STATE OF NEW YORK

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IN ASSEMBLY

January 17, 2023

Introduced by M. of A. SIMON, CRUZ, REYES, GLICK, WEPRIN, BURDICK, JACOBSON, OTIS, CUNNINGHAM, SEAWRIGHT, SANTABARBARA, MITAYNES, GONZALEZ-ROJAS, COLTON, FORREST, PHEFFER AMATO, BARRETT, SHRESTHA, LEVENBERG, ARDILA, MAMDANI, DINOWITZ, TAPIA, LEE, McDONALD, KELLES, TAYLOR, BORES -- Multi-Sponsored by -- M. of A. CARROLL, COOK, DAVILA, EPSTEIN, HEVESI, PAULIN, STECK, WALKER -- read once and referred to the Committee on Health -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the special order of third reading

AN ACT to amend the public health law, in relation to providing public notice and public engagement when a general hospital seeks to close entirely or a unit that provides maternity, mental health or substance use care

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

Section 1. Short title. This act shall be known and may be cited as the "local input in community healthcare act".

§ 2. Section 2801-g of the public health law, as added by chapter 541 of the laws of 2010, subdivision 4 as added by section 3 of part E of chapter 57 of the laws of 2023, is amended to read as follows:

§ 2801-g. Community [~~forum~~] notice and engagement on hospital closure. 1. Process for the closure of a general hospital or a unit of a general hospital. (a) This section sets forth a process for the closure of a general hospital or a unit of a general hospital. As used in this section, "unit" means a portion of a general hospital that offers licensed emergency, maternity, mental health or substance use services, including any specialty care or any other hospital service in an operating certificate as approved under section twenty-eight hundred five of this article. For the purposes of this section, the closure of a unit of

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

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a general hospital shall include a reduction of such services. As used in this section, "reduction" means a reduction in services that results in:

(i) more than fifteen percent of a reduction in patient capacity of a unit within twelve months; or

(ii) a twenty-five percent or more reduction in patient capacity in aggregate within a twenty-four month period; or

(iii) a thirty-five percent or more reduction in patient capacity in aggregate within a thirty-six month period.

2. Closure of a general hospital. (a) Written notification of a proposed closure of a general hospital must be provided to the department and all parties listed in subparagraph (ii) of paragraph (c) of this subdivision no later than two hundred seventy days prior to the proposed closure date. Nothing in this section shall prohibit a general hospital from conferring with the department prior to submitting such written notification to give informal notice and seek guidance.

(b) Application. A general hospital that seeks to close entirely shall submit an application that requires review by the public health and health planning council, or any successor entity. The application for the closure shall include a health equity impact assessment, as defined by section twenty-eight hundred two-b of this article, and a proposed closure plan. The application shall be submitted at least two hundred ten days before the proposed closure. No cessation, pause, transfer, or limitation of service may be carried out while the closure application is pending without prior written approval by the commissioner or the commissioner's designee, who may take into consideration the impacts on quality of care and patient safety stemming from changes in patient volume or services. As used in this section, "transfer of services" shall include conversion of services from inpatient to outpatient services, the moving of services to other facilities, or the transfer of personnel that would constitute a reduction or unavailability of services.

(c) Public community forum. (i) No later than [~~thirty~~] one hundred fifty days [~~after~~] prior to the proposed closure of a general hospital, the commissioner shall hold a public community forum for the purpose of obtaining public input concerning the anticipated impact of the general hospital's closure on access to health care services by members of the surrounding community, including but not limited to recipients of medical assistance for needy persons, the uninsured, and medically underserved populations as defined in paragraph (d) of subdivision one of section twenty-eight hundred two-b of this article, and options and proposals to ameliorate such anticipated impact. The commissioner shall afford community members, health care providers, labor unions, payers, businesses and consumers a reasonable opportunity to speak about relevant matters at such community forum.

[~~2.~~] (ii) No later than [~~sixty~~] thirty days [~~after~~] before holding a community forum pursuant to [~~subdivision one of this section~~] this paragraph, the commissioner shall make available to the public on the department's website information regarding:

[~~(a)~~] (A) the proposed closure plan submitted by the general hospital;

(B) the anticipated impact of the general hospital's closure on access to health care services by members of the surrounding community, including but not limited to recipients of medical assistance for needy persons, the uninsured, and underserved populations;

[~~(b)~~] (C) specific measures the department and other parties have taken or will take to ameliorate such anticipated impact including but

not limited to ensuring that the services to be eliminated would be available to Medicaid, or individuals that are insured by a publicly-subsidized plan and uninsured patients at the surrounding area facilities that are taking new patients; and

[~~(c)~~] (D) any further recommendations regarding access to health care services in communities impacted by the general hospital's closure.

