

# STATE OF NEW YORK

9321--A

## IN ASSEMBLY

February 23, 2022

Introduced by M. of A. FORREST, GOTTFRIED, EPSTEIN, SIMON, GONZALEZ-ROJAS, SEAWRIGHT, GLICK, JACKSON, LUCAS, DAVILA, AUBRY, GIBBS, MAMDANI -- 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 social services law, in relation to the transparency and quality of care of operators of adult care facilities

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

1 Section 1. Paragraph (b) of subdivision 2 of section 461-b of the  
2 social services law, as amended by chapter 15 of the laws of 2016, is  
3 amended to read as follows:

4 (b) For existing licensed operators in good standing and their affil-  
5 iates, the department shall develop a streamlined application review and  
6 approval process, in collaboration with representatives of associations  
7 of operators and representatives of resident advocacy organizations, to  
8 be available for use in relation to approval of an additional facility  
9 of the same type. Notwithstanding any provision of law or regulation to  
10 the contrary, the streamlined application review and approval process  
11 shall include, but not be limited to, the following:

12 (i) a certification process and form for the operator or its affiliate  
13 to attest that it will have sufficient financial resources, revenue and  
14 financing to meet facility expenses and resident needs, which shall  
15 satisfy the statutory and regulatory financial component of the applica-  
16 tion review and approval process;

17 (ii) a certification process and form for the operator or its affil-  
18 iate to attest that its legal, corporate and organizational documents  
19 comply in substance with department requirements, which shall satisfy  
20 the statutory and regulatory legal component of the application review  
21 and approval process;

22 (iii) a certification process and form for the operator or its affil-  
23 iate to attest that it is in substantial compliance with all applicable  
24 codes, rules and regulations in any other state in which it operates,  
25 and to disclose any enforcement or administrative action taken against  
26 it in any other state;

27 (iv) for operators of adults homes, enriched housing programs, or  
28 residencies for adults, or its affiliates, an opportunity for public

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

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1 comment on the application shall be posted on the department's webpage  
2 and by notice to the long-term care ombudsman program. Comments may be  
3 submitted by electronic or regular mail, and shall be considered as part  
4 of the character and competence review of the application and may be  
5 considered the basis for rejecting the application or imposing condi-  
6 tions that must be satisfied prior to the expiration of the conditional  
7 approval period;

8 (v) a period of public comment and review of no longer than sixty  
9 days. Conditional approval shall only be granted once the period of  
10 public comment has been closed and the department has duly reviewed and  
11 considered any issues which may be relevant to the approval process;

12 (vi) issuance by the department of a conditional approval to operate  
13 the facility for a specified period of time upon substantial completion  
14 of the character and competence, legal, financial and architectural  
15 components of the application, so long as the operator or its affiliate  
16 agrees in writing to satisfy all pending conditions prior to the expira-  
17 tion of the conditional approval period or a time frame established by  
18 the department;

19 ~~(vii)~~ (vii) issuance by the department of a conditional approval to  
20 construct a facility, at the operator's or its affiliate's own risk,  
21 upon substantial completion of the architectural component of the appli-  
22 cation;

23 ~~(viii)~~ (viii) elimination of duplicative submission and review of any  
24 application information which has been previously reviewed and approved  
25 by the department or any of its regional offices within the past two  
26 years through a certification process and form whereby the operator or  
27 its affiliate will attest that such application information is duplica-  
28 tive;

29 ~~(ix)~~ (ix) with respect to any programmatic application information  
30 to be reviewed by the regional office, such review shall be conducted  
31 on-site by the regional office during the pre-opening inspection or  
32 first full annual inspection, if the department has previously approved  
33 the operator or its affiliate to operate the same type of program at  
34 another facility within the past two years;

35 ~~(x)~~ (x) electronic submission of applications; and

36 ~~(xi)~~ (xi) a combined application for licensure as an adult care  
37 facility, assisted living residence and/or assisted living program, to  
38 the extent the department determines such a combined application is  
39 feasible.

