

STATE OF NEW YORK

4893--A

Cal. No. 372

2021-2022 Regular Sessions

IN SENATE

February 18, 2021

Introduced by Sens. RIVERA, BIAGGI, HINCHEY, KRUEGER, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee and committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 7. Where the operator of a nursing home provides or purports to
54 provide, by any contract, agreement or arrangement, for any party to
55 carry out or be delegated any activity or responsibility relating to the
56 nursing home, that shall not diminish any responsibility or liability

1 that the operator would otherwise have for any such activity or respon-
2 sibility or for the operation of the nursing home.

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

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

17 § 3. This act shall take effect immediately.