STATE OF NEW YORK

3583

2021-2022 Regular Sessions

IN ASSEMBLY

January 27, 2021

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:

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, stockholders, members or operators; with respect to any proposed incorporator, director, sponsor, stockholder, member or operator who is already or within the past ten years has been an incorporator, director, sponsor, 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

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

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department of mental hygiene, no approval shall be granted unless the public health 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, 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; (c) the financial resources of the proposed institution and its sources of future revenues; [~~and~~] (d) **an applicant that proposes to merge, consolidate, partner, acquire through the establishment of control, or proposes any other transaction or affiliation with other health care providers governed under this article, that such merger, consolidation, acquisition, or other transaction or affiliation with other health care providers governed under this article, shall improve access to medically underserved individuals, lower the costs to consumers, advance the public health goals of the state, and the applicant shall not increase charges for services that exceed the consumer price index for medical care for the five years immediately following any approval of such merger, consolidation, acquisition, or other transaction or affiliation; and pursuant to this section. Such approved applicant shall submit an annual report to the department by December thirty-first of each year for the five years following such approval demonstrating how the approval of a certificate of incorporation, articles of organization or application for establishment, benefited the public, including but not limited to, lowering costs to consumers, providing efficiencies, and otherwise benefiting the service area of the applicant; and (e)** such other matters as it shall deem pertinent.

§ 2. This act shall take effect immediately.