[~~3.~~] (iii) A community forum conducted pursuant to this section shall be held at a location within a reasonable proximity to the general hospital or unit subject to the proposed closure, and shall be announced no less than [~~ten~~] fourteen days prior to the date of such community forum. Such forum shall be held at a proper time and be accessible to the impacted community virtually and physically.

[~~4. At least thirty days prior to a general hospital applying to the federal centers for medicare and medicaid services to convert from a general hospital with inpatients to a rural emergency hospital under 42 USC 1395x(kkk), or successor provisions, such hospital shall hold a public community forum for the purpose of obtaining public input concerning the anticipated impact of the hospital's closure of inpatient units, including but not limited to, the impact on recipients of medical assistance for needy persons, the uninsured, people with disabilities, and medically underserved populations, and options and proposals to ameliorate such anticipated impact.~~

~~The~~] (iv) No later than thirty days prior to a community forum under this section, the general hospital shall notify health care providers, labor unions, the [~~congressional~~] local, state, and federal legislative representative, the office of the attorney general, the county executive, mayor, town supervisor, and in the case of the city of New York, the borough president, and community board for [~~the~~] every district in which the [~~facility~~] general hospital is located, [~~the county executive of the county in which the facility is located, and the state senator and assembly member representing the area within which the facility is located~~] of the date, time, and location of the community forum. The general hospital shall afford all public participants a reasonable opportunity to speak about relevant matters at such community forum. Prior to [~~any~~] a community forum and as soon as practicable, the general hospital shall be required to:

[~~(a)~~] (A) notify the office of mental health and the local director of community services in the event such general hospital has psychiatric inpatient beds licensed under article thirty-one of the mental hygiene law or designated pursuant to section 9.39 of the mental hygiene law, and

[~~(b)~~] (B) notify the office of addiction services and supports in the event such general hospital has inpatient substance use disorder treatment programs or inpatient chemical dependence treatment programs licensed under article thirty-two of the mental hygiene law. The commissioner shall also accept comments submitted in writing at such public forum and by mail or electronic mail within at least two weeks following the community forum.

(v) The commissioner shall also accept comments submitted in writing at such public forum and by mail or electronic mail within at least two weeks following the community forum.

(d) Revised closure plan. No later than thirty days after the community forum, the general hospital shall submit a revised closure plan to the department addressing concerns raised by community stakeholders during the community forum. The general hospital and the department

shall make the revised closure plan publicly available on their websites no later than forty-five days after the community forum.

(e) Public health and health planning council review. No later than ninety days prior to the proposed closure, the public health and health planning council, or any successor entity, shall hold a public meeting before the council to review the application, including the health equity impact assessment and revised closure plan. Within two weeks after such meeting, the public health and health planning council shall make a recommendation to the commissioner for the commissioner's consideration.

3. Closure of a unit of a general hospital. (a)(i) Written notification of a proposed closure of a unit of a general hospital, as defined in subdivision one of this section, must be provided to the department and all parties listed in subparagraph (iv) of paragraph (c) of subdivision two of this section no later than two hundred ten days prior to the proposed closure date. Nothing in this section shall prohibit a general hospital from conferring with the department prior to submitting such written notification to give informal notice and seek guidance.

(ii) A reduction in services or closure of a unit in a general hospital shall not be required to undergo the process set forth in this section if the general hospital demonstrates to the department a good cause for such reduction or closure of a unit, which shall include one or more of the following:

(A) whether such closure or reduction is temporary in order to modernize a facility;

(B) whether such closure addresses the current health care demand, such as patient volume and the overall availability of services in the facility's health service area or county served;

(C) there are acute labor shortages outside of the control of the general hospital that impacts patient safety; or

(D) an acute financial emergency outside of the control of the general hospital.

(b) Application. A general hospital that seeks the closure of a unit shall submit an application to the department of health that requires review by the public health and health planning council, or any successor entity in addition to approval by the commissioner. The application for the closure shall include a health equity impact assessment, as defined by section twenty-eight hundred two-b of this article, and a proposed closure plan. The application shall be submitted at least one hundred fifty days before the proposed closure. No cessation, pause, transfer, or limitation of service may be carried out while the closure application is pending without prior written approval by the commissioner or the commissioner's designee, who shall take into consideration the impacts on quality of care and patient safety stemming from changes in patient volume or services. As used in this section, "transfer of services" shall include conversion of services from inpatient to outpatient services, the moving of services to other facilities, or the transfer of personnel that would constitute a reduction or unavailability of services.

