§ 16.27 Residential facilities; receivership.

(a) The operator of any facility may at any time request the office to take over the operation of such facility by the appointment of a receiver. Upon receiving such a request, the office may, if it deems such action desirable, enter into an agreement with any such operators with respect to the appointment of a receiver to take charge of the facility under conditions as found acceptable by both parties. Receivership commenced in accordance with the provisions of this subdivision shall terminate at such time as may be provided in the receivership agreement, or one hundred twenty days after the receipt by either party of written notice that the other party wishes to terminate such receivership.

(b) (1) a. If the commissioner has reason to believe that it is necessary to protect the health, safety and welfare of the persons with developmental disabilities in a residential facility, at the time of temporary suspension of the operating certificate of such a facility or upon issuance of a notice of intention to revoke or suspend the operating certificate of such a facility pursuant to section 16.17 of this article, or at the time of any notice of disapproval of an application for issuance or renewal of such certificate pursuant to section 16.05 of this article, the commissioner may apply to the supreme court in the county where the facility is situated for an order to show cause why a receiver should not be appointed to take charge of the facility. The supreme court shall, upon the request of the commissioner, and upon determining that the notice was properly issued and that the health, safety and welfare of the persons with developmental disabilities would be served by the appointment of a receiver to operate the facility, appoint a receiver to commence operating the facility upon the effective date of the revocation, suspension, temporary suspension, denial or nonrenewal of the operating certificate of such facility.

b. The receiver should, where reasonably possible, be a voluntary association or not-for-profit corporation which holds a valid and current operating certificate for a residential facility pursuant to section 16.05 of this article (or which shall satisfactorily demonstrate its lawful qualifications for such operating certificate) with the approval of the commissioner, an employee of the office or other

designee.

c. Such application for an order to show cause, shall contain proof by affidavit that the commissioner has temporarily suspended the facility's operating certificate or has issued a notice of intention to revoke, suspend, or deny issuance or renewal of its operating certificate.

d. In the case of a temporary suspension of an operating certificate, a temporary receiver may be appointed and a temporary restraining order may be granted. If the commissioner demonstrates that, unless a temporary receiver is appointed and a temporary restraining order is granted before a hearing can be held, the health or safety of any person with developmental disabilities will be in imminent danger or that property necessary to the operation of the facility will be in imminent danger of removal or destruction, a temporary receivership and a temporary restraining order may be granted without notice. The temporary receivership and temporary restraining order shall be in effect pending a determination of the order to show cause.

e. The order to show cause why a receiver should not be appointed shall be returnable not less than five days after service is completed; provided, however, that in the case of an appointment of a temporary receiver without notice to the owner or operator pursuant to subparagraph d of this paragraph, the order to show cause shall be returnable no more than fourteen days from the appointment of a temporary receiver.

f. The order to show cause shall provide for personal service of a copy thereof and the papers on which it is based on the owner or owners of the real property on or in which the facility is located and on the facility operator. In the case of an appointment of a temporary receiver without notice to the owner or operator pursuant to subparagraph d of this paragraph, such order to show cause shall provide for personal service upon such owner and operator within thirty-six hours after the appointment of the temporary receiver. If any owner or operator cannot with due diligence be served personally within the county where the property is located and within the time fixed in such order, then

service may be made on such person by posting a copy thereof in a conspicuous place within the facility in question, and by sending a copy thereof by certified mail, return receipt requested, to such operator at the last address registered by him with the department and such owner to the address set forth in the last recorded deed with respect to such real property on or in which the facility is located. Service shall be deemed complete on filing proof of service thereof in the office of the county clerk, or the clerk of the city of New York, as the case may be.

(2) On the return of said order to show cause, determination shall have precedence over every other business of the court unless the court shall find that some other pending proceeding, having similar statutory precedence, shall have priority. The court may conduct a hearing at which all interested parties shall have the opportunity to present evidence pertaining to whether the health, safety and welfare of the residents with developmental disabilities will be served by the appointment of a receiver to operate the facility. If the court shall find that the facts warrant the granting thereof, then any such qualified and approved agency, person or corporation, the commissioner, or any person designated by the commissioner, shall be appointed receiver to take charge and assume operation of the facility, and the court shall determine a fair monthly rental for the facility consistent with its usage as such facility, taking into account all relevant factors, including the condition of such facility, which amount shall, except in the case where the receiver is assuming an existing bona fide arm's length lease, not exceed the amount which would be reimbursable to the facility under the medical assistance program for real property costs if each resident in the facility were a recipient of medical assistance. Such rental shall be paid by the receiver to the owner or owners of the facility for each month that the receivership remains in effect, provided, however, that nothing contained herein shall be construed to alter and diminish any rental obligation the operator may have under any currently valid lease.

