54 department of mental hygiene, no approval shall be granted unless the  
55 public health and health planning council, having afforded an adequate  
56 opportunity of not less than ninety days to members of the public, resi-

1 dents and their representatives, staff and their representatives, the  
2 state office of the long-term care ombudsman, the regional offices, and  
3 members of health systems agencies, if any, having geographical juris-  
4 diction of the area where the institution is to be located to be heard,  
5 to comment through the department's website and through other means on  
6 the application, the character and competency of the individuals apply-  
7 ing, and/or the consistently high level of care that has or has not been  
8 rendered, shall affirmatively find by substantial evidence as to each  
9 such incorporator, director, sponsor, principal stockholder or operator  
10 that a substantially consistent high level of care is being or was being  
11 rendered in each such hospital, home, residence, halfway house, hostel,  
12 or other residential facility or institution with which such person is  
13 or was affiliated; for the purposes of this paragraph, the public health  
14 and health planning council shall adopt rules and regulations, subject  
15 to the approval of the commissioner, to establish the criteria to be  
16 used to determine whether a substantially consistent high level of care  
17 has been rendered, provided, however, that there shall not be a finding  
18 that a substantially consistent high level of care has been rendered by  
19 an applicant where one or more individuals or entities with a five  
20 percent or greater ownership interest in the applicant has a five  
21 percent or greater ownership interest in a facility located in the  
22 United States that has on average for any of the four most recent quar-  
23 ters, three hours or less total direct care staff time per resident per  
24 day or less than one-half hour per resident per day registered nurse  
25 staffing, as published by the Center for Medicare and Medicaid Services  
26 in the federal center for Medicare and Medicaid Services' (CMS) payroll  
27 based journal data or where there have been violations of the state  
28 ~~[hospital]~~ or federal nursing home code, or other applicable rules and  
29 regulations, that (i) threatened to directly affect the health, safety  
30 or welfare of any patient or resident, including but not limited to a  
31 finding of immediate jeopardy, or actual harm, and (ii) were recurrent  
32 or were not promptly corrected, including but not limited to repeat  
33 deficiencies for the same or similar violations over a three year period  
34 or during the entire duration of ownership if less than three years, or  
35 (iii) any facility which has received a Double G citation issued by the  
36 Centers for Medicare and Medicaid Services in the prior three years; (c)  
37 the financial resources of the proposed institution and its sources of  
38 future revenues; and (d) such other matters as it shall deem pertinent,  
39 including but not limited to the proposed incorporators, directors,  
40 sponsors, stockholders, members or operators having affiliations with or  
41 interests in a facility anywhere in the United States which: (i) is  
42 listed on the CMS special focus facility list, or its successor, or (ii)  
43 is listed on the CMS special focus facility candidate list, or its  
44 successor, or (iii) received inadequate performance scores over the  
45 previous three years on the New York state nursing home quality initi-  
46 ative or on similar quality measurement initiatives or tools, or (iv)  
47 has been in receivership; closed as a result of a settlement agreement  
48 from a decertification action or licensure revocation; or has been  
49 involuntarily terminated from the Medicare or Medicaid program in the  
50 prior five years, or (v) has been convicted of patient abuse, neglect or  
51 exploitation, (vi) has been the subject of an enforcement action by the  
52 state Medicaid fraud control unit or the federal health and human  
53 services office of inspector general, or (vii) has outstanding  
54 violations with the national labor relations board or the occupational  
55 safety and health administration.

§ 2. Section 2803-x of the public health law, as added by chapter 677 of the laws of 2019, is amended to read as follows:

§ 2803-x. Requirements related to residential health care facilities and related assets and operations. 1. The operator of a residential health care facility shall notify the commissioner of any common or familial ownership of any corporation, other entity or individual providing services to the operator or the facility. Such information shall also be included in the residency agreement for prospective residents and as addendums for residents currently residing in the residential health care facility. The operator shall notify the department at least ninety days prior to entering into any new common or familial ownership of any corporation, or other entity or individual providing services to the operator of the facility. The operator shall also provide notification to all residents and their representatives, staff and their representatives, and the state office of the long-term care ombudsman.

2. The operator of a residential health care facility shall, on an annual basis, attest to the department, in a form determined by the department, to the accuracy of the information provided to the department under this section.

3. The operator of a residential health care facility may not enter into any arrangement to guarantee the debt or other obligation of a party which has not received establishment approval.

4. The operator of a residential health care facility shall notify the department at least ninety days prior to executing a letter of intent or other contractual agreement related to:

a. the sale, mortgaging, encumbrance, or other disposition of the real property of the facility; and

b. the management, operations, staffing agency or other entity to be involved in the operations of the facility.

5. The department, shall, within ten days after receipt of a notification required under subdivision four of this section, notify the state office of the long-term care ombudsman of an operator of a residential health care facility's intent to execute a letter of intent or other contractual agreement related to:

a. the sale, mortgaging, encumbrance, or other disposition of the real property of the facility; and

b. the management, operations, staffing agency or other entity to be involved in the operations of the facility.

6. The operator of a residential health care facility shall notify all residents and their representatives, staff and their representatives, and the state office of the long-term care ombudsman within five days of executing a letter of intent or other contractual agreement as described in paragraphs a and b of subdivision four of this section. The department shall make regulations and take other actions to implement procedures for such notification.

7. The operator of a residential health care facility shall retain sufficient authority and control to discharge its responsibilities and the department shall by regulations outline those elements of control which shall not be delegated to a managing entity.

8. Any new owner, operator or management company of a residential health care facility shall retain all employees for a sixty-day transition period, except for the nursing home administrator and the director of nursing, and shall not reduce the wages or benefits, or modify any other terms and conditions of employment, economic or otherwise during the transition period.

1     9. In any instance where a residential health care facility is sold or  
2 otherwise transferred and used for a purpose which is not a health care  
3 purpose, the operator shall remit to the department an amount equivalent  
4 to the undepreciated value of capital assets for which the provider has  
5 been funded or reimbursed through Medicaid rate adjustments or otherwise  
6 funded or reimbursed with resources provided by the state for the  
7 purpose of improvement or transformation.

8     § 3. This act shall take effect immediately.