

STATE OF NEW YORK

9131

IN SENATE

April 29, 2024

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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:

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

5 1. For the purposes of this section:

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

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

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

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

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

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

24 (e) "serious financial instability" shall include but not be limited
25 to defaulting or violating key covenants of loans, or missed mortgage
26 payments, or general untimely payment of obligations, including but not
27 limited to employee benefit fund, payroll tax, and insurance premium
28 obligations, or failure to maintain required debt service coverage

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

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1 ratios or, as applicable, factors that have triggered a written event of
2 default notice to the department by the dormitory authority of the state
3 of New York; and

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

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

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