(3) Any receiver appointed pursuant to this subdivision shall have all of the powers and duties of a receiver appointed in an action to foreclose a mortgage on real property, together with such additional powers and duties as are herein granted and imposed. The receiver shall with all reasonable speed, but in any case, within eighteen months after

the date on which the receivership was ordered to provide for the orderly transfer of all persons with developmental disabilities in the facility to other facilities or make other provisions for their continued safety and care. During the interim period when such persons with developmental disabilities must remain in the facility, the receiver may correct or eliminate those deficiencies in the facility that seriously endanger the life, health or safety of such persons with developmental disabilities provided that such correction or elimination of deficiencies does not include major alterations of the physical structure of the facility. The receiver shall, during this period operate the facility in such a manner as to guarantee safety and adequate care for such persons with developmental disabilities. The receiver shall have the power to let contracts therefor or incur expenses in accordance with the provisions of local laws, ordinances, rules and regulations applicable to contracts for public works except that advertisement shall not be required for each such contract. Notwithstanding any such laws, ordinances, rules or regulations, the receiver may let contracts or incur expenses for individual items of repairs, improvements or supplies without the procurement of competitive bids where the total amount of any such individual item does not exceed five thousand dollars. Any receiver who is an official or employee of the state of New York shall not be required to file any bond. The receiver shall collect incoming payments from all sources and apply them to the costs incurred in the performance of the receiver's functions. The receiver shall honor all existing leases, mortgages and chattel mortgages that had previously been undertaken as obligations of the owners or operators of the facility. However, such receiver may make application to the appointing court for recission, reformation or such other relief as may be appropriate with respect to the executory covenants or provisions of any contractual obligations of such owners or operators as may be necessary or appropriate to protect the best interests of the persons with developmental disabilities residing within such facility. No security interest in any real or personal property comprising the facility or contained within the facility, or in any fixture of the facility, shall be impaired or diminished in priority by the receiver. The receiver shall compensate the owner or owners of any goods held in inventory for those goods which he uses or causes to be

used by reimbursing the costs of such goods, except that no such compensation shall be made for any such goods for which the owners or operators of the facility have already been reimbursed. Neither the receiver nor the office shall engage in any activity that constitutes a confiscation of property without the payment of fair compensation.

(4) The appointing court, upon application of the receiver, may make such provision as justice may require for a reasonable compensation and reimbursement of the reasonable expenses of such receiver. The receiver shall be liable only in the receiver's official capacity for injury to person and property by reason of conditions of the facility in a case where an owner would have been liable; provided that the receiver operates such facility in compliance with the terms of the appointment the receiver shall not have any liability in a personal capacity, except for gross negligence and intentional acts.

(5) a. The court shall terminate the receivership only under any of the following circumstances:

(i) eighteen months after the date on which it was ordered;

(ii) when the office grants the facility a new operating certificate, whether the structure of the facility or the land on which it is located shall be under the same or different ownership; or

(iii) at such time as all of the persons with developmental disabilities in the facility have been provided alternative residential services.

b. At the time of termination, the receiver shall render a full and complete accounting to the court and shall make disposition of surplus money at the direction of the court.

(6) a. Any person who is served a copy of an order of the court appointing the receiver shall, upon being notified of the name and address of the receiver, make all payments for goods supplied by the facility, or services rendered by the facility, to the receiver. A receipt shall be given for each such payment, and copies of all such receipts shall be kept on file by the receiver. The amount so received shall be deposited by the receiver in a special account which shall also be used for all disbursements made by the receiver.

b. Any person refusing or omitting to make such a payment after such

service and notice may be sued therefor by the receiver. Such person shall not in such suit dispute the authority of the receiver to incur or order such expenses, or the right of the receiver to have such payments made to him. The receipt of the receiver for any sum paid to him shall, in all suits and proceedings and for every purpose, be as effectual in favor of any person holding the same as actual payment of the amount thereof to the owner or other person or persons who would, but for the provisions of this subdivision, have been entitled to receive the sum to be paid. No person with developmental disabilities shall be discharged, nor shall any contract or rights be forfeited or impaired, nor any forfeiture or liability be incurred, by reason of any omission to pay any owner, contractor or other person any sum so paid to the receiver.

(7) Any other provision of this chapter notwithstanding, the office may, if it deems appropriate, grant to any facility operating or scheduled to operate under a receivership authorized by this subdivision an operating certificate the duration of which shall be limited to the duration of the receivership.

(8) (i) No provision contained herein shall be deemed to relieve the owner or operator of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner or operator prior to the appointment of any receiver hereunder, nor shall anything contained herein be construed to suspend during the receivership any obligation of the owner or operator for the payment of taxes or other operating and maintenance expenses of the facility nor of the owner or any other person for the payment of mortgages or liens.

(ii) The receiver shall not be responsible for any obligations incurred by the owner, operator or prime lessor, if any, prior to the appointment of the receiver.

(iii) The receiver shall be entitled to use for operating and maintenance expenses and the basic needs of the residents of the facility a portion of the revenues due the operator during the month in which the receiver is appointed which portion shall be established on the basis of the amounts of the unpaid operating and maintenance expenses for such month.

(iv) Any sums determined to be due and owing by the receiver to the owner, operator or prime lessor shall be off-set by any charges determined to be the obligations of the owner, operator or prime lessor.

(c) (1) Subject to paragraph two of this subdivision, and subject to the approval of the director of the budget, the commissioner is authorized to make payments to receivers appointed pursuant to the provisions of subdivision (b) of this section, only if the receiver demonstrates to the satisfaction of the commissioner that the facility's funds which are available are insufficient to meet operating and maintenance expenses of the facility and the basic needs of the residents of the facility.

(2) Notwithstanding any inconsistent provisions of law, payments made pursuant to this section shall be made from funds appropriated therefor and such payments shall be made only if a certificate of allocation and a schedule of amounts to be available therefor shall have been issued by the director of the budget and a copy of such certificate filed with the comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

(d) This section shall apply only to the facilities under the jurisdiction of the office for people with developmental disabilities. Reference to the commissioner in this section shall mean the commissioner of developmental disabilities.