STATE OF NEW YORK

6034--B

Cal. No. 172

2023-2024 Regular Sessions

IN ASSEMBLY

March 30, 2023

Introduced by M. of A. PAULIN, BICHOTTE HERMELYN, SAYEGH -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- ordered to a 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 order of third reading

AN ACT to amend the public health law, in relation to expanding the scope of the temporary operator program

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

Section 1. Subdivision 1 of section 2806-a of the public health law, as added by section 50 of part E of chapter 56 of the laws of 2013, paragraph (g) as added by section 7 of part K of chapter 57 of the laws of 2015, is amended to read as follows:

1. For the purposes of this section:

(a) "adult care facility" shall mean an adult home or enriched housing program licensed pursuant to article seven of the social services law or an assisted living residence licensed pursuant to article forty-six-B of this chapter;

(b) "established operator" shall mean the operator of [~~an adult care~~] a facility[~~, a general hospital or a diagnostic and treatment center that has been established and issued an operating certificate as such pursuant to this article~~];

(c) "facility" shall mean (i) a [~~general~~] hospital [~~or a diagnostic and treatment center that has been issued an operating certificate as such pursuant to this article~~]; or (ii) an adult care facility;

(d) "temporary operator" shall mean any person or entity that:

(i) agrees to operate a facility on a temporary basis in the best interests of its residents or patients and the community served by the facility; and

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

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(ii) has demonstrated that [~~he or she has~~] **they have** the character, competence and financial ability to operate the facility in compliance with applicable standards;

(e) "serious financial instability" shall include but not be limited to defaulting or violating key covenants of loans, or missed mortgage payments, or general untimely payment of obligations, including but not limited to employee benefit fund, payroll tax, and insurance premium obligations, or failure to maintain required debt service coverage ratios or, as applicable, factors that have triggered a written event of default notice to the department by the dormitory authority of the state of New York; and

(f) "extraordinary financial assistance" shall mean state funds provided to a facility upon such facility's request for the purpose of assisting the facility to address serious financial instability. Such funds may be derived from existing programs within the department, special appropriations, or other funds.

(g) "improper delegation of management authority by the governing authority or operator" of a [~~general hospital~~] **facility** shall include, but not be limited to, the delegation to an entity that has not been established as an operator of the [~~general hospital~~] **facility** of (i) authority to hire or fire the administrator or other key management employees; (ii) maintenance and control of the books and records; (iii) authority over the disposition of assets and the incurring of liabilities on behalf of the facility; and (iv) the adoption and enforcement of policies regarding the operation of the facility. The criteria set forth in this paragraph shall not be the sole determining factors, but indicators to be considered with such other factors that may be pertinent in particular instances. Professional expertise shall be exercised in the utilization of the criteria. All of the listed indicia need not be present in a given instance for there to be an improper delegation of authority.

§ 2. This act shall take effect immediately; provided the amendments to section 2806-a of the public health law made by section one of this act shall not affect the repeal of such section and shall be deemed repealed therewith.