

# STATE OF NEW YORK

5684--A

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, GONZALEZ-ROJAS, ENGLEBRIGHT, JACKSON, CUSICK, ANDERSON, SIMON, BARRETT, SILLITTI -- read once and referred to the Committee on Health -- 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:

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

3 2-b. (a) This subdivision applies with respect to an application under  
4 this section relating to the incorporation or establishment of any nurs-  
5 ing home, in addition to subdivision two of this section.

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

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

20 (d) The council shall forward a copy of the application, and accompa-  
21 nying documents, to the state office of the long-term care ombudsman and

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

LBD07696-04-1

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

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

23 3-b. (a) This subdivision applies to an application under this section  
24 relating to a nursing home, and applies in addition to subdivision three  
25 of this section.

26 (b) The application shall provide information as to the character,  
27 competence and standing in the community of every present or proposed  
28 controlling person, principal stockholder or principal member of the  
29 applicant, the identity of every nursing home in which each of those  
30 individuals or entities is, or in the preceding five years has been, a  
31 controlling person, principal stockholder or principal member; and the  
32 nature of that interest. The council shall not approve the application  
33 unless it finds that each of those individuals and entities, in relation  
34 to each such nursing home, for at least the previous three years, demon-  
35 strated satisfactory character, competence and standing in the community  
36 and the nursing home provided a consistently high level of care. The  
37 council shall adopt rules and regulations, subject to the approval of  
38 the commissioner, to establish the criteria to be used to determine  
39 whether a consistently high level of care has or has not been rendered  
40 by an applicant where one or more controlling persons, principal stock-  
41 holders or principal members of the applicant is a controlling person,  
42 principal stockholder or principal member of a nursing home located in  
43 the United States. The council shall not consider that a consistently  
44 high level of care has been delivered at a facility in the United States  
45 that has earned a two-star rating or less by the federal center for  
46 Medicare and Medicaid Services' (CMS) (or a comparable rating under a  
47 successor CMS rating system) or where there have been violations of the  
48 state or federal nursing home code, or other applicable rules and regu-  
49 lations, that threatened to directly affect the health, safety or  
50 welfare of any patient or resident, including but not limited to a find-  
51 ing of immediate jeopardy, or actual harm, and were recurrent or were  
52 not promptly corrected, including but not limited to repeat deficiencies  
53 for the same or similar violations over a three year period or during  
54 the entire duration of ownership if less than three years, or any facil-  
55 ity which has been in receivership; closed as a result of a settlement  
56 agreement from a decertification action or licensure revocation; or has

1 been involuntarily terminated from the Medicare or Medicaid program in  
2 the prior five years, provided however, that where an applicant has  
3 taken over a facility and promptly corrected such deficiencies, the  
4 council may consider the application.

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

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

9 § 2803-x. Requirements related to [~~residential health care facilities~~]  
10 nursing homes and related assets and operations. 1. The operator of a  
11 [~~residential health care facility~~] nursing home shall notify the commis-  
12 sioner of any common or familial ownership of any corporation, other  
13 entity or individual providing services to the operator or the facility.  
14 Such information shall also be included in the residency agreement for  
15 prospective residents and as addendums for residents currently residing  
16 in the residential health care facility nursing home. The operator shall  
17 notify the department at least ninety days prior to entering into any  
18 new common or familial ownership of any corporation, or other entity or  
19 individual providing services to the operator of the facility. The oper-  
20 ator shall also provide notification to all residents and their repre-  
21 sentatives, staff and their representatives, and the state office of the  
22 long-term care ombudsman.

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

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

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

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

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

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

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

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

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

51 7. Where the operator of a nursing home provides or purports to  
52 provide, by any contract, agreement or arrangement, for any party to  
53 carry out or be delegated any activity or responsibility relating to the  
54 nursing home, that shall not diminish any responsibility or liability  
55 that the operator would otherwise have for any such activity or respon-  
56 sibility or for the operation of the nursing home.

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

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

15    § 3. This act shall take effect immediately.