40 § 2. Paragraph (b-2) of subdivision 2 of section 461-b of the social  
41 services law, as amended by chapter 15 of the laws of 2016, is amended  
42 to read as follows:

43 (b-2) For purposes of paragraph (b) of this subdivision, "good stand-  
44 ing" shall mean the operator and its affiliates have not: (A) received  
45 any official written notice from the department of a proposed revoca-  
46 tion, suspension, denial or limitation on the operating certificate of  
47 the facility or residence; (B) within the previous ~~three~~ five years,  
48 been assessed a civil penalty after a hearing conducted pursuant to  
49 subparagraph one of paragraph (b) of subdivision seven of section four  
50 hundred sixty-d of this article for a violation that has not been recti-  
51 fied; (C) within the previous ~~year~~ five years, received any official  
52 written notice from the department of a proposed assessment of a civil  
53 penalty for a violation described in subparagraph two of paragraph (b)  
54 of subdivision seven of section four hundred sixty-d of this article;  
55 (D) within the previous ~~three~~ five years, been issued an order pursu-  
56 ant to subdivision two, five, six or eight of section four hundred

1 sixty-d of this article; (E) within the previous [~~three~~ five years,  
2 been placed on, and if placed on, removed from the department's "do not  
3 refer list" pursuant to subdivision fifteen of section four hundred  
4 sixty-d of this article; or (F) within the previous three years, been  
5 cited by the department for a violation of residents' rights regulations  
6 pursuant to subdivision three of section four hundred sixty-one-d of  
7 this article. Provided, however, that in the case of an operator or  
8 affiliate that is not in good standing as provided in this paragraph,  
9 the department may permit the operator or affiliate to use the stream-  
10 lined application process, in its discretion, if it determines that the  
11 disqualifying violation was an isolated occurrence that was promptly  
12 corrected by the operator or affiliate.

13 § 3. Paragraph (a) of subdivision 3 of section 461-b of the social  
14 services law, as amended by chapter 591 of the laws of 1999, is amended  
15 to read as follows:

16 (a) The department shall not approve an application for establishment  
17 of an adult care facility unless it is satisfied insofar as applicable,  
18 as to (i) the character, competence and standing in the community, of  
19 the applicant; provided, however, with respect to any such applicant who  
20 is already or within the past ten years has been an incorporator, direc-  
21 tor, sponsor, stockholder, operator, administrator, member or owner of  
22 any adult care facility which has been issued an operating certificate  
23 by the board or the department, or of a halfway house, hostel or other  
24 residential facility or of a program or facility licensed or operated by  
25 a health, mental hygiene, social services or education agency or depart-  
26 ment of this or any state, or a program serving persons with mental  
27 disabilities, or other persons with disabilities as defined in subdivi-  
28 sion twenty-one of section two hundred ninety-two of the executive law,  
29 the aged, children or other persons receiving health, mental hygiene,  
30 residential, social or educational services, no approval of such appli-  
31 cation shall be granted unless the department shall affirmatively find  
32 by substantial evidence as to each such applicant that a substantially  
33 consistent high level of care is being or was being rendered in each  
34 such facility or institution with which such person is or was affil-  
35 iated; for the purposes of this paragraph, there may be a finding that a  
36 substantially consistent high level of care has been rendered where  
37 there have been violations of applicable rules and regulations, that (1)  
38 did not threaten to directly affect the health, safety or welfare of any  
39 patient or resident, [~~and~~] (2) did not violate rights of a resident of  
40 the facility, and (3) were promptly corrected and not recurrent; (ii)  
41 the financial resources of the proposed facility and its sources of  
42 future revenue; and (iii) such other matters as it shall deem pertinent,  
43 including, for adult homes, enriched housing programs, or residences for  
44 adults, public comment received by the department. In the case of appli-  
45 cations for adult homes, enriched housing programs, or residences for  
46 adults, the department shall post on its webpage, and with notice to the  
47 long term care ombudsman program, an opportunity for public comment, and  
48 shall accept comments by electronic or regular mail.

49 § 4. This act shall take effect on the one hundred eightieth day after  
50 it shall have become a law. Effective immediately, the addition, amend-  
51 ment and/or repeal of any rule or regulation necessary for the implemen-  
52 tation of this act on its effective date are authorized to be made and  
53 completed on or before such effective date.