STATE OF NEW YORK

9025--A

IN SENATE

October 5, 2020

Introduced by Sens. RIVERA, MAY, SKOUFIS, METZGER -- 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

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

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

Section 1. Section 2801-a of the public health law is amended by adding two new subdivisions 2-b and 3-b to read as follows:

2-b. With respect to the incorporation or establishment of any nursing home, in addition to the requirements set forth in subdivision two of this section, after the filing of an application the public health and health planning council shall (a) provide notice to the public, nursing homes residents and their representatives, staff and their representatives, and the state office of the long-term care ombudsman and the regional office having geographical jurisdiction of the area where the proposed institution is to be located of the proposed certificate or application on the department's website within thirty days of receipt; provide a mechanism to submit written comments electronically on the proposed certificate or application to the public health and health planning council; and provide at least ninety days for such comment period, and (b) forward a copy of the proposed certificate or application for establishment, and accompanying documents, to the state office of the long-term care ombudsman and the regional office having geographical jurisdiction of the area where the proposed institution is to be located within thirty days of receipt. The public health and health planning council shall act upon such application after the state office of the long-term care ombudsman, regional office and the public have had a reasonable time, but not less than ninety days, to submit their recommendations. At the time members of the public health and health planning council are notified that an application is scheduled for consideration, the applicant, the public, the state office of the long-term care ombudsman and the regional offices, shall be so notified in writing

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

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which may be through electronic means. The public health and health planning council shall afford the applicant an opportunity to present information in person concerning the application to a committee designated by the council. The public health and health planning council shall not take any action contrary to the advice of the public, the state office of the long-term care ombudsman or the regional office until it affords such entities an opportunity to request a public hearing and, if so requested, a public hearing shall be held. If the public health and health planning council proposes to disapprove the application it shall afford the applicant an opportunity to request a public hearing. The public health and health planning council may hold a public hearing on the application on its own motion. Any public hearing held pursuant to this subdivision may be conducted by the public health and health planning council, or by any individual designated by the public health and health planning council. The provisions of subdivision two of this section which are not inconsistent with this subdivision shall apply to nursing homes.

3-b. With respect to an application for a certificate of incorporation, articles of organization or application for establishment of a nursing home, in addition to the criteria set forth in subdivision three of this section, the public health and health planning council shall not issue an approval unless they have afforded an adequate opportunity of not less than ninety days to members of the public, residents and their representatives, staff and their representatives, the state office of the long-term care ombudsman and the regional offices to comment through the department's website and through other means on the application, the character and competency of the individuals applying, and/or the consistently high level of care that has or has not been rendered by an applicant where one or more individuals or entities with a five percent or greater ownership interest in the applicant has a five percent or greater ownership interest in a facility located in the United States that has on average for any of the four most recent quarters, three hours or less total direct care staff time per resident per day or less than one-half hour per resident per day registered nurse staffing, as published by the Center for Medicare and Medicaid Services in the federal center for Medicare and Medicaid Services' (CMS) payroll based journal data or where there have been violations of the state or federal nursing home code, or other applicable rules and regulations, that threatened to directly affect the health, safety or welfare of any patient or resident, including but not limited to a finding of immediate jeopardy, or actual harm, and were recurrent or were not promptly corrected, including but not limited to repeat deficiencies for the same or similar violations over a three year period or during the entire duration of ownership if less than three years, or any facility which has received a Double G citation issued by the Centers for Medicare and Medicaid Services in the prior three years. The public health and health planning council shall also consider whether the proposed incorporators, directors, sponsors, stockholders, members or operators of a nursing home have affiliations with or interests in a facility anywhere in the United States which: (i) is listed on the CMS special focus facility list, or its successor, or (ii) is listed on the CMS special focus facility candidate list, or its successor, or (iii) received inadequate performance scores over the previous three years on the New York state nursing home quality initiative or on similar quality measurement initiatives or tools, or (iv) has been in receivership; closed as a result of a settlement agreement from a decertification action or licensure revo-

cation; or has been involuntarily terminated from the Medicare or Medicaid program in the prior five years, or (v) has been convicted of patient abuse, neglect or exploitation, or (vi) has been the subject of an enforcement action by the state Medicaid fraud control unit or the federal health and human services office of inspector general, or (vii) has outstanding violations with the national labor relations board or the occupational safety and health administration. The provisions of subdivision three of this section which are not inconsistent with this subdivision shall apply to nursing homes.

§ 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.

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

§ 3. This act shall take effect immediately.