STATE OF NEW YORK

1124

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. FORREST, AUBRY, DAVILA, EPSTEIN, GIBBS, GLICK, GONZALEZ-ROJAS, JACKSON, LUCAS, MAMDANI, SEAWRIGHT, SIMON -- read once and referred to the Committee on Health

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:

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

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

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

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

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

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

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(iv) **for operators of adults homes, enriched housing programs, or residencies for adults, or its affiliates, an opportunity for public comment on the application shall be posted on the department's webpage and by notice to the long-term care ombudsman program. Comments may be submitted by electronic or regular mail, and shall be considered as part of the character and competence review of the application and may be considered the basis for rejecting the application or imposing conditions that must be satisfied prior to the expiration of the conditional approval period;**

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

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

[~~(v)~~] **(vii)** issuance by the department of a conditional approval to construct a facility, at the operator's or its affiliate's own risk, upon substantial completion of the architectural component of the application;

[~~(vi)~~] **(viii)** elimination of duplicative submission and review of any application information which has been previously reviewed and approved by the department or any of its regional offices within the past two years through a certification process and form whereby the operator or its affiliate will attest that such application information is duplicative;

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

[~~(viii)~~] **(x)** electronic submission of applications; and

[~~(ix)~~] **(xi)** a combined application for licensure as an adult care facility, assisted living residence and/or assisted living program, to the extent the department determines such a combined application is feasible.

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

(b-2) For purposes of paragraph (b) of this subdivision, "good standing" shall mean the operator and its affiliates have not**:** (A) received any official written notice from the department of a proposed revocation, suspension, denial or limitation on the operating certificate of the facility or residence; (B) within the previous [~~three~~] **five** years, been assessed a civil penalty after a hearing conducted pursuant to subparagraph one of paragraph (b) of subdivision seven of section four hundred sixty-d of this article for a violation that has not been rectified; (C) within the previous [~~year~~] **five years**, received any official written notice from the department of a proposed assessment of a civil penalty for a violation described in subparagraph two of paragraph (b) of subdivision seven of section four hundred sixty-d of this article;

(D) within the previous [~~three~~] **five** years, been issued an order pursuant to subdivision two, five, six or eight of section four hundred sixty-d of this article; (E) within the previous [~~three~~] **five** years, been placed on, and if placed on, removed from the department's "do not refer list" pursuant to subdivision fifteen of section four hundred sixty-d of this article**; or (F) within the previous three years, been cited by the department for a violation of residents' rights regulations pursuant to subdivision three of section four hundred sixty-one-d of this article**. Provided, however, that in the case of an operator or affiliate that is not in good standing as provided in this paragraph, the department may permit the operator or affiliate to use the streamlined application process, in its discretion, if it determines that the disqualifying violation was an isolated occurrence that was promptly corrected by the operator or affiliate.

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

(a) The department shall not approve an application for establishment of an adult care facility unless it is satisfied insofar as applicable, as to (i) the character, competence and standing in the community, of the applicant; provided, however, with respect to any such applicant who is already or within the past ten years has been an incorporator, director, sponsor, stockholder, operator, administrator, member or owner of any adult care facility which has been issued an operating certificate by the board or the department, or of a halfway house, hostel or other residential facility or of a program or facility licensed or operated by a health, mental hygiene, social services or education agency or department of this or any state, or a program serving persons with mental disabilities, or other persons with disabilities as defined in subdivision twenty-one of section two hundred ninety-two of the executive law, the aged, children or other persons receiving health, mental hygiene, residential, social or educational services, no approval of such application shall be granted unless the department shall affirmatively find by substantial evidence as to each such applicant that a substantially consistent high level of care is being or was being rendered in each such facility or institution with which such person is or was affiliated; for the purposes of this paragraph, there may be a finding that a substantially consistent high level of care has been rendered where there have been violations of applicable rules and regulations, that (1) did not threaten to directly affect the health, safety or welfare of any patient or resident, [~~and~~] (2) **did not violate rights of a resident of the facility, and (3)** were promptly corrected and not recurrent; (ii) the financial resources of the proposed facility and its sources of future revenue; and (iii) such other matters as it shall deem pertinent**, including, for adult homes, enriched housing programs, or residences for adults, public comment received by the department. In the case of applications for adult homes, enriched housing programs, or residences for adults, the department shall post on its webpage, and with notice to the long term care ombudsman program, an opportunity for public comment, and shall accept comments by electronic or regular mail**.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.