STATE OF NEW YORK

5684

2021-2022 Regular Sessions

IN ASSEMBLY

February 23, 2021

Introduced by M. of A. GOTTFRIED, GALEF, CLARK, TAYLOR, PAULIN, ABINANTI, BICHOTTE HERMELYN, McDONALD, HEVESI, BRONSON, WALLACE, STECK, DINOWITZ, THIELE, PERRY -- read once and referred to the Committee on Health

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. Subdivision 2 of section 2801 of the public health law, as amended by chapter 955 of the laws of 1969, is amended to read as follows:

2. "Nursing home" means **a residential health care facility,** a facility providing therein nursing care to sick, invalid, infirm, disabled or convalescent persons in addition to lodging and board or health-related service, or any combination of the foregoing, and in addition thereto, providing nursing care and health-related service, or either of them, to persons who are not occupants of the facility.

§ 2. 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. (a) This subdivision applies with respect to an application under this section relating to the incorporation or establishment of any nursing home, in addition to subdivision two of this section.

(b) The council shall provide notice of the application to the public on the department's website within thirty days of receipt of it and provide it to the state office of the long-term care ombudsman and the regional office having geographical jurisdiction of the area where the nursing home is to be or is located. In the case of an application relating to an existing nursing home, the notice shall also be provided in writing or electronically to residents of the nursing home and their representatives, and the staff of the nursing home and their representatives.

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

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(c) The council shall provide a mechanism for submitting written comments electronically on the application to the council; and provide at least ninety days for the comment period. The terms of the written comment process shall be included in the notice under paragraph (a) of this subdivision.

(d) The council shall forward a copy of the application, 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 nursing home is or is to be located within thirty days of receipt of the application. The council shall not act upon such application until after the state office of the long-term care ombudsman, regional office and the parties entitled to notice have had a reasonable time, but not less than ninety days, to submit their recommendations. At the time members of the council are notified that an application is scheduled for consideration, the applicant, and the parties entitled to the notice under paragraph (a) of this subdivision shall be so notified in writing or electronically. The council shall afford the applicant an opportunity to present information in person concerning the application to a committee designated by the council. The council shall not take any action contrary to the advice of the state office of the long-term care ombudsman or the regional office until it affords the state or regional office an opportunity to request a public hearing and, if so requested, the public hearing is held. If the council proposes to disapprove the application it shall afford the applicant an opportunity to request and testify at a public hearing. The council may hold a public hearing on the application on its own motion or upon the written request of any person.

(e) Where this subdivision is inconsistent with subdivision two of this section, this subdivision shall prevail.

3-b. (a) This subdivision applies to an application under this section relating to a nursing home, and applies in addition to subdivision three of this section.

(b) The application shall provide information as to the character, competence and standing in the community of every present or proposed controlling person, principal stockholder or principal member of the applicant, the identity of every nursing home in which each of those individuals or entities is, or in the preceding five years has been, a controlling person, principal stockholder or principal member; and the nature of that interest. The council shall not approve the application unless it finds that each of those individuals and entities, in relation to each such nursing home, for at least the previous three years, demonstrated satisfactory character, competence and standing in the community and the nursing home provided a consistently high level of care. The council shall adopt rules and regulations, subject to the approval of the commissioner, to establish the criteria to be used to determine whether a consistently high level of care has or has not been rendered by an applicant where one or more controlling persons, principal stockholders or principal members of the applicant is a controlling person, principal stockholder or principal member of a nursing home located in the United States. The council shall not consider that a consistently high level of care has been delivered at a facility 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 jour-

nal 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 been in receivership; closed as a result of a settlement agreement from a decertification action or licensure revocation; or has been involuntarily terminated from the Medicare or Medicaid program in the prior five years, provided however, that where an applicant has taken over a facility and promptly corrected such deficiencies, the council may consider the application.

(c) Where this subdivision is inconsistent with subdivision three of this section, this subdivision shall prevail.

§ 3. 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~~] nursing homes and related assets and operations. 1. The operator of a [~~residential health care facility~~] nursing home 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 nursing home. 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~~] nursing home 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~~] nursing home 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~~] nursing home 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 nursing home's intent to execute a binding 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 nursing home 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 binding letter of intent or other contractual agreement as described in paragraphs a and b of subdivision four of this section.

7. The operator of a nursing home shall be responsible and liable for the operation of the nursing home, regardless of any contract, agreement or arrangement providing for any party to carry out, or purporting to delegate, any activity or responsibility relating to the nursing home.

8. Any new owner, operator or management company of a nursing home shall retain all employees of the nursing home for at least a sixty-day transition period, except for the nursing home administrator and the director of nursing, or any controlling person, principal stockholder or principal member, and shall not reduce the wages or benefits, or modify any other terms and conditions of employment, economic or otherwise during the transition period, and except for cause.

9. In any instance where a [~~**residential health care facility**~~] **nursing home** 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.

§ 4. This act shall take effect immediately.