

# 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:

1 Section 1. Subdivision 2 of section 2801 of the public health law, as  
2 amended by chapter 955 of the laws of 1969, is amended to read as  
3 follows:

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

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

12 2-b. (a) This subdivision applies with respect to an application under  
13 this section relating to the incorporation or establishment of any nurs-  
14 ing home, in addition to subdivision two of this section.

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

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

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

6 (d) The council shall forward a copy of the application, and accompa-  
7 nying documents, to the state office of the long-term care ombudsman and  
8 the regional office having geographical jurisdiction of the area where  
9 the nursing home is or is to be located within thirty days of receipt of  
10 the application. The council shall not act upon such application until  
11 after the state office of the long-term care ombudsman, regional office  
12 and the parties entitled to notice have had a reasonable time, but not  
13 less than ninety days, to submit their recommendations. At the time  
14 members of the council are notified that an application is scheduled for  
15 consideration, the applicant, and the parties entitled to the notice  
16 under paragraph (a) of this subdivision shall be so notified in writing  
17 or electronically. The council shall afford the applicant an opportunity  
18 to present information in person concerning the application to a commit-  
19 tee designated by the council. The council shall not take any action  
20 contrary to the advice of the state office of the long-term care ombuds-  
21 man or the regional office until it affords the state or regional office  
22 an opportunity to request a public hearing and, if so requested, the  
23 public hearing is held. If the council proposes to disapprove the appli-  
24 cation it shall afford the applicant an opportunity to request and  
25 testify at a public hearing. The council may hold a public hearing on  
26 the application on its own motion or upon the written request of any  
27 person.

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

30 3-b. (a) This subdivision applies to an application under this section  
31 relating to a nursing home, and applies in addition to subdivision three  
32 of this section.

33 (b) The application shall provide information as to the character,  
34 competence and standing in the community of every present or proposed  
35 controlling person, principal stockholder or principal member of the  
36 applicant, the identity of every nursing home in which each of those  
37 individuals or entities is, or in the preceding five years has been, a  
38 controlling person, principal stockholder or principal member; and the  
39 nature of that interest. The council shall not approve the application  
40 unless it finds that each of those individuals and entities, in relation  
41 to each such nursing home, for at least the previous three years, demon-  
42 strated satisfactory character, competence and standing in the community  
43 and the nursing home provided a consistently high level of care. The  
44 council shall adopt rules and regulations, subject to the approval of  
45 the commissioner, to establish the criteria to be used to determine  
46 whether a consistently high level of care has or has not been rendered  
47 by an applicant where one or more controlling persons, principal stock-  
48 holders or principal members of the applicant is a controlling person,  
49 principal stockholder or principal member of a nursing home located in  
50 the United States. The council shall not consider that a consistently  
51 high level of care has been delivered at a facility in the United States  
52 that has on average for any of the four most recent quarters, three  
53 hours or less total direct care staff time per resident per day or less  
54 than one-half hour per resident per day registered nurse staffing, as  
55 published by the Center for Medicare and Medicaid Services in the feder-  
56 al center for Medicare and Medicaid Services' (CMS) payroll based jour-

1 nal data or where there have been violations of the state or federal  
2 nursing home code, or other applicable rules and regulations, that  
3 threatened to directly affect the health, safety or welfare of any  
4 patient or resident, including but not limited to a finding of immediate  
5 jeopardy, or actual harm, and were recurrent or were not promptly  
6 corrected, including but not limited to repeat deficiencies for the same  
7 or similar violations over a three year period or during the entire  
8 duration of ownership if less than three years, or any facility which  
9 has been in receivership; closed as a result of a settlement agreement  
10 from a decertification action or licensure revocation; or has been  
11 involuntarily terminated from the Medicare or Medicaid program in the  
12 prior five years, provided however, that where an applicant has taken  
13 over a facility and promptly corrected such deficiencies, the council  
14 may consider the application.

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

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

19 § 2803-x. Requirements related to [~~residential health care facilities~~]  
20 nursing homes and related assets and operations. 1. The operator of a  
21 [~~residential health care facility~~] nursing home shall notify the commis-  
22 sioner of any common or familial ownership of any corporation, other  
23 entity or individual providing services to the operator or the facility.  
24 Such information shall also be included in the residency agreement for  
25 prospective residents and as addendums for residents currently residing  
26 in the residential health care facility nursing home. The operator shall  
27 notify the department at least ninety days prior to entering into any  
28 new common or familial ownership of any corporation, or other entity or  
29 individual providing services to the operator of the facility. The oper-  
30 ator shall also provide notification to all residents and their repre-  
31 sentatives, staff and their representatives, and the state office of the  
32 long-term care ombudsman.

33 2. The operator of a [~~residential health care facility~~] nursing home  
34 shall, on an annual basis, attest to the department, in a form deter-  
35 mined by the department, to the accuracy of the information provided to  
36 the department under this section.

37 3. The operator of a [~~residential health care facility~~] nursing home  
38 may not enter into any arrangement to guarantee the debt or other obli-  
39 gation of a party which has not received establishment approval.

40 4. The operator of a [~~residential health care facility~~] nursing home  
41 shall notify the department at least ninety days prior to executing a  
42 letter of intent or other contractual agreement related to:

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

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

47 5. The department, shall, within ten days after receipt of a notifica-  
48 tion required under subdivision four of this section, notify the state  
49 office of the long-term care ombudsman of an operator of nursing home's  
50 intent to execute a binding letter of intent or other contractual agree-  
51 ment related to:

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

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

1 6. The operator of a nursing home shall notify all residents and their  
2 representatives, staff and their representatives, and the state office  
3 of the long-term care ombudsman within five days of executing a binding  
4 letter of intent or other contractual agreement as described in para-  
5 graphs a and b of subdivision four of this section.

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

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

17 9. In any instance where a [~~residential health care facility~~] nursing  
18 home is sold or otherwise transferred and used for a purpose which is  
19 not a health care purpose, the operator shall remit to the department an  
20 amount equivalent to the undepreciated value of capital assets for which  
21 the provider has been funded or reimbursed through Medicaid rate adjust-  
22 ments or otherwise funded or reimbursed with resources provided by the  
23 state for the purpose of improvement or transformation.

24 § 4. This act shall take effect immediately.