(c) Community public forum. (i) No later than ninety days prior to the proposed closure of a unit of a general hospital, the commissioner shall hold a public community forum for the purpose of obtaining public input concerning the anticipated impact of the unit's closure on quality and access to health care services by members of the surrounding community, including but not limited to recipients of medical assistance for needy persons, the uninsured, and medically underserved populations as defined in paragraph (d) of subdivision one of section twenty-eight hundred

two-b of this article, and options and proposals to ameliorate such anticipated impact. The commissioner shall afford community members, health care providers, labor unions, payers, businesses, and other participants a reasonable opportunity to speak about relevant matters at such community forum.

(ii) No later than two weeks before holding a community forum pursuant to this paragraph, the commissioner shall make available to the public on the department's website information regarding: (A) the proposed closure plan submitted by the general hospital; (B) the anticipated impact of the closure on quality and access to health care services by members of the surrounding community, including but not limited to recipients of medical assistance for needy persons, the uninsured, and underserved populations; (C) specific measures the department and other parties have taken or will take to ameliorate such anticipated impact including but not limited to ensuring that the services to be eliminated would be available to Medicaid, or individuals that are insured by a publicly-subsidized plan and uninsured patients at the surrounding area facilities that are taking new patients; and (D) any further recommendations regarding quality and access to health care services in communities impacted by the closure.

(iii) A community forum conducted pursuant to this paragraph shall be held at a location within a reasonable proximity to the unit subject to the proposed closure and shall be announced no less than fourteen days prior to the date of such community forum. Such forum shall be held at a proper time and be accessible to the impacted community virtually and physically.

(iv) No later than two weeks prior to the community forum under this section, the general hospital seeking to close a unit shall notify health care providers, labor unions, the local, state, and federal legislative representative, the office of the attorney general, the county executive, mayor, town supervisor, and in the case of the city of New York, the borough president, and community board for every district in which the general hospital is located, of the date, time, and location of the community forum. Prior to the community forum and as soon as practicable, the general hospital shall be required to: (A) notify the office of mental health and the local director of community services in the event such general hospital is seeking to close an inpatient psychiatric unit licensed under article thirty-one of the mental hygiene law or designated pursuant to section 9.39 of the mental hygiene law, and (B) notify the office of addiction services and supports in the event the general hospital is seeking to close an inpatient substance use disorder treatment programs or inpatient chemical dependence treatment programs licensed under article thirty-two of the mental hygiene law.

(v) The commissioner shall also accept comments submitted in writing at such public forum and by mail or electronic mail within at least two weeks following the community forum.

(d) Revised closure plan. No later than thirty days after the community forum, the general hospital shall submit a revised closure plan to the department addressing concerns raised by community stakeholders during the community forum. The general hospital and the department shall make the revised closure plan publicly available on their websites no later than forty-five days after the community forum.

(e) Public health and health planning council review. No later than thirty days prior to the proposed closure, the public health and health planning council, or any successor entity, shall hold a public meeting

to review the application, including the health equity impact assessment and revised closure plan. Within two weeks after such meeting, the public health and health planning council shall make a recommendation to the commissioner for the commissioner's consideration.

4. The commissioner shall make their decision to either approve or deny the closure plan within thirty days following receipt of the recommendation from the public health and health planning council.

5. At least thirty days prior to a general hospital applying to the federal centers for medicare and medicaid services to convert from a general hospital with inpatients to a rural emergency hospital under 42 USC 1395x(kkk), or successor provisions, such general hospital shall hold a public community forum for the purpose of obtaining public input concerning the anticipated impact of the general hospital's closure of inpatient units, including but not limited to, the impact on recipients of medical assistance for needy persons, the uninsured, people with disabilities, and medically underserved populations, and options and proposals to ameliorate such anticipated impact.

6. No later than January first, two thousand twenty-five and annually thereafter, the commissioner shall provide a report to the legislature, including but not limited to, identifying the general hospital or unit of a general hospital that has provided written notice of a closure, the proposed closure date and the services impacted by the proposed closure. Such report shall be provided in electronic format and shall be distributed to the temporary president and minority leader of the senate, the speaker and minority leader of the assembly, the chair of the senate standing committee on health, and the chair of the assembly health committee.

7. No provision of this section shall modify any other requirement or process for the closure of a general hospital or a unit of a general hospital that is required pursuant to this chapter or the regulations promulgated pursuant to it, including but not limited to any department or public health and health planning council review or approval process.

§ 3. This act shall take effect on the sixtieth day after it shall have become a law, and shall not apply to any proposed closures on notice to the department as of the date it shall